

**AUDIT AND GOVERNANCE COMMITTEE –
14 SEPTEMBER 2016**

**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 Chief Legal 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. Since 2012 it has been necessary for local authorities to seek judicial approval of any authorisations granted for surveillance within the scope of the RIP Act. This judicial approval must be received before the surveillance can be carried out.
4. 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 2015 to March 2016. The Authority's Policy for Compliance with the Regulation of Investigatory Powers Act 2000 is attached in annex 1 for consideration.

Exempt Information

5. 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

6. Between April 2015 and March 2016 the Council authorised covert surveillance on only 2 occasions. Only one authorisation was pursued further to the point of seeking Magistrate's approval. No requests for authorisation were refused.
7. This represents a reduction in the number of authorisations to the previous year as there were 5 authorisations granted in the period between April 2014 and March 2015. The need for surveillance does vary according to the operational requirements and priorities of the Service. By way of comparison there were only 2 authorisations between April 2013 and March 2014.
8. The authorisation for surveillance granted in 2015 related to age restricted products. 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.
9. In October 2015 9 businesses in Oxfordshire were visited to test whether they would sell cigarettes to a person under 18 years of age. All the businesses refused to sell cigarettes to the young volunteer involved in the test purchasing.
10. In relation to the authorisation which was granted but which did not proceed to Magistrate's approval this related to a doorstep crime incident. After seeking internal authorisation to install a camera in the victim's property in order to record images of persons visiting the property the investigating officer subsequently determined that this surveillance was not required. As a result no application was made for judicial approval of the surveillance and no surveillance was carried out.
11. The committee may be interested in the outcomes of investigations that involved the use of covert surveillance authorised under the RIP Act. In 2014 a number of test purchases of new psychoactive substances, or 'legal highs' were carried out. As a result of this action and the subsequent investigation open sales of these products from shops in Oxfordshire ceased in 2015. The Council currently has a prosecution scheduled for trial in January 2017

relating to charges against a business and two individuals for the supply of these products.

12. 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). In the previous year there were 22 requests for access to communications data but 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 subject to that investigation.

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 granted on all occasions that an application has been made.

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 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

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

Recommendation

17. **The Committee is RECOMMENDED**
 - a) **to consider and note the use of activities within the scope of RIPA by Oxfordshire County Council, and**
 - b) **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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Background papers: None
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