

ABERDEEN CITY COUNCIL

COMMITTEE	Audit, Risk & Scrutiny
DATE	12 February 2020
REPORT TITLE	RIPSA - Annual Report
REPORT NUMBER	GOV/20/042
DIRECTOR	Chief Executive
CHIEF OFFICER	Fraser Bell - Chief Officer
REPORT AUTHOR	Jess Anderson
TERMS OF REFERENCE	5.2 and 6.4

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 consider a statement on the Council's Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) policy and statistical information on relevant activity on an annual basis.

2. RECOMMENDATION(S)

That the Committee resolves to: -

- 2.1 Note the report.
- 2.2 Agree the Corporate Protocol and Procedure on Covert Surveillance (Appendix A).

BACKGROUND

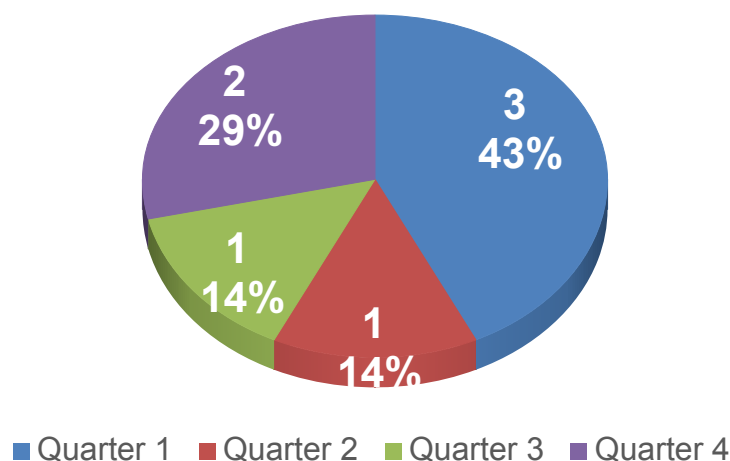
- 3.1 The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), gives the Council powers to conduct two types of covert surveillance:
1. Directed Surveillance; and
 2. the use of a Covert Human Intelligence Source (the use of an undercover officer).

- 3.2 The Council has a protocol and procedure in place which governs the use and management of covert surveillance. Further, all members of staff wishing to use RIPSA, are required to undertake training prior to being able to make an application under RIPSA.
- 3.3 Various Council services use RIPSA 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 RIPSA.
- 3.4 This Committee receives an update on covert surveillance activity on a quarterly basis as is required by policy and the Scottish Government’s Code of Practice on Covert Surveillance. This report pulls together an analysis of surveillance activity over 2019, providing members with a more detailed overview of surveillance activity. The role of this Committee is to monitor compliance with the protocol to ensure that it is being used consistently and that that policy remains fit for purpose.

APPLICATIONS FOR COVERT SURVEILLANCE

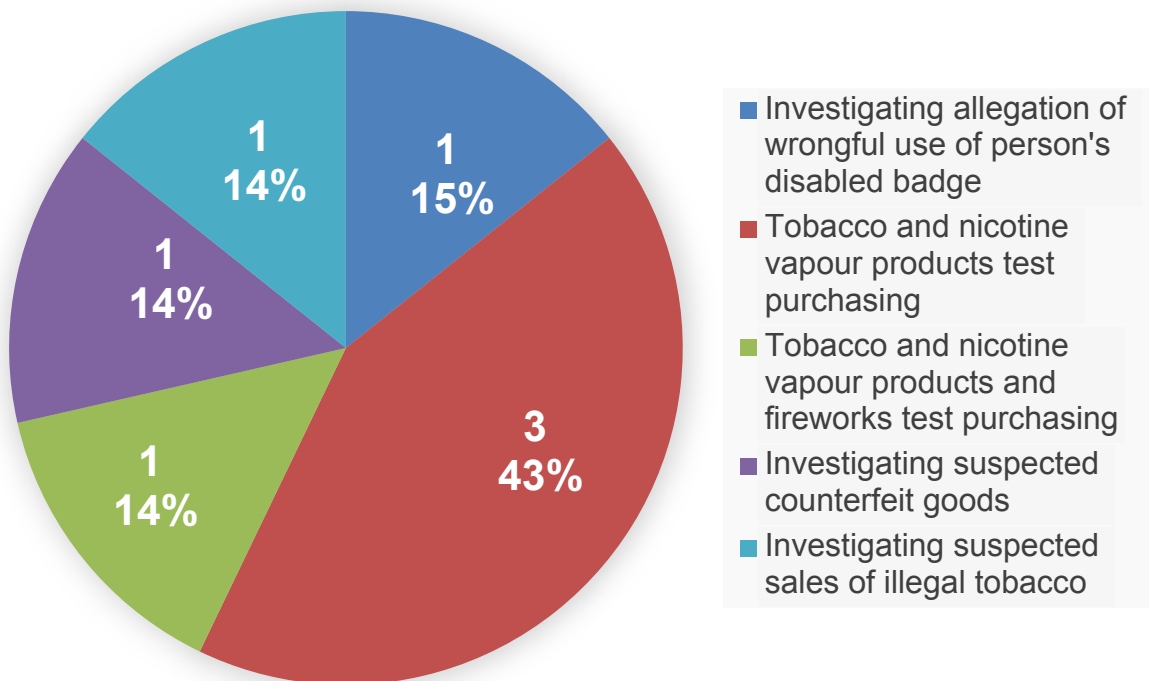
- 3.5 During 1st January – 31st December 2019 there were 7 authorisations for covert surveillance. All 7 were authorisations for Directed Surveillance. There were no applications for a CHIS. The chart below shows the breakdown of authorisations by Quarter.

