

ABERDEEN CITY COUNCIL

Name of Committee	:	Policy & Strategy Committee
Date of Meeting	:	29 April 2008
Title of Report	:	Regulation of Investigatory Powers Act 2000- Dispensation of Standing Orders
Lead Officer	:	Jane MacEachran, City Solicitor, Resources Management
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Other Involvement	:	None
Consultation undertaken with	:	Councillors Kate Dean and Kevin Stewart

Summary of Report

To seek Committee approval to dispense with Standing Order 71(1)(i) in order that the contract with the Singlepoint Data Services Limited can be finalised and the Corporate Policy and Procedure implemented.

Recommendations

1. To agree to dispense with Standing Order 71(1)(i) and instruct the City Solicitor to finalise the contract with Singlepoint Data Services Limited.

Links to the Community Plan and to Vibrant, Dynamic & Forward Looking

Compliance with the Corporate Policy and Procedure, and with the Council's legal obligations under the Regulation of Investigatory Powers Act 2000 (RIPA) in relation to accessing communications data, will ensure that Council

Services do not unlawfully interfere with a citizen's right to privacy whilst that Service is exercising a statutory function.

Implementation

The contract with Singlepoint Data Services Limited requires to be finalised in order that the Policy and Procedure, previously approved by this Committee on 4 March 2008, can be implemented. Once the contract is executed by both parties, the Policy and Procedure will be published and accessible on the City Solicitor's homepage. Notification of the Policy and Procedure will be delivered via the Council's *Teamtalk* newsletter and the Intranet (The Zone). Officers using the powers under RIPA will be required to be trained prior to using same.

Resource Implications

- People** : None arising from this report.
- Finance** : There is no fee or cost to enter into a contract with Singlepoint Data Services Limited. Under the contract, Service Areas will be required to pay a £50 data request fee per application on a pay-as-you-go basis. There is an additional £10 fee chargeable should the Service Area require advice and assistance.
- Systems & Technology** : None arising from this report
- Property** : None arising from this report
- Other Equipment** : None arising from this report
- Other** : None arising from this report

Other Implications

- Health & Safety** : None arising from this report

Risk Management : There is a potential risk of the Council incurring costs implications as a result of having to instruct English legal agents to represent the Council in any legal proceedings arising out of the contract or a breach of it.

However, the potential risk of a contract breakdown and protracted legal proceedings is assessed as minimal given there exists an opportunity in the contract for either party to terminate the contract with 30 days written notice.

By not entering into a contract with Singlepoint Data Services Limited, the Council would require to send officers to London to participate in the accreditation course at an approximate cost of £800 per person, excluding travel and accommodation. There would be a need to send at least two officers on this course to ensure that an accredited person is available at all times.

**Human Rights/
Equalities/Diversity** : None arising from this report.

**Equalities Impact
Assessment** : None arising from this report.

Sustainability : None arising from this report

Environmental : None arising from this report

Social : None arising from this report

Economic : None arising from this report

Construction : None arising from this report

Signature :

Main Considerations

Council Services have had access to communications information for a number of years. Services utilise this information as an "investigatory tool" when exercising some statutory enforcement powers.

Since the coming into force of RIPA on 5th January 2004, there had been no formally adopted policy or procedure to regulate a streamlined practice for applications of this nature across the organisation. However, a report, draft policy and procedure was submitted for approval to the Policy and Strategy Committee on 4th March 2008 who approved same.

As a result of the Council's "Single Point of Contact" (SPoC), (a legal requirement to access communications information), retiring from employment in January 2007, a replacement had to be identified. Having considered the costs involved with training a number of senior officers to be accredited by the Home Office, against the frequency with which the Council has used RIPA, alternative options were considered. At present, negotiations are ongoing to conclude a contract with an external SPoC. This option is considered better value for money and will ensure that the Council always has a SPoC in place. Incidentally, Falkirk Council use the services of the external provider and have been pleased with the quality of service received thus far.

The term 'SPoC' is not defined within the Regulations of Investigatory Powers Act 2000 (RIPA), however, the accompanying Codes of Practice specifically state there should be at least one SPoC in each public authority. It further states that no public authority can lawfully access communications data without having an accredited SPoC in place. Thus, Aberdeen City Council has been unable to use communications data since January 2007.

The external provider is a company called 'Singlepoint Data Services Limited' who are based in South Yorkshire and are authorised to act as a SPoC on behalf of public authorities who contract with them. In summary, the company undertakes to;

- provide advice, if requested, provide support to assist the Council with the preparation of a data request (an extra fee of £10 will be charged for this)
- act as the SPoC and obtain data pursuant to RIPA for onward supply in encrypted form to the Council,
- upon receiving a draft request, provide advice on the fee, whether the request is in the correct form, whether it's compliant with RIPA and whether the data requested is likely to be available.

Singlepoint permits the Council to have an unlimited number of authorised persons to access their E-solution database, which would allow all relevant Services to have the facility of electronically requesting communications data under RIPA. There is no annual or commencement fee, though each subscriber data request is invoiced at a cost of £50.00 on a pay-as-you-go basis.

Singlepoint have offered, should the Council agree to the contract, to set up a demonstration of the online system, in order that relevant personnel in the Office of the City Solicitor and other staff potentially using the system could have an insight into the procedure. Having considered in detail the contract terms and conditions, the City Solicitor is of the view that they are acceptable and not unduly onerous for the Council.

Having entered into contract negotiations with Singlepoint, there appears to be a stalemate with respect to one issue, the 'jurisdiction' clause, as the draft contract is subject to English Law. Singlepoint advise that as it is an English company with (only) English assets, any foreign company [or public authority] would be required to commence legal action against Singlepoint in England.

In terms of this Council's Standing Orders, *"all contracts entered into in terms of and in accordance with these Standing Orders shall...be subject to the law of Scotland and the exclusive jurisdiction of the Scottish Courts"*.¹ Thus, any departure from this clause would require a dispensation by Committee.

Entering into a contract subject to English Law would mean that the Council would require to employ the services of an English qualified lawyer to either represent it in any legal proceedings arising out of the contract or a breach of it or, to represent it in any dispute resolution arising from said breach.

On balance, the services being offered by Singlepoint are better value than having an internal SPoC accredited by the Home Office. In addition, an external SPoC means that the Council will always be able to utilise communications data [provided the contract remains in place] and will not be in a position whereby this is prohibited due to internal staff changes as is the present situation. Indeed, the lack of a SPoC over the past year has meant that Trading Standards have been unable to use communications data to assist in furthering their investigations and it is imperative that a SPoC is secured shortly.

Whilst the conclusion of a contract subject to English law is less than satisfactory, there is a risk of the Council incurring additional costs in respect of defending its legal rights pertaining to that contract. However, this risk although present, should be regarded as minimal.

The approved Policy and Procedure have been drafted to incorporate the application process used by the external SPoC. The procedure differs from the historical paper based application process in that data requests are completed on a secure on-line web based programme.

There has been some suggestion that Westminster Parliament may conduct a review of the use of RIPA and where this has been minimal, remove powers to access communications information and implement a procedure whereby an authority will have to apply for use of these powers. Thus, the Council's

¹ Clause 71 (1) (i) of Aberdeen City Council Standing Orders and Orders of Reference.

continued "non-use" could result in its powers to access this type of information under RIPA, being removed.