

ABERDEEN CITY COUNCIL

COMMITTEE	Audit, Risk & Scrutiny
DATE	4 December 2019
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	RIPSA Quarterly Report – Quarter 4 2019
REPORT NUMBER	GOV/19/291
DIRECTOR	Chief Executive
CHIEF OFFICER	Fraser Bell - Chief Officer Governance
REPORT AUTHOR	Jess Anderson
TERMS OF REFERENCE	5.2

1. PURPOSE OF REPORT

- 1.1 It is a requirement, under paragraph 3.29 of the Scottish Government's Code of Practice for Covert Surveillance and Property interference, that elected members review the authority's use of covert surveillance on a quarterly basis to ensure that it is being used consistently with the local authority's policy and that that policy remains fit for purpose.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Note the update within the report.

3. BACKGROUND

- 3.1 The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), gives the Council powers to conduct two types of covert surveillance:
1. Directed Surveillance; and

2. the use of a Covert Human Intelligence Source (the use of an undercover officer).
- 3.2 The Council has a policy in place which governs the use and management of covert surveillance. Further, all members of staff wishing to use RIPSAs, are required to undertake training prior to being able to make an application under RIPSAs.
- 3.3 Various Council services use RIPSAs as an investigatory tool. It is considered the “tool of last resort” in light of its intrusiveness into the privacy of the person(s) being surveyed. Council services such as Trading Standards, Environmental Health and Benefit Fraud are most likely to use RIPSAs.

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- 3.4 In the period from October until 22 November 2019 (the deadline for this report), there have been two authorisations for Directed Surveillance.
- 3.5 Both applications relate to the sale of Tobacco/ Nicotine Vapour Products, with one of the applications also including Fireworks Test Purchasing.
- 3.6 Test purchases for underage sale of tobacco and nicotine products are part of an enforcement initiative promoted by the Scottish Government. One part of that enforcement activity is undertaking test purchases. This can either be a random check or as part of a planned operation after complaints have been made about the shop(s) targeted. A test purchase is the only way in which Trading Standards can ascertain whether the shop is selling age restricted goods or not, and thus proves necessary to continued education and enforcement with sellers of age restricted goods such as tobacco and nicotine.
- 3.7 An addition to the usual tobacco test purchasing, is the test purchasing of fireworks. It is an offence to sell certain categories of fireworks to a person under 18 years of age under the Pyrotechnics Articles (Safety) Regulations 2015. As with Tobacco/ Nicotine products, the only way to ascertain whether licensed retailers of fireworks are complying with their legal requirements is to undertake a test purchase carried out by a volunteer under the age of 18 years old.
- 3.8 The sale of age restricted goods, such as Tobacco and Vapour products is highly regulated with Trading Standards officers having delegated powers to enforce that legislation.
- 3.9 In respect of one application referred to in 3.4 above, that application was cancelled within the statutory three-month period. The authorisation was executed in accordance with the Council’s policy on covert surveillance and RIPSAs and has been audited by the Governance team- Legal Services as is normal practice. The other application was a live operation at the time of writing this report.
- 3.10 The use of covert surveillance is restricted to certain legal purposes; crime prevention and detection, public health and public safety. The continued ability

to use surveillance, in appropriate circumstances, for the investigation of offences such as the selling of age restricted goods is connected to the themes; Prosperous Place, Prosperous People and Prosperous Economy in the Local Outcome Improvement Plan (LOIP). The investigation and enforcement of regulatory laws (such as the sale of age restricted goods) by the Council, ensure that young people are protected, and communities can be assured that the Council is proactively enforcing its powers and making communities safe.

- 3.11 After an application for a covert surveillance operation is authorised by a senior officer, known as an Authorising Officer, it is sent through to the Chief Officer-Governance for logging and auditing. Members of the Governance Team within Legal Services then carry out an audit of the authorisation and raise any matters of good practice, policy or procedure with the Authorising Officer and the applicant. Officers within Legal services do not interfere with the authorisation as that responsibility lies with the Authorising Officer. This approach has been agreed and was supported by the Surveillance Commissioner.
- 3.12 There have been no further applications for covert surveillance made or approved within this quarter. Should any further applications be received prior to the Committee date, Committee will be updated at the meeting.
- 3.13 There have been no changes to the Protocol and it remains fit for purpose.