No. of Authorisations Jan - Dec 2019

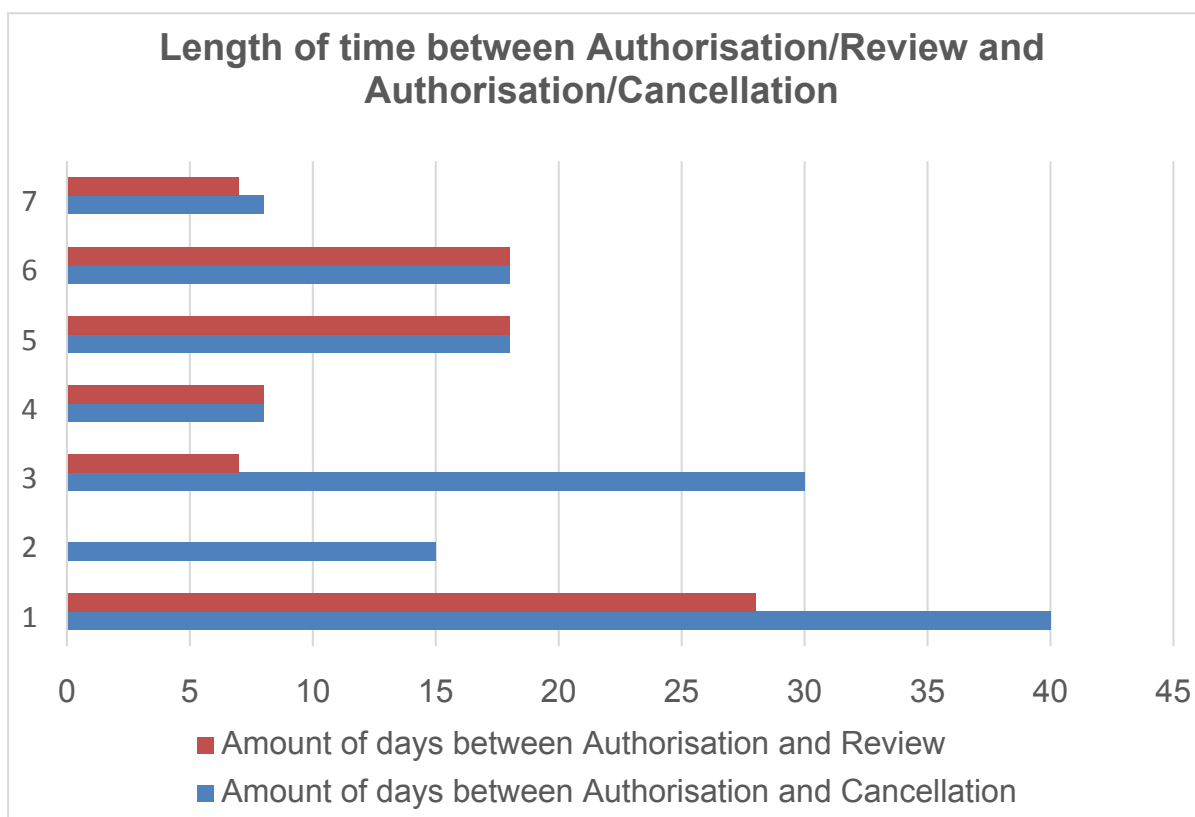


- 3.6 6 of the Directed Surveillance applications came from the Operations and Protective Services and 1 was from the Corporate Investigations Team. The chart below groups the applications by purpose.

