

SAFER AND STRONGER COMMUNITIES SCRUTINY COMMITTEE

18th June 2012

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. 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. The last review of the use of surveillance by this committee was in January 2012 and the last review of the Council's policy was in September 2011.
3. This paper provides a summary of the activities undertaken by Oxfordshire County Council that fall within the scope of this Act since the last review of the Council's policy. It also provides specific information on activities undertaken since the last periodic update in January. Changes to the Regulation of Investigatory Powers Act regime are expected to be introduced later this year and this paper provides the committee with an overview of these for information.

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.

Use of the Act by Oxfordshire County Council

5. Between January 2012 and May 2012 there was only one application for approval of activities falling within the scope of the Act that can be reported at this time. Where authorisations have been granted in relation to matters that may result in legal action these matters are not included in these activity summaries but will be detailed once any legal proceedings have concluded.

Date	Service requesting authorisation	Description of activity	Granted/refused	Outcome
14/3/12	Trading Standards	Attempt to establish contact with an individual suspected of selling counterfeit goods on-line to establish whether suspicions were correct.	Granted	Contact could not be established

6. 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.
7. Between September 2011 and 31 March 2012 the Authority has authorized surveillance 11 times. All of these authorisations related to functions carried out by the Trading Standards Service. Of these authorisations 5 related to doorstep crime investigations, 5 related to under-age sales test purchasing exercises and 1 related to an investigation into sales of counterfeit goods (as outlined above).
8. Since 2006 (at which time a separate procedure for recording communications data authorisations was established) access to communications data has been authorised 58 times. There have been 2 requests for access to communications data since September 2011. One of these requests sought to obtain the name and address of the user of a telephone number linked to an investigation into a building business suspected of unfair trading and fraud. This case has now concluded with the suspect being convicted in Oxford Crown Court in February and sentenced to 6 months imprisonment. The other sought to obtain the details of the user of an e-mail account linked to the sale of counterfeit goods.

The Protection of Freedoms Act 2012

9. The Protection of Freedoms Act 2012 received Royal Assent on 1st May 2012. This wide ranging Act includes specific provisions relating to local authority use of the Regulation of Investigatory Powers Act which are expected to come into force later this year.

10. The Protection of Freedoms Act introduces the limitation that an authorisation for surveillance under the RIP Act by a local authority officer will not take effect until a judicial authority has made an order approving the authorisation. This means, in practical terms, that our existing processes will still need to be applied to approve activities falling within the scope of the RIP Act but that we will then also need to apply to a Magistrate's Court as an additional step before the authorisation takes effect. Any extension of an authorisation will similarly need to be approved by a Magistrate.
11. This change is likely to be supplemented by a limitation on the scope of the RIP Act so that it will only apply to activities undertaken in relation to 'serious offences'. 'Serious offences' is likely to be defined as those which carry a penalty of 6 months or more imprisonment. This will not prevent local authorities undertaking surveillance in relation to more minor matters but the authority will not have the protection of the RIP Act should its activities be challenged as a breach of human rights.
12. When the provisions relating to surveillance within the Protection of Freedoms Act are enacted our policy will need to be redrafted and a further report will be provided to the committee.

External Inspection

13. 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 the outcomes of this inspection were reported to the committee in September 2011. The date of the next inspection is not yet known.

RECOMMENDATION

14. The Committee is recommended to consider and note the periodic and annual use of RIPA by Oxfordshire County Council.

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Background papers: None
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