

AUDIT & GOVERNANCE COMMITTEE – 12 SEPTEMBER 2018

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. 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 2017 to March 2018. The Authority's Policy for Compliance with the Regulation of Investigatory Powers Act 2000 is attached in annex 1 for consideration.
3. 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. In 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 actions taken in the last year to address the findings of the Commissioner's investigation.
4. The Office of Surveillance Commissioners has now been incorporated into the Investigatory Powers Commissioner's Office. Therefore, future RIPA inspections of this authority will be carried out by this office.

Use of the Act by Oxfordshire County Council

5. Between April 2017 and March 2018 the Council authorised covert surveillance on only 3 occasions. This was the same number of authorisations as in the previous year.
6. All the authorisations for surveillance granted in 2017/2018 related to work to tackle 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.

7. 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. This has included the use of sniffer dogs trained to detect tobacco and has led to the seizure of over 30,000 illegal cigarettes in the last few months.
8. As part of the enforcement activity required to reduce the availability of illegal tobacco in Oxfordshire, test purchases are carried out in shops which are suspected of stocking these products. These test purchases constitute surveillance. Between April 2017 and March 2018 a total of 3 authorisations were sought and granted under RIPA relating to illegal tobacco enforcement; 2 for directed surveillance and 1 CHIS. As a result, 13 test purchases were attempted and of these 9 resulted in a sale of illegal tobacco.
9. 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). This also falls within the scope of RIPA and is addressed in the Council’s RIPA Policy.
10. In May 2018 a potential breach of the requirements of RIPA was reported to the Investigatory Powers Commissioners Office. This breach related to a Council officer who undertook surveillance on an individual without appropriate authorisation under RIPA. The officer undertook surveillance as a result of suspecting the individual had overstated their care needs when completing a care assessment. As a result of this potential RIPA breach a practice note was issued to social care staff reminding them of the requirements of RIPA.

Actions Taken on the Recommendations of the last Office of the Surveillance Commissioners review

11. The main recommendation arising from the Commissioner’s inspection in 2017 was to organise refresher training on the requirements of RIPA for the Council’s authorising officers. This training was carried out in March 2018 and was provided by an external company that specialises in training on this subject. All Council managers who are able to authorise activities within the scope of RIPA attended this training.
12. The other recommendations were all addressed prior to last year’s report to the committee and were outlined in that report.

RIPA Policy

13. The Council’s RIPA Policy is included in Annex 1 of this report. This policy has been updated since the last report to the committee to name a wider group of officers as persons who may authorise activities under RIPA. The additional named authorising officers are substitutes who may only act in the absence of the other authorising officers.

14. The Committee is asked to note the revised Policy and comment to the Monitoring Officer on any matters that they would like the Monitoring Officer to consider.

Magistrate's Oversight

15. 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. Since these changes came into force Magistrate's approval has been granted on all occasions that an application has been made.

Conclusion

16. Use of activities that fail within the scope of RIPA remains infrequent by this Council. Since the last annual report the group of officers who may authorise surveillance has been widened to provide resilience and refresher training on the requirements of RIPA has been provided to all authorising officers. This addresses the outstanding recommendation of the last Office of the Surveillance Commissioner inspection.

RECOMMENDATIONS

17. 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 actions taken to address the outcome of the Office of Surveillance Commissioners report, and**
- (b) **Note the revised 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.**

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