

AUDIT & GOVERNANCE COMMITTEE – 3 JULY 2013

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 Director for Social & Community Services

Introduction

1. The Regulation of Investigatory Powers Act 2000 (RIPA) ('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 within the Act against Local Authorities 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 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 2012 to March 2013.

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 April 2012 and March 2013 the Council has authorized surveillance on 10 occasions. All of these authorisations related to functions carried out by the Trading Standards Service. Of these authorisations 4 related to doorstep crime investigations, 2 related to under-age sales test purchasing exercises, 2 related to an investigation into the sale of misdescribed cars and 2 related to an investigation into sales of counterfeit goods. Some explanation of common activities may assist in understanding the activities concerned.
6. 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 of purchase. 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.
7. 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.
8. Should a business 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.
9. 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 the surveillance in order to minimise intrusion.

10. Criminal investigations. Surveillance can be conducted as part of a criminal investigation where it is necessary and proportionate to do so. As examples, the Trading Standards Service may undertake surveillance by way of contacting the seller of suspected counterfeit goods in order to purchase some of the goods being offered for sale. The activity that constitutes surveillance would be the email or telephone contact with the seller and any meeting to purchase the product where the seller is unaware that the buyer is an enforcement officer.

Communications Data

11. Local authorities are able to obtain certain communications data for the purpose of prevention or detection of crime. The information that a local authority can obtain includes names and addresses of subscribers of telephone numbers, websites and email addresses and itemised records of calls made to or from telephone numbers. Local authorities are not able to obtain details of the content of any communication, for example the content of an email sent from a particular email address.
12. Between April 2012 and March 2013 there were 8 requests for access to communications data that were authorised. These requests concerned attempts to trace the user of particular telephone numbers, websites or email addresses on 7 occasions. The other request sought to obtain records of calls made from a particular telephone number. Of these, 3 related to an investigation into the sale of misdescribed cars, 3 concerned doorstep crime investigations and one related to an investigation into the sale of counterfeit goods. All these requests were approved.

Magistrate's Oversight

13. In October 2012 a new requirement for oversight of authorisations of covert surveillance activities was introduced by the Protection of Freedoms Act 2012. 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 sought on three occasions in relation to authorisations granted to obtain communications data. These authorisations were all approved by the Magistrates concerned.

Policy

14. The Authority's Policy on Compliance with the Regulation of Investigatory Powers Act 2000 is annexed to this report. The Policy was updated during 2012 to reflect the changes to the requirements introduced through the Protection of Freedoms Act 2012. The policy remains up to date but the committee are invited to comment on any amendments or changes that may be appropriate.

External Inspection

15. The Council's arrangements for authorising activities under 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 4th May 2011 and the result of this inspection was reported previously to the Safer and Stronger Communities Scrutiny Committee. No inspections took place during 2012/13.

RECOMMENDATION

16. **The Committee is RECOMMENDED to consider and note the periodic and annual use of Regulation of Investigatory Powers Act by Oxfordshire County Council.**

JOHN JACKSON

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Background papers: None

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