Type of Authorisations Jan - Dec 2019



- 3.7 Under RIPSA and the Council's protocol on covert surveillance, the duration of a Directed Surveillance authorisation is 3 months. Guidance states that the operation should be reviewed at the earliest opportunity after its conclusion and cancelled thereafter, if appropriate. All 7 authorisations were cancelled within the 3-month period and the graph below shows the length of time between Authorisation and Review/ Cancellation. It should be noted that as covert surveillance is a planned operation, the authorisation can be granted a few days/ or up to a week prior to the start of the surveillance operation. Additionally, the Authorising Officer can authorise more than one day of surveillance. The graph below provides assurance to members that authorisations have been cancelled appropriately and in accordance with the protocol.



Authorisation for Directed Surveillance	Days between Authorisation and Cancellation	Days between Authorisation and Review
1	40	28
2	15	-
3	30	7
4	8	8
5	18	18
6	18	18
7	8	7

3.8 Test purchases for underage sale of tobacco and nicotine products are part of an enforcement initiative promoted by the Scottish Government. The enforcement activity 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.

3.9 The latter half of 2019 saw the first authorisation for a test purchase in relation to Firework products. The Scottish Government published a consultation on firework safety in 2019 and, as a result of the response to that, has launched the Fireworks Action Plan; “Promoting the safe and appropriate use of fireworks

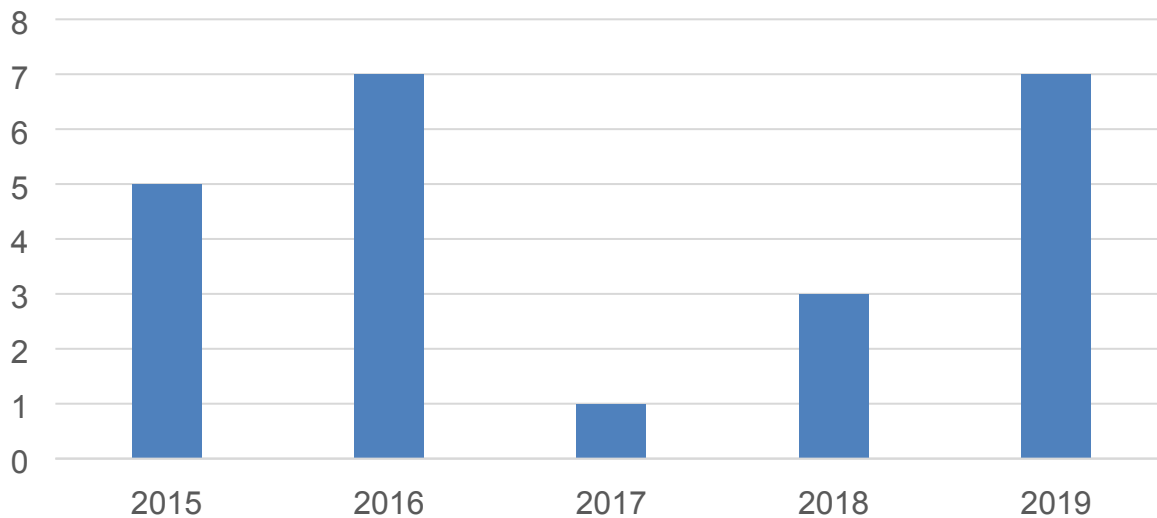
in Scotland”. This action plan has longer term actions including the establishment of a Firework Review Group whose remit is to develop clear recommendations for tightening regulations on where and when fireworks can be used in Scotland¹.

