

## **AUDIT & GOVERNANCE COMMITTEE – 11 SEPTEMBER 2019**

# **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**

## **RECOMMENDATIONS**

1. 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
  - b) Note the 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.

## **Executive Summary**

2. The introduction of the Regulation of Investigatory Powers Act 2000 ('the Act') created a framework within which public bodies can lawfully carry out covert activities. Codes of Practice under the Act require that elected members review the Authority's use of activities within the scope of the Act periodically and review the Authority's Policy annually. This report provides a summary of the covert activities undertaken by the council between April 2018 and March 2019 for review by the committee. The report also provides the committee with an opportunity to review and comment on the council's Regulation of Investigatory Powers Act Policy.

## **Introduction**

3. 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.
4. Codes of Practice under the Act require that elected members review the Authority's use of activities within the scope 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 2018 to August 2019. The Authority's Policy for Compliance with the Regulation of Investigatory Powers Act 2000 is attached in Annex 1 for consideration.

5. 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. Our last inspection was in May 2017. All actions to address the findings of the Commissioner's inspections have been completed and were included in the 2018 annual report to the committee on the use of activities within the scope of RIPA.

### **Use of the Act by Oxfordshire County Council**

6. Between April 2018 and March 2019 the Council authorised covert surveillance on 7 occasions. This is an increase in use of activities within the scope of the Act from only 3 occasions between April 2017 and March 2018.
7. All but 1 of the authorisations for surveillance granted in 2018/2019 related to investigations concerning 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.
8. 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. Investigations of suspected supplies of illegal tobacco normally involve a covert test purchase. The purpose of the test purchase is to obtain a sample of the product being sold in order to ascertain whether it is legal to sell in this country and to identify the persons involved in the sale. Covert test purchases also assist in identifying where stocks of the product are being stored since illegal tobacco is frequently hidden in or around the premises from which it is sold.
9. Covert test purchases are an essential operational tactic in the efforts to tackle the sale of illegal tobacco. These test purchases must be authorised under the Act and require the careful consideration of whether the intrusion is necessary for the purpose of prevention and detection of crime and proportionate to the outcome being sought.
10. Since a new initiative to tackle the supply of illegal tobacco in Oxfordshire commenced in August 2017 covert test purchases have resulted in 25 sales of illegal tobacco products from 11 different premises. A total of 2160 illegal cigarettes have been purchased covertly.
11. More recently, as a result of intelligence from partner agencies and the public, trading standards have conducted test purchases from individuals offering illegal tobacco for sale via Facebook "buying and selling" pages. So far 4 sales from 3 different individuals have been made resulting in the purchase of 1820 illegal cigarettes and 1.3kg of hand-rolling tobacco.

12. As a result of trading standards investigations, in the last 18 months 12 formal enforcement visits have been made to retail premises and warrants have been executed at 6 residential premises resulting in a total seizure of 83,655 illegal cigarettes and 16.15 kg of illegal hand-rolling tobacco. One motor vehicle was seized (by HMRC) as part of a trading standards-led operation. Four individuals have been prosecuted for illegal tobacco offences resulting in convictions for all four and sentences totalling 12 months imprisonment with fines and costs totalling £8,440. A further individual has pleaded guilty and is awaiting sentencing and confiscation proceedings.
13. Four applications to review the premises licence to sell alcohol (on the grounds of breaching the “preventing crime and disorder” objective of the Licensing Act) have been made following trading standards investigations into illegal tobacco sales. These licence reviews resulted in a revocation of the premises licence in one case, a 3-month licence suspension in another and additional conditions being added to the premises licences for the other two businesses.
14. The other authorisation under the Act provided between April 2018 and March 2019 related to the legal controls on the sale of knives. Under the Criminal Justice Act 1988, it is an offence for any person to sell a knife or similar bladed instrument to a person under 18. Trading standards carries out test purchases in order to ascertain whether a person under 18 years of age could obtain a knife from a shop in Oxfordshire. Prior to any test purchase the business concerned will receive advice from trading standards.
15. In 2018 42 businesses in Oxfordshire received an advisory visit from trading standards and 18 were subject of a test purchase. Of these, 2 businesses sold a knife to a person who was under 18 years of age.
16. 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 activity also falls within the scope of the Act and is addressed in the Council’s RIPA Policy.

## **RIPA Policy**

17. The Council’s RIPA Policy is included in Annex 1 of this report. This policy has been reviewed since the last report to the committee but no changes have been made to it other than minor revisions of job titles.
18. The Committee is asked to note the Policy and comment to the Monitoring Officer on any matters that they would like the Monitoring Officer to consider.

## **Magistrate’s Oversight**

19. 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. All

applications made to Magistrates between April 2018 and March 2019 were approved.

## **Conclusion**

20. Use of activities that fall within the scope of the Act remains infrequent by this Council. However, in the last year trading standards operational activity to tackle the sale of illegal tobacco has resulted in an increase in applications to undertake activities within the scope of the Act. The outcomes of the investigations into the suspected supply of illegal tobacco show that this issue remains a problem in the county and therefore the continued use of covert surveillance as part of these investigations is considered necessary.

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