

## **SAFER & STRONGER COMMUNITIES SCRUTINY COMMITTEE 5 JULY 2010**

### **REPORT ON THE ARRANGEMENTS FOR MEETING THE REQUIREMENTS OF THE REGULATION OF INVESTIGATORY POWERS ACT 2000**

**Report by Acting Head of Trading Standards and Community Safety**

#### **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 provisions of the Act are often misreported in the media. The Act gives no additional powers to local authorities. Instead the Act restricts the use of surveillance and access to telecommunications data. Where authorities are able to use surveillance or access telecommunications data the Act specifies how the Authority should do so in order to be acting lawfully.
4. The Codes of Practice under the Act require that elected members review the Authority's use of the Act quarterly and review the Authority's policy annually. Given that the majority of authorisations granted under the Act relate to Trading Standards duties, it is appropriate that the Safer and Stronger Communities Scrutiny Committee fulfils this function. This paper provides an overview of the Regulation of Investigatory Powers Act 2000, Oxfordshire County Council's policies and procedures to ensure compliance with the Act and a summary of the Council's use of the Act.

## **Types of Surveillance**

5. Covert surveillance is a planned operation or investigation with the aim of gathering information in such a way that the person involved does not know that they are being observed.
6. A Covert Human Intelligence Source (CHIS) is an informant or undercover officer who establishes a relationship with a person in order to obtain private information about that person.
7. Communications data is information about the use of telecommunications equipment (telephones, e-mail, the Internet). Local authorities are not able to intercept communications (e.g. listen to telephone conversations, access e-mails) but can obtain some details of the use of such systems (e.g. the name and address of the subscriber or user of a telephone number or e-mail address or details of calls made from, or received at, a particular number).

## **Legal Requirements**

8. 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.
9. 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.**

10. 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.
11. The policy specifies the officers who can authorise activities under the Act. They are the County Solicitor, the Deputy Head of Trading Standards, the Chief Executive and Assistant Chief Executive.
12. A central record of authorisations is maintained by the County Solicitor.

## **Use of the Act by Oxfordshire County Council**

13. 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 2010 the Authority had authorized surveillance 218 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 guidance changing as to how test purchases should be authorised. 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.
14. Excluding under-age sales test purchasing operations, 25 authorisations for surveillance activities have been approved since 2001.
15. Since 2006 (at which time a separate procedure for recording communications data authorisations was established) access to communications data has been authorised 43 times. All but 8 of these authorisations have been limited to the name and address of the user of a telephone number or e-mail address.

## **Office of Surveillance Commissioners Inspections**

16. 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 7 May 2008. The key findings were as follows:
  - ◆ The policies and procedures of the Council were "succinct and accurate".
  - ◆ The prior recommendation for a limited number of Senior Officers to authorise has been actioned.
  - ◆ The central records were maintained securely and confirmed the Monitoring Officer exercised "excellent oversight of all RIPA matters, checking all papers as they are presented and holding quarterly meetings to check all records".
  - ◆ Training was commended and noted that training was "taken very seriously and is evidently most effective".

17. The report concluded the following:

“The Council is a very sparing user of covert surveillance, but its operations, when undertaken, are conducted with great care. Training has been very effective in ensuring a high degree of RIPA awareness amongst all relevant staff, and procedures and policies are excellent ..... Here is a Rolls Royce kept in first class order, but only brought out occasionally”.

18. There is no date, as yet, for the next inspection.

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Background papers: Nil

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