- 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, allegations of fraud are 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. Further, risk assessments form a part of the application form for any covert surveillance authorisation and the Authorising Officer must satisfy him/herself that this has been considered and where necessary, mitigated before he/she authorises an application.
- 3.11 The Council’s continued use of covert surveillance powers remains relatively consistent over the years, reflecting that whilst it is a “tool of last resort” it is still appropriate and effective in the relevant circumstances. The graph below shows the numbers of applications authorised by year, since 2015. Members will note that there was only 1 application in 2017. This is due to a change in practice which was implemented after Summer 2017 following discussions with the Surveillance Commissioner during his inspection in the Spring. Applicants were advised that a Directed Surveillance authorisation was now required for initial test purchases, where previously this had been done under an officer’s delegated enforcement powers. This change was reported to this Committee in September 2017, CG/17/112².

¹ <https://consult.gov.scot/safer-communities/fireworks/>

² <https://committees.aberdeencity.gov.uk/documents/g4310/Public%20reports%20pack%2026th-Sep-2017%2014.00%20Audit%20Risk%20and%20Scrutiny%20Committee.pdf?T=10>

No. of Authorisations 2015-2019



- 3.12 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 is supported by the Investigatory Powers Commissioner.

POLICY

- 3.13 There have been no changes to the substance of the Protocol and it still remains compliant with the Scottish Government Codes of Practice on Covert Surveillance and Property Interference 2017. A copy of the Protocol is attached at Appendix A. Members are asked to approve a revision to the Protocol at 8.3 to remove the contact details for Authorising Officers. The Chief Officer-Governance has delegated powers to appoint Authorising Officers and the removal of specific officer details will avoid the need to report to Committee for approval of personnel changes. Any changes to personnel subject of an appointment by the Chief Officer- Governance are uploaded to the Council's intranet. Further, should there be any changes to the number of Authorising Officers, members will be advised through the quarterly reporting process, similar to those reports submitted in September³ and December 2018⁴.

³ <https://committees.aberdeencity.gov.uk/documents/g6258/Public%20reports%20pack%2025th-Sep-2018%2014.00%20Audit%20Risk%20and%20Scrutiny%20Committee.pdf?T=10>

⁴ <https://committees.aberdeencity.gov.uk/documents/g6259/Public%20reports%20pack%2004th-Dec-2018%2014.00%20Audit%20Risk%20and%20Scrutiny%20Committee.pdf?T=10>

TRAINING

- 3.14 There were no requests for training during the year for new staff. In the latter part of 2018, Refresher training (and where necessary full training) was provided to all applicants and officers who were new to covert surveillance work.
- 3.15 The Governance team undertakes a quarterly meeting with Authorising officers (AO) which provides for the chance to discuss feedback from any audits of application forms, general practice and provides an opportunity for AO's to raise any queries they might have. The next AO meeting is due in February 2020.

AWARENESS RAISING

- 3.16 As mentioned in the report for Quarter 4, 2019, officers within the Governance Team, Legal Services are looking at creating an interactive knowledge sharing platform which would allow instant messages to be sent to applicants/AO's when there are updates on covert surveillance activity. There will also be the opportunity for applicants to discuss general issues on surveillance. Content on actual operations will be prohibited from that forum, due to the sensitivity of a covert operation. In the next coming weeks, testing will take place, and thereafter, it will be rolled out, by invitation only to those officers who have had surveillance training.

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. The Code also reflects that elected members should set the Policy on an annual basis. This annual report brings together a review of all RIPSA activity throughout the last year and provides members an overview of the Council's compliance and updated Protocol. Regular scrutiny by members is also a matter which is taken into account by the Investigatory Powers Commissioner's Office 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, this is done by reporting to this Committee quarterly.
- 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.	L	
Technology	There are no technological risks arising from this report	L	
Reputational	Failure to not update Committee on RIPSA activity would mean that	L	External inspections on RIPSA activity operate every 3-4 years. This provides

	the Council would be at risk of negative reputational damage when this is raised by the Surveillance Commissioner in their inspection.		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.
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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.

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. There have been no changes to the Protocol and therefore an EHIRA is not required.
Privacy 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)

Corporate Protocol and Procedure on Covert Surveillance

11. REPORT AUTHOR CONTACT DETAILS

Name: Jess Anderson

Title: Team Leader, Governance

Email Address: JeAnderson@aberdeencity.gov.uk

Tel: 01224 52 2553