

SAFER AND STRONGER COMMUNITIES SCRUTINY COMMITTEE

MONDAY 5 SEPTEMBER 2011

**Report on the use of the Regulation of Investigatory Powers Act
2000 by Oxfordshire County Council**

**Report by Director of Social and Community Services and the
County Solicitor & Head of Law and Governance**

Introduction

1. The Regulation of Investigatory Powers Act 2000 ('the Act') creates the legal framework for the lawful use of covert surveillance and access to telecommunications data by public authorities. Prior to the introduction of this Act, the use of covert surveillance and access to communications data were not controlled by statute. Codes of Practice issued under this Act contain the detail that public authorities must have regard to when using covert surveillance or accessing communications data.
2. There is no direct sanction against Local Authorities within the Act for failing to comply with its provisions. Nevertheless covert surveillance or accessing communications data by its nature is an interference of a person's right to a private and family life guaranteed under Article 8 of the European Convention on Human Rights. The consequences of not obtaining prior authorisation in accordance with the Act may mean that the action is unlawful by virtue of Section 6 of the Human Rights Act 1998 i.e. a failure by the Authority to conduct this work in accordance with human rights conventions.
3. The 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 report therefore addresses both of these objectives, giving:
 - a periodic summary of the activities undertaken by the Council between October 2010 to July 2011 inclusive
 - an annual report on the use of the Council's RIPA procedures, including the findings from the recent inspection by the Office of Surveillance Commissioners.

Exempt Information

4. This report contains no exempt information. However, if specific details of operations or activities are required by the committee it may be necessary for the committee to exclude members of the public from the meeting in order to either-
 - a. Prevent the disclosure of information relating to an individual, or

- b. Prevent the disclosure of information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime.

Legal Requirements

5. Under the Act only officers holding certain senior positions can authorise surveillance or the access of communications data. In authorising activities under the Act, the authorising officer must be satisfied that the activity is necessary and proportionate.
6. In determining whether the action is necessary, an authorising officer in a local authority must be satisfied that the action is required for the purpose of preventing or detecting crime or for preventing disorder. Once grounds for necessity is demonstrated, the person granting the authorisation must also believe that the use of surveillance or an intelligence source is proportionate to what is aimed to be achieved by the conduct and use of that source or surveillance. This involves balancing the intrusive nature of the investigation or operation and the impact on the target or others who might be affected by it against the need for the information in operational terms.

Policies and Procedures in Operation in Oxfordshire County Council.

7. The Authority has implemented a policy on compliance with the requirements of this Act (Refer Annex 1). This policy details the procedures that must be followed by all officers considering covert surveillance operations or requiring access to communications data.
8. The policy specifies the officers who can authorise activities under the Act. They are the County Solicitor and the Acting Head of Trading Standards and Community Safety.
9. A central record of authorisations is maintained by the County Solicitor.

Use of the Act by Oxfordshire County Council – Types of Use

10. The table under paragraph 15 summarises the applications for activities falling within the scope of the Act that have been considered by the designated authorising officers. Some explanation of common activities may assist in understanding the activities concerned.
11. Under-age sales test purchasing in shops. Trading Standards will carry out test purchases of age restricted goods on a number of occasions throughout the year. Such test purchases are one aspect of the work that the service carries out with the aim of reducing the availability of age restricted goods to persons below the legal minimum age. The age restricted goods concerned may include cigarettes, knives, alcohol, fireworks and solvents. Test purchasing and other activities are carried out in order for the service to meet

its responsibilities to enforce age restricted sales legislation and to support community safety strategies.

12. Premises are selected for test normally as a result of intelligence or complaints from the public, but some routine market surveillance is also carried out. The operation involves a young volunteer attempting to buy the age restricted product whilst being observed by a trading standards enforcement officer. The surveillance being authorised is the observation of the young volunteer attempting to purchase an age restricted product. This takes place in the open area of the shop and no surveillance takes place other than in areas of the premises that the public can enter. Therefore, the actual surveillance is of minimal intrusiveness. No recording equipment is used.
13. Should a premises fail a test purchase officers will investigate the circumstances of the sale (e.g. what training has been provided to the sales assistant concerned, what policies and procedures have been adopted by the business, etc.). When test purchasing alcohol, we normally work with the Police and the sales assistant who sells the product will be issued with a fixed penalty notice by the Police Officer present. Following investigation of the circumstances of the sale a decision is made on the most appropriate course of action to take to prevent further illegal sales by the business. In most instances, advice and assistance is offered to the business concerned and further test purchases carried out at a later date to determine whether the business has improved. If appropriate, formal legal action can be taken against the business.
14. Doorstep crime related surveillance. It is known that doorstep criminals repeatedly victimise vulnerable people. Frequently, Trading Standards is made aware of an incident at a time when it is suspected that the suspect will return, normally to attempt to obtain further money from the victim. In these circumstances surveillance is carried out at the victim's home, with their consent, to attempt to identify and detain the suspect. The victim's family and regular visitors to the victim's property are made aware of and consent to the surveillance in order to minimise intrusion.

Use of the Act - October 2010 – July 2011

15. Please note that the following summary does not include authorisations granted in relation to matters that may result in legal action where reporting the surveillance might compromise any such legal action.

Date	Service requesting authorisation	Description of activity	Granted/ refused	Outcome
25/10/10	Trading Standards	Under-age sales test purchasing exercise relating to knives. Oxford. (1 premises)	Granted	Premises tested and passed
25/10/10	Trading Standards	Under-age sales test purchasing exercise	Granted	5 premises tested. 2 sold.

