

AUDIT & GOVERNANCE COMMITTEE – 16 SEPTEMBER 2020

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

RECOMMENDATION

- 1. 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**
 - b) Note the Policy document at Annex 1 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.**

Executive Summary

2. The introduction of the Regulation of Investigatory Powers Act 2000 ('the Act') created a framework within which public bodies can lawfully carry out covert activities. Codes of Practice under the Act require that elected members review the Authority's use of activities within the scope of the Act periodically and review the Authority's Policy annually. This report provides a summary of the covert activities undertaken by the council between April 2019 and March 2020 for review by the committee. The report also provides the committee with an opportunity to review and comment on the council's Regulation of Investigatory Powers Act Policy.

Introduction

3. 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.
4. Codes of Practice under the Act require that elected members review the Authority's use of activities within the scope 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 2019 to August 2020. The Authority's Policy for Compliance with the Regulation of Investigatory Powers Act 2000 is attached in annex 1 for consideration.

5. 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. Our last inspection was in May 2017. All actions to address the findings of the Commissioner's inspections have been completed and were included in the 2018 annual report to the committee on the use of activities within the scope of RIPA. A further inspection is now planned for September 2020 and the outcomes of that inspection will be reported in due course.

Use of the Act by Oxfordshire County Council

6. Between April 2019 and March 2020, the Council authorised covert surveillance on 7 occasions. This is the same number of authorisations for activities within the scope of the Act as were granted between April 2018 and March 2019. All of these authorisations related to trading standards investigations.
7. Of the authorisations for surveillance granted in the last year 4 related to investigations concerning the sale of illegal tobacco. Illegal tobacco refers to cigarettes, hand-rolling tobacco or other smoking products that have been smuggled into the UK without tax being paid on them, or which are counterfeit. They can be attractive to children and young people as they are often sold at "pocket money prices" by unscrupulous sellers. The importation, distribution and supply of illegal tobacco is often linked with other forms of criminality.
8. The County Council's Trading Standards team is working with retailers and partner organisations to raise awareness of the problem of illegal tobacco and carries out enforcement action when required. Investigations of suspected supplies of illegal tobacco normally involve a covert test purchase. The purpose of the test purchase is to obtain a sample of the product being sold in order to ascertain whether it is legal to sell in this country and to identify the persons involved in the sale. Covert test purchases also assist in identifying where stocks of the product are being stored since illegal tobacco is frequently hidden in or around the premises from which it is sold. Covert test purchases are undertaken only where there are grounds to suspect the person or business concerned is involved in the supply of illegal tobacco products.
9. Covert test purchases are an essential operational tactic in the efforts to tackle the sale of illegal tobacco. These test purchases must be authorised under the Act and require the careful consideration of whether the intrusion is necessary for the purpose of prevention and detection of crime and proportionate to the outcome being sought. In some cases 2 separate authorisations are required for the same operation; a covert human intelligence source authorisation to enable an officer to make contact with the seller of suspected unlawful products and arrange to purchase some of the products and a directed surveillance authorisation to enable officers to observe the purchase and corroborate the evidence gathered through this purchase.
10. Between April 2019 and March 2020, the 4 authorisations that were granted under RIPA for illegal tobacco sales related to 2 separate investigations. Legal

proceedings have commenced in relation to one investigation and the other matter is still under investigation. In total, 6 prosecutions for illegal tobacco sales were concluded during this period taking into consideration the outcomes of investigations commenced before the period of this report.

11. As a result of trading standards investigations into the supply of illegal tobacco, between April 2019 and March 2020 illegal products were seized from 16 premises (including 2 seizures from vehicles). In total, 22,700 individual cigarettes, 12,450grams of hand rolling tobacco and 57,420grams of shisha tobacco products were seized.
12. The other authorisations under the Act provided between April 2019 and March 2020 related to the legal controls on the sale of knives. Under the Criminal Justice Act 1988, it is an offence for any person to sell a knife or similar bladed instrument to a person under 18. Trading standards carries out test purchases in order to ascertain whether a person under 18 years of age could obtain a knife from a shop in Oxfordshire. Prior to any test purchase the business concerned will receive advice from trading standards.
13. In 2019/20 test purchases were carried out at 45 businesses in Oxfordshire. Of these, 8 businesses sold a knife to a person who was under 18 years of age. One prosecution resulted with Lewis Baker Retail Ltd pleading guilty to a single offence under S141A of the Criminal Justice Act 1988 at Oxford Magistrates' Court on Friday 24 July. The company was fined £750 and ordered to pay prosecution costs of £2,084 and a £75 victim surcharge.

RIPA Policy

14. The Council's RIPA Policy is included in Annex 1 of this report. This policy has been reviewed since the last report to the committee. Minor revisions have been made to reflect changes in personnel at the council. In addition, a new section has been added to the policy, at paragraph 6, relating to information security and retention. This section reminds officers of the importance of securely managing and disposing of any information gathered as a result of surveillance activities.
15. The Committee is asked to note the Policy and comment to the Monitoring Officer on any matters that they would like the Monitoring Officer to consider.

Magistrate's Oversight

16. From October 2012 the Protection of Freedoms Act 2012 required Judicial oversight of authorisations of covert surveillance activities. 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. All applications made to Magistrates between April 2019 and March 2020 were approved.

Conclusion

17. Use of activities that fall within the scope of the Act remains infrequent by this Council. However, trading standards operational activity to tackle the sale of illegal tobacco and to prevent the sale of age restricted products to persons under the minimum age limit requires the use of surveillance periodically. The outcomes of the surveillance and subsequent investigations into illegal activities show that the continued use of covert surveillance is necessary for the effective discharge of the council's statutory responsibilities and the delivery of operation plans to achieve priorities.

STEVE JORDEN

Interim Monitoring Officer and Corporate Director Commercial Development, Assets and Investment

Contact officer: Richard Webb, Assistant Director of Regulatory Service.
Tel: 01865 815791