TRAINING AND COMMUNICATIONS

- 3.14 Training forms a large part of RIPSAs compliance and is something which all officers must have before they are permitted to carry out covert surveillance under RIPSAs. The Council's training regime is something which has been commended on by the Surveillance Commissioner on the last three inspections.
- 3.15 The mandatory course is run by solicitors in Governance, Legal Services and a senior Trading Standards officer. It consists of theory, practice and practical application of the rules and procedures around RIPSAs, with the aim that all attendees are equipped with the skills to apply for, and have granted, a covert surveillance application and that all attendees are trained to the same standard. There have been no training sessions delivered this quarter.
- 3.16 In October, there was a meeting with Authorising Officers where feedback on the authorisation process was shared and discussed and the possibility of creating a forum for discussion and learning was discussed. These meetings are an opportunity for officers to share practice with each other which can be a valuable tool to good and consistent practice. The next meeting is scheduled for the New Year.
- 3.17 The Governance Team, Legal Services is exploring new ways of communicating news/ case law and good practice to applicants and Authorising officers. It is anticipated that an update should be available to Committee in the New Year.

4. FINANCIAL IMPLICATIONS

4.1 There are no financial implications arising from this report.

5. LEGAL IMPLICATIONS

5.1 The Scottish Government Code of Practice on Covert Surveillance sets an expectation that elected members review and monitor the use of RIPSA on a quarterly basis. This is also a matter which is taken into account by the Investigatory Powers Commissioner when they carry out their inspections.

5.2 A review of the Council's RIPSA activity by elected members provides assurance that the Council's use of RIPSA is being used consistently and that the standards set by its policy remain fit for purpose.

5.3 The management, knowledge and awareness of those involved with RIPSA activity was something which was commended by the Commissioner in his inspection in 2017. The reporting of RIPSA activity to Committee provides another level of scrutiny and assurance on the use of RIPSA.

6. MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
Financial	There are no financial risks arising from this report.	L	
Legal	Reporting on the use of RIPSA ensures that the Council continues to comply with the Code of Practice and that elected members continue to provide a level of scrutiny on matters of policy.	L	Quarterly reporting on RIPSA activity and the related policy to members, mitigates the risks highlighted in this section.
Employee	There are no employee risks related to this report.	L	Appropriate and mandatory training arms staff with the correct skills to carry out surveillance and thus, there

			is little to no risk to staff . All requests for training are met
Customer	Failure to report to and update Committee on RIPSA activity means that it would undermine public confidence in the Council and how it operates.	L	
Environment	There are no environmental risks arising from this report.		
Technology	There are no technological risks arising from this report		
Reputational	Failure to not update Committee on RIPSA activity would mean that the Council would be at risk of negative reputational damage when this is raised by the Surveillance Commissioner in their inspection.		External inspections on RIPSA activity operate every 3-4 years. This provides external assurance to the Committee of the Council's compliance with RIPSA. The Inspection Report is shared with Committee and any Action Plan created, endorsed and approved by Committee.

7. OUTCOMES

Local Outcome Improvement Plan Themes	
	Impact of Report
Prosperous Economy	This report does not link to this theme directly. The use of RIPSA activity by the Council as an investigatory tool may have an impact on the economy as a result of enforcement action taken by services such as Trading Standard, e.g. such as in enforcing the law around counterfeit goods.
Prosperous Place	Enforcement activity undertaken by the Council by using, where appropriate, its powers under RIPSA, may have an impact on this theme by tackling the selling of counterfeit goods.

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Design Principles of Target Operating Model	
	Impact of Report
Governance	Reporting to this Committee on the Councils use of RIPSA ensures compliance with the Code of Practice and gives Committee assurances that the Council's use of RIPSA is being done according to its policy.

8. IMPACT ASSESSMENTS

Assessment	Outcome
Equality & Human Rights Impact Assessment	The purpose of this report is to update Committee on the Council's use of RIPSA. This report does not propose or endorse any changes to the Councils policy on RIPSA not its procedure and as such, an EHRA is not required.
Data Protection Impact Assessment	The purpose of this report is to update Committee on the Council's use of RIPSA. As such, a Privacy Impact Assessment is not required.
Duty of Due Regard / Fairer Scotland Duty	There is no requirement to consider the Fairer Scotland Duty as this report does not seek approval for any Strategic decisions and is merely providing Committee with an update RIPSA activity.

9. BACKGROUND PAPERS

None

10. APPENDICES (if applicable)

None

11. REPORT AUTHOR CONTACT DETAILS

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