

Division(s):

AUDIT AND GOVERNANCE COMMITTEE – 17th SEPTEMBER 2014

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 County Solicitor and Monitoring Officer

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 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 any surveillance evidence gathered may be ruled inadmissible by the Court. In addition, the action may be 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 2013 to March 2014.

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 2013 and March 2014 the Council authorised covert surveillance on only 2 occasions. This is a significant reduction on the number of authorisations granted in previous years. This reduction is mainly a consequence of the publication of a new Code of Practice on age restricted products by the Better Regulation Delivery Office (a section of the Department of Business, Innovation and Skills). Local Authorities are required to have regard to this Code of Practice when carrying out activities aimed at reducing the sale of age restricted products to persons under 18 years of age. The Code makes routine testing of shops through test purchase exercises subject to more stringent requirements and, particular, it is now required that overt methods to reduce the sales should have been attempted and have failed before test purchasing is considered. Therefore no test purchasing exercises were carried out between March 2013 and April 2014, reducing the number of RIPA authorisations sought.
6. For context, the committee may wish to know that 2 covert test purchase exercises relating to age restricted products were carried out between April 2012 and January 2013 at which time the new Code of Practice came into force. Between April 2011 and March 2012 there were 11 similar test purchasing exercises. Typically, between 15% and 30% of premises tested in an exercise fail and sell age restricted products to people under 18 years of age.
7. One of the authorisations granted in 2013/14 related to a doorstep crime investigation conducted by the Trading Standards Service. This surveillance involved installing a covert camera at the victim's home, with their consent, to record images of any person approaching their front-door. The other concerned a Fire and Rescue Service investigation. This surveillance involved fitting covert cameras at a Fire and Rescue Service building to assist in the detection of theft from that property.
8. In the same period there were 4 requests for access to communications data that were authorised (i.e. requests to provide the names and addresses of subscribers of telephone numbers). All of these requests related to an investigation into the mis-selling of 'green energy' products such as solar panels. A prosecution has been commenced in relation to this matter and is scheduled for trial in January 2015.
9. Covert surveillance continues to be an essential investigatory method for the Trading Standards Service. In particular, covert cameras are used to provide protection to vulnerable people who have become victims of doorstep crime. Cameras mounted at the victim's home are used to record visitors to the property and immediately alert the Trading Standards Service when someone approaches the door so that help can be arranged if necessary.
10. Another matter of note is the conclusion in October 2013 of a prosecution resulting from an investigation that required covert surveillance. This prosecution concerned the supply of counterfeit products on Facebook. The

investigation was commenced following consumer complaints. The perpetrator was initially contacted and warned to cease this practice but she took steps to avoid detection and continued to sell similar items which were suspected of being counterfeit. In order to establish whether the items being sold by this person were genuine or counterfeit it was necessary for officers from the Trading Standards Service to contact her via Facebook and purchase some items from her. This constitutes covert surveillance and both an authorisation for directed surveillance and an authorisation for conduct as a covert human intelligence source was granted in August 2012. The items purchased were found to be counterfeit and a prosecution was commenced. She entered guilty pleas and was fined £1600 and order to pay back £2000 in costs.

Magistrate's Oversight

11. 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 granted on all occasions that an application has been made.

Policy

12. 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 has been reviewed and remains up to date but the committee are invited to comment on any amendments or changes that may be appropriate.

External Inspection

13. Public authorities are subject to periodic inspection by the Office of Surveillance Commissioners (OSC). These inspections review the authority's systems of internal control and comment on the appropriateness of authorisations granted under the Act.
14. This authority was inspected by the OSC in May 2014. The inspection resulted in one recommendation for improvement in respect of the detail recorded on the record of cancellation of a surveillance authorisation. The inspector found that records of cancellations did not comply with OSC guidance but it should be noted that there is no specific requirements in the legislation or Codes of Practice on this aspect of the procedures. Otherwise, the OSC report comments on the high standard of applications and authorisations that were reviewed and the good level of knowledge of the officers that were interviewed. No authorisations were considered to be inappropriate and all authorisations were granted with due regard to the necessity and proportionality of the activity proposed.

Recommendation

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

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Background papers: None

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August 2014