

Divisions Affected - All

AUDIT AND GOVERNANCE COMMITTEE

21ST SEPTEMBER 2022

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 Anita Bradley, Director of Law & Governance and
Monitoring Officer**

RECOMMENDATION

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) Comment on any changes that the committee would wish the Monitoring Officer to consider when finalising the update to the Policy for Compliance with the Regulation of Investigatory Powers Act 2000 at Annex 1.

Executive Summary

2. The Regulation of Investigatory Powers Act 2000 ('the Act') creates a legal framework within which public bodies can lawfully carry out covert information gathering 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 2021 and March 2022 for review by the committee.
3. The Council is currently revising the Policy for Compliance with Regulation of Investigatory Powers Act. This report provides the committee with the opportunity to review the draft new policy and to provide comment for consideration by the Monitoring Officer when finalising the policy.

Introduction

4. The Act regulates the use of covert investigatory 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 seeks

to obtain information by the use of informants or officers acting in an undercover capacity.

5. Under the Act local authorities may only carry out covert surveillance where it is necessary for the prevention or detection of crime. In addition, local authorities can only authorise surveillance activities within the framework created by the Act if it meets one of the following tests – criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco (the ‘seriousness’ threshold). Covert surveillance for other matters, such as for the investigation of minor criminal offences not meeting the ‘seriousness’ threshold, cannot be authorised under the Act.
6. 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 2021 to March 2022.
7. The Authority’s Policy for Compliance with the Regulation of Investigatory Powers Act 2000 is currently under review. A draft new policy has been prepared. This new draft policy is intended to provide more guidance to council officers and provides more clarity on lawful monitoring of social media for business purposes. It also strengthens the requirements in relation to the appropriate management of information gathered through covert surveillance to ensure any information gathered through activities within the scope of the Act is kept securely, only shared as is strictly necessary for the purposes for which it was obtained and is not retained longer than necessary.

Use of the Act by Oxfordshire County Council

8. Within the Council covert surveillance is mainly carried out by the Trading Standards Service as part of investigations into suspected contraventions of consumer protection legislation. The COVID-19 pandemic impacted on the investigatory activities undertaken by that service due to need to redirect resources to support the response to the pandemic and as a result of limitations on activities that could be carried out safely. Consequentially, between April 2020 and March 2021 the Council authorised covert surveillance on 3 occasions. Trading Standards investigatory practice returned to normal in 2021 and therefore covert surveillance was undertaken more frequently.
9. Between April 2021 and March 2022 covert surveillance was authorised on 15 occasions in relation to 8 investigations or operations. There are two forms of covert surveillance that can be authorised and frequently both forms are authorised for a specific operation. These are:
 - a) The covert observation or monitoring of an individual or place (directed surveillance) including monitoring of social media accounts.
 - b) Establishing a relationship with a person for the purpose of gathering information without the other person knowing the true purpose of the relationship (covert human intelligence sources).

10. In relation to the authorisations for surveillance granted in the last year 10 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.
11. The County Council’s Trading Standards team works 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. Covert test purchases are undertaken only where there are grounds to suspect the person or business concerned is involved in the supply of illegal tobacco products.
12. Covert test purchases are an essential operational tactic in the efforts to tackle the sale of illegal tobacco. They normally require authorisation for both directed surveillance and the use of a covert human intelligence source. The covert human intelligence source in this instance is often an officer of the service acting as a normal customer, but this requires authorisation as a covert human intelligence source. If another officer covertly observes the test purchase, to corroborate evidence obtained, a separate directed surveillance authorisation is required. 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.
13. As an example of this work, in November 2021 Trading Standards officers executed a warrant on a residential address in Banbury following a test purchase authorised under the Act as part of an investigation of cigarettes offered for sale on a Romanian language Facebook group in the area. This resulted in over 680,000 illegal cigarettes being seized, one of the biggest single seizures made by a Trading Standards Service. Most of the products seized have been found to be counterfeit.
14. Of the other authorisations granted under the Act over this period, 3 related to test purchases of roofing services offered by businesses that had been subject to complaints from members of the public. When investigating these complaints it is often difficult to establish whether false statements were made by the businesses to induce customers to agree to unnecessary work. Therefore, the Trading Standards invited those businesses to assess the condition of a roof on a property. Authorisations under the Act were required due to the businesses

not being made aware that the individuals who contacted them were officers of the Trading Standards Service.

15. A further authorisation concerned test purchase of age restricted products. Trading Standards advises businesses on procedures to limit the sale of age restricted products such as knives, alcohol and tobacco to persons under the legal minimum age of purchase. Trading Standards also carries out test purchases in order to ascertain whether a person under 18 years of age could obtain these products from shops in Oxfordshire. Prior to any test purchase the business concerned will receive advice from trading standards. The test purchase involves covert observations in business premises and therefore requires authorisation under the Act.
16. The final authorisation related to an Internal Audit investigation of a suspect blue parking badge fraud.

RIPA Policy

17. The Council is currently revising the RIPA Policy. The draft new policy is included in Annex 1 of this report. The revision of the policy is intended to provide additional guidance for council officers, strengthen the emphasis on the safeguarding of juveniles, provide updated guidance on how the Act applies in relation to monitoring social media and provide clearer requirements in relation to the storage, handling and disposal of information gathered through covert surveillance. The revisions reflect feedback on the policy from the last inspection by the Investigatory Powers Commissioner's Office (see below).
18. The Committee is asked to comment to the Monitoring Officer on any matters that they would like the Monitoring Officer to consider in finalising this policy revision.

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 2021 and March 2022 were approved.

Investigatory Powers Commissioner's Office Inspection

20. Local Authority arrangements under the Act are subject to inspection by the Investigatory Powers Commission's Office (IPCO). The last IPCO inspection was in September 2020 and the outcome of that inspection was reported in the annual report last year.

Training

21. Training on the requirements of the Act and associated guidance was provided to council officers in January 2022. Training is arranged periodically to ensure officers remain aware of the requirements and any changes to guidance or new judicial decisions which need to be considered before undertaking surveillance.

Conclusion

22. Use of activities that fall within the scope of the Act remains infrequent by this Council. However, some operational activity requires the use of surveillance occasionally. The outcomes of the surveillance and subsequent investigations into illegal activities show that the continued use of covert surveillance is necessary for the effective discharge of the council's statutory responsibilities and the delivery of operational plans to achieve priorities.

Financial Implications

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Legal Implications

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Staff Implications

There are no direct staffing implications arising from this report.

Equality & Inclusion Implications

There are no equality and inclusion implications arising from this report.

Sustainability Implications

There are no sustainability implications arising from this report.

Risk Management.

There are no risk management implications arising from this report other than outlined in the sections above.

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Annex: Annex 1- Draft RIPA Policy

Background papers: None

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