

Division(s):

AUDIT & GOVERNANCE COMMITTEE – 6 SEPTEMBER 2017

REPORT ON THE AUTHORITY'S POLICY FOR COMPLIANCE WITH THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND USE OF ACTIVITIES WITHIN THE SCOPE OF THIS ACT

Report by the Monitoring Officer

Introduction

1. The Regulation of Investigatory Powers Act 2000 ('the Act') regulates the use of covert activities by Local Authorities. It creates the statutory framework by which covert surveillance activities may be lawfully undertaken. Special authorisation arrangements need to be put in place whenever a Local Authority considers commencing covert surveillance or considers obtaining information by the use of informants or officers acting in an undercover capacity.
2. As part of the legislative regime, the Office of Surveillance Commissioners carry out inspections from time to time to examine an authority's policies, procedures, operations and administration.
3. On 25 May 2017, Assistant Commissioner (His Honour Brian Barker CBE, QC) visited the County Council to inspect the processes of the Council and the Oxfordshire Fire and Rescue Service. This report summarises the findings of the Inspector's investigation and invites the Committee to raise any questions or comments.
4. A copy of the Inspector's report is included as **Annex 1** to this committee report. The outcome was generally positive but several helpful recommendations were made for improvements, which have been accepted.
5. Codes of Practice under the Act require that elected members review the Authority's use of the Act periodically and review the Authority's policy annually. This paper provides a summary of the activities undertaken by Oxfordshire County Council that fall within the scope of this Act for the period from April 2016 to March 2017. The Authority's Policy for Compliance with the Regulation of Investigatory Powers Act 2000 is attached in **Annex 2** for consideration.

Key aspects of the Office of the Surveillance Commissioners review

6. The review considered the following:
 - Central records and forms

- RIPA (Regulation of Investigatory Powers Act) Policy and management structure
 - Training
7. As to **central record and forms**, the Council's processes were generally found to be sound. The Inspector did however find that the cancellation of some authorisations "was insufficient and in several cases missed altogether". Improvements to this were recommended, especially as the previous inspection in 2014 had highlighted similar concerns. The Inspector has recognised the Council's commitment that this will be dealt properly, in compliance with guidelines, in future.
 8. As to the Council's **policies and management structures**, the Inspector was pleased to note that the Policy was "easy to follow and reviewed annually" and suggested some minor additions including flowcharts of the overall process. He was pleased that the Guidance Section included a "reasonably comprehensive section on the care needed in using social media sites to assist in gathering evidence".
 9. **Annexes 2 and 3** to this report are the updated **Policy** and **Guidance** documents, respectively, now including the minor points agreed with the Inspector. That is:
 - a. cross-referenced links to further information (Guidance)
 - b. emphasis on the identifying collateral intrusion (Guidance and Policy)
 - c. addition of appendix of standard flow charts of the overall process (Policy) and application to the Magistrates' Court (Guidance)
 - d. additional Authorising Officer (see paragraph 10 below) (Policy)
 10. As regards the **management structure for authorisations**, the Inspector commented that they recommend the authority's designated Senior Responsible Officer (the Monitoring Officer) is not involved in authorising surveillance applications. They recommend this in recognition of the Senior Responsible Officer's supervisory role over authorising officers and it being considered best practice for that person to remain independent from authorisations. After due consideration of this recommendation, taking account of the fact that the Monitoring Officer has a broader Governance role for the Council and is very rarely asked to authorise RIPA applications, it has been decided that this recommendation will not be adopted. However, the Director of Finance will be nominated as a further authorising officer to provide additional options for future applications.
 11. As regards **training**, the Inspector noted the good work that has been done to ensure training for appropriate staff and for managers generally. The Inspector recommended that it would be timely to set up a refresher session in the near future for all potential RIPA users and the Authorising Officers.
 12. The Committee is asked to note the revised Policy and Guidance documents and comment to the Monitoring Officer on any matters that they would like the Monitoring Officer to consider.

Use of the Act by Oxfordshire County Council

13. Between April 2016 and March 2017 the Council authorised covert surveillance on only 3 occasions. In the same period in the previous year 2 authorisations were granted. The need for surveillance does vary according to the operational requirements and priorities of the Service.
14. All authorisations for surveillance granted in 2016/2017 related to age restricted products. Monitoring of the sale of age restricted goods such as cigarettes, knives and alcohol to persons under the legal minimum age of purchase involves young volunteers attempting to purchase the relevant product whilst being observed by Trading Standards Officers. This constitutes surveillance and has to be authorised under the RIP Act.
15. During this period 3 test purchase operations were undertaken by Trading Standards. In total 29 businesses were tested and 3 were found to sell age restricted products to persons under the legal minimum age of purchase. One of these businesses was warned and subsequently passed a retest. The other sale is still under investigation. In relation to the third, ownership of the business changed subsequent to the operation and a decision was made not to pursue the matter further as a result.
16. In the same period there were no requests for access to communications data that were authorised (i.e. requests to provide the names and addresses of subscribers of telephone numbers).

Magistrate's Oversight

17. In October 2012 a requirement for oversight of authorisations of covert surveillance activities was introduced by the Protection of Freedoms Act 2012. All authorisations for covert surveillance activities falling within the scope of the Act granted by local authorities now need Magistrate's approval before they take effect. Since these changes came into force Magistrate's approval has been granted on all occasions that an application has been made.

Conclusion

18. The Office of the Surveillance Commissioner Inspector concluded that there has been less use of the RIPA powers since the last inspection but that the Council was still confident and compliant in its use. It was noted that officers "have considerable experience and focus in this area". He was pleased to recognise that "there is a clear commitment and enthusiasm to maintaining proper standards of supervision and awareness, and to be ready when the occasion demands".
19. The recommendations for action have been accepted and acted upon by officers.

20. RECOMMENDATION

The Committee is **RECOMMENDED** to:

- (a) Consider and note the use of activities within the scope of the Regulation of Investigatory Powers Act by the Council and the Office of Surveillance Commissioners report, and**
- (b) Note the revised Policy and Guidance documents at Annexes 2 and 3 and to comment on any changes to the Policy for Compliance with the Regulation of Investigatory Powers Act 2000 that the committee would wish the Monitoring Officer to consider.**

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