

**AUDIT AND GOVERNANCE COMMITTEE –
16 SEPTEMBER 2015**

**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 Head of Law and Governance and County Solicitor

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 2014 to March 2015.

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 2014 and March 2015 the Council authorised covert surveillance on only 4 occasions. On one such occasion two separate authorisations were granted, making 5 the total number of authorisations in the year. This is a slight increase on the number of authorisations to the previous year as there were only 2 authorisations between April 2013 March 2014. However, it is still significantly fewer authorisations than were granted in previous years. This overall 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) as reported last year.
6. Monitoring of the sale of age restricted goods such as cigarettes, knives and alcohol to persons under the legal minimum age of purchase involves young volunteers attempting to purchase the relevant product whilst being observed by Trading Standards Officers. This constitutes surveillance and has to be authorised under the RIP Act. The committee will recall that a discussion on this new Code of Practice arose during last year's presentation of the annual report of the Council's activities falling within the scope of the RIP Act. At the time the committee raised concerns about how this Code of Practice limited options for carrying out test purchases of age restricted products. The Code requires that overt methods to prevent the sale of age restricted products to young people should have been attempted and have failed before an authorisation is provided to carry out test purchases with young volunteers. As a result of the discussion at the committee meeting the County Solicitor wrote to the Office of the Surveillance Commissioners raising the committee's concerns. The committee may wish to know that Office of the Surveillance Commissioners guidance has now been changed and that routine test purchases of the sale age restricted products can now be carried out more readily.
7. The following is a summary of the surveillance authorisations provided between April 2014 and March 2015.
 - One authorisation 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.
 - One authorisation was granted to allow Trading Standards staff to purchase 'legal highs' covertly from shops in order to have the products tested for safety.
 - Two authorisations related to a person suspected of selling counterfeit mobile phones from car parks. The authorisations permitted test purchases to be made.

- One authorisation related to a potential insurance fraud relating to a claim against the Council.
- 8. One investigation that involved the use of covert surveillance authorised under the RIP Act was recently concluded in court. The case concerned poor quality building work at an older person's park home. Once alerted to the incident a covert camera was installed at the victim's home. This monitored visitors to the property in case the suspects returned. As a result of the investigation Christopher Meacey and Angel Jay were prosecuted for carry out work without applying appropriate professional diligence and which was either poorly executed, below standard or done without the correct skill, knowledge, expertise and qualifications. Christopher Meacey was also prosecuted for charging an inflated amount for work that had a lesser value.
- 9. Christopher Meacey was sentenced to a 12 month Community Order and requirement to do 100 hours unpaid work with £2,500 compensation to be paid to the victim. He was also ordered to pay Trading Standards costs of £1,250. Angel Jay was sentenced to a nine month Community Order with a supervision requirement for nine months. He was also order to pay the victim £800 compensation and Trading Standards costs of £1,250.
- 10. In the same period there were 22 requests for access to communications data that were authorised (i.e. requests to provide the names and addresses of subscribers of telephone numbers). These all related to a single investigation into the activities of a range of people operating various home repairs businesses. The large number of requests reflects the number of different mobile phones used by the individuals.
- 11. In the previous year there were 4 requests for communications data. All of these requests related to an investigation into the mis-selling of 'green energy' products such as solar panels. This investigation resulted in a prosecution which was heard in Oxford Crown Court in June. After a 5 week trial the three defendants were all found guilty of a range of offences under consumer protection legislation. Sentencing for this case is scheduled for the end of July.

Magistrate's Oversight

- 12. 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

- 13. 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. Changes will need to be made to the policy shortly to reflect senior management changes with the Council.

External Inspection

14. 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.
15. This authority was last inspected by the OSC in May 2014. The outcome of this inspection was reported to the committee in the last annual report.

RECOMMENDATION

16. **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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