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		relating to cigarettes vending machines. Oxford/Kidlington. (6 premises)		Premises owners warned.
25/10/10	Trading Standards	Under-age sales test purchasing exercise relating to fireworks. County-wide. (24 premises)	Granted	11 premises tested. 4 sold. Premises owners warned.
2/11/10	Trading Standards	Installation of a covert camera to record visitors to a doorstep crime victim's property (Wendlebury).	Granted	Suspects returned to property and images captured.
2/11/10	Trading Standards	Installation of a covert camera to record visitors to a doorstep crime victim's property (Dorchester).	Granted	Suspects did not return to property.
16/11/10	Trading Standards	Installation of a covert camera to record visitors to a doorstep crime victim's property (Banbury).	Granted	Suspects returned to property and images captured.
17/11/10	Trading Standards	Under-age sales test purchasing exercise relating to knives. Banbury. (4 premises)	Granted	All premises tested passed.
18/11/10	Trading Standards	Under-age sales test purchasing exercise relating to cigarettes vending machines. Banbury. (14 premises)	Granted	Only 1 premises tested which failed. Premises owner warned.
18/11/10	Trading Standards	Under-age sales test purchasing exercise relating to cigarettes. Banbury. (5 premises)	Granted	3 premises tested. All passed.
8/12/10	Trading Standards	Under-age sales test purchasing exercise relating to cigarettes. Oxford. (10 premises)	Granted	10 premises tested. 3 sold. Premises owners warned.
17/12/10	Trading Standards	Under-age sales test purchasing exercise relating to alcohol. Oxford. (10 premises)	Granted	Operation cancelled due to snow restricting travel.
9/2/11	Trading Standards	Installation of a covert camera to record visitors to a doorstep crime victim's property. (Oxford).	Granted	Suspects did not return to property.
15/2/11	Trading Standards	Under-age sales test purchasing exercise relating to cigarettes. Various locations within Vale of the White Horse.	Granted	6 premises tested. 3 sold. Premises owners warned.

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		(13 premises).		
6/4/11	Trading Standards	Installation of a covert camera to record visitors to a doorstep crime victim's property (Goring).	Granted	Suspects returned to premises and were arrested (linked to authorisation of 12/4/11)
12/4/11	Trading Standards	Observation of a doorstep crime victim's property at a time that it was suspected that the suspects would return to obtain payment for work carried out.	Granted	Suspects returned to premises and were arrested.
26/4/11	Trading Standards	Under-age sales test purchasing exercise relating to cigarettes. Various locations within West Oxfordshire. (11 premises)	Granted	4 premises tested. No sales.
26/4/11	Trading Standards	Under-age sales test purchasing exercise relating to cigarettes. Oxford. (5 premises).	Granted	All 5 premises tested passed.
19/5/11	Trading Standards	Installation of a covert camera to record visitors to a doorstep crime victim's property (Didcot).	Granted	Suspects did not return to property.
13/6/11	Trading Standards	Under-age sales test purchasing exercise relating to cigarettes. Various locations within Oxford, Didcot and Witney. (15 premises)	Granted	9 premises tested. 2 sales. Premises owners warned.
31/5/11	Trading Standards	Under-age sales test purchasing exercise relating to knives. Oxford. (Kassam car boot sale)	Granted	3 stalls tested and all sold. 2 warned. 1 caution issued by Police.

Use of the Act - Annual Summary

16. The Council publishes a summary of the authorisations granted under this Act on the public website. This summary includes the date of the authorisation, type of surveillance or communications data concerned and the purpose of the operation or investigation. Annex 2 to this paper includes a summary report of all the authorisations granted under the Act. Between 2001 and 31 May 2011 the Authority had authorized surveillance 266 times. All but 6 of these operations were undertaken by the Trading Standards Service. There was a sharp increase in authorisations in 2009 on account of changes to the nature

of reporting. This affected Trading Standards test purchasing of age restricted products (e.g. alcohol, knives and fireworks). During 2009 it was considered necessary to authorise each test purchase separately, so an authorisation was required for each premises visited. The requirements have now been clarified so that the operation as a whole (involving visits to between 10 and 20 premises) can be approved under a single operation.

17. Excluding under-age sales test purchasing operations, 37 authorisations for surveillance activities have been approved since 2001.
18. Since 2006 (at which time a separate procedure for recording communications data authorisations was established) access to communications data has been authorised 56 times. There have been 16 requests for access to communications data since April 2010. Of these 16 requests since April 2010, 13 requested subscriber details for telephone numbers or e-mail addresses and 3 sought to obtain the subscriber information through requesting details of the bank account used to pay bills.

Use of the Act - Office of Surveillance Commissioners' Inspections

19. The Council's arrangements for authorising RIPA are subject to formal inspection by the Office of Surveillance Commissioners. Inspections are usually conducted by a retired member of the judiciary who inspects the policies and procedures of the Council and undertakes a review of all authorisations. The last inspection took place on the 4 May 2011 and a copy of the full report is included as Annex 3 to this report. The key findings were as follows:
 - That appendix 1 of the Council's RIPA policy, giving examples of RIPA usage, be dispensed with;
 - That a centrally-retrievable record of RIPA authorisations be established and maintained, containing the information specified in paragraph 8.1 of the Covert Surveillance Code of Practice; and
 - That only the latest versions of the RIPA forms be used in all future applications and authorisations, care being taken to specify correct expiration dates.
20. The report concluded with the following:

“The Council continues to have a sound RIPA structure, with good policies and procedures and good training. The Rolls Royce remains in generally good order but with occasional minor blemishes.”
21. The Inspector's findings have been put into effect. There is no date, as yet, for the next inspection.

RECOMMENDATION

The Committee is recommended to consider and note:

- (a) the periodic and annual use of RIPA by Oxfordshire County Council; and
- (b) the outcome of the Surveillance Commissioner Inspection of May 2011.

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Background papers: None

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October 2010