

ABERDEEN CITY COUNCIL

COMMITTEE	Audit, Risk & Scrutiny
DATE	8 th October 2020
EXEMPT	No
CONFIDENTIAL	Yes- <i>Personal data within Appendix 2 has been redacted to comply with the Data Protection Act 2018.</i>
REPORT TITLE	RIPSA Activity Report (Q1 –Q3) and IPCO Inspection 2020.
REPORT NUMBER	COM/20/137
DIRECTOR	Chief Executive
CHIEF OFFICER	Fraser Bell- Chief Officer- Governance
REPORT AUTHOR	Jess Anderson, Team Leader
TERMS OF REFERENCE	5.2

1. PURPOSE OF REPORT

- 1.1 To ensure that Members review the Council's use of covert surveillance on a quarterly basis in order to provide assurance that it is used consistently in accordance with the Corporate Protocol and Procedure on Covert Surveillance and to advise Members of the outcome of an inspection undertaken by the Investigatory Powers Commissioner (IPCO) of the Council's governance and compliance of covert activities.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Notes the updates within the report in respect of the Council's covert surveillance activity during Quarters 1-3 of the current year.
- 2.2 Notes the amendments to the Corporate Protocol and Procedure on Covert Surveillance in Appendix 1.
- 2.2 Notes and endorses the Investigatory Powers Commissioner's Inspection Letter 2020, in Appendix 2.

3. BACKGROUND

- 3.1 There are a range of situations in which Council's employees, in the course of their duties, require to carry out investigations and activities which by their very nature are covert, i.e. they are concealed, secret or clandestine. In accordance with the Human Rights Act 1998, it is essential that covert investigations are compatible with Article 8 of the European Convention on Human Rights (ECHR)

which states that: “*Everyone has the right to respect for his private and private life, his home and his correspondence*”.

- 3.2 The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), provides a legal framework for covert surveillance by public authorities and an independent inspection regime to monitor these activities. RIPSA sets out a process for the authorisation of covert surveillance by designated officers, for the duration of that authorisation and for the review, renewal or termination of authorisations. It 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).
- 3.3 The Investigatory Powers Commissioner (whose office is known as the IPCO) is responsible for overseeing the use of covert surveillance by designated public authorities based in the UK, of which the Council is one. The aim of the IPCO is to provide effective and efficient oversight so that the conduct of covert activities by public authorities is human rights compliant in accordance with RIPSA. The IPCO conducts its inspections every three years.
- 3.4 The Council has a Corporate 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 to undertake covert surveillance.
- 3.5 In accordance with paragraph 4.43 of the Scottish Government’s Code of Practice on Covert Surveillance and Property Interference, elected members of a local authority should review the authority’s use of RIPSA a quarterly basis to ensure it is being used consistently and set the policy at least once a year. This Committee receives quarterly reports on RIPSA activity and an Annual Report and therefore discharges this requirement.
- 3.6 This report outlines RIPSA activity during Quarters 1-3 and the outcome of the IPCO Inspection carried out in May 2020.

RIPSA ACTIVITY

- 3.7 The Annual Report for 2019 was considered by this Committee in February 2020. At that time there had been no RIPSA authorisations. During Q1¹ there were no authorisations granted.
- 3.8 The lack of authorisations in Q1 was due to the impact of COVID -19. In particular, Services who would normally use RIPSA authorisations to carry out test purchases were unable to do so due to lockdown and restrictions on social distancing. Not only that, Services like Trading Standards and Environmental Health were working together supporting compliance with the Coronavirus legislation to ensure safe practices were being adhered to.

¹ January- March 2020

- 3.9 In Q2², there had been one application for Directed Surveillance. This application was in respect of the alleged selling of counterfeit goods and was cancelled within the statutory period in accordance with the Corporate Protocol and Procedure.
- 3.10 There have been no applications for covert surveillance for Q3³ at the time of writing.

DATA ASSURANCE

- 3.11 On 1st May 2020, the IPCO wrote to the Chief Executive highlighting serious compliance failings by part of the UK intelligence community. The IPCO requested that public authorities undertake a Data Assurance exercise to assess compliance around how data obtained by way of a covert operation is handled, stored, shared and destroyed and, where necessary, amend any practices to provide more clarity around how to safeguard such data. The IPCO advised that Data Assurance will form part of future IPCO inspections.
- 3.12 In response to this, amendments to the Corporate Protocol and Procedure for Covert Surveillance have been made, a guidance note produced and published on the online forum mentioned below and applicants have been directed to include information about Data Assurance in the Cancellation part of the application process.

INSPECTION

- 3.13 On 17th April 2020, the Council was contacted by the Investigatory Powers Commissioner's Office (IPCO)⁴ to advise that it was due for an inspection, the last being in 2017. The IPCO noted that their inspection regime had become more flexible and could consist of one of three options; a telephone call, a desktop audit, or a physical inspection. A telephone call took place on 15th May 2020 between Jess Anderson, Team Leader- Regulatory & Compliance, Legal Services and an Inspector from the IPCO. A copy of the Inspection Report is attached at Appendix 2.
- 3.14 The main points to note from the Inspection report were around enhancing the guidance already in place on social media investigations, highlighting examples from the Scottish Government Codes of Practice on CHIS and including a statement about not being registered with the National Anti-Fraud Network (NAFN).
- 3.15 The changes to the Protocol are discussed at section 7 of this report, but for the sake of completeness, the guidance on Social Media investigations was updated to reflect the recommendations by the IPCO. Guidance on Social media investigations also forms part of the mandatory training for all applicants and will be part of the refresher training carried out in 2020. The Guidance note "Identifying a CHIS" was updated to add one example from the Scottish

² April to June 2020

³ July- September

⁴ The regulatory body for RIPSAs activity.

Government's Code of Practice on the use of a Covert Human Intelligence Source, as the remaining examples were already included within that note and the Protocol and Procedure amended to signpost back to that Guidance. Finally, the Council is currently not a member of NAFN as it does not access communications data under the Regulation of Investigatory Powers Act 2000, albeit, it does have powers to do so. The Council previously had access to NAFN (other clusters had licences) but it was not used for authorisations under RIPA. That said, Officers in Regulatory & Compliance, Legal Services along with Trading Standards have been exploring its potential use and clarifying what processes and procedures would be required. Any change to this position would be reported to this Committee as it has that oversight role.

PROTOCOL

3.16 In March 2020, after the submission of the Annual Report to this Committee in February, Officers in Legal Services finalised the workplan for RIPSA for the year ahead. Work had already begun on various developments with RIPSA guidance/ awareness raising, namely the development of an online forum accessible only to officers who have been trained in RIPSA, but the workplan, put into focus our wider aims for the year. This included:

- amendments to the protocol in relation to: the online forum and its content, a move to modified application forms (supported by the IPCO), clarity around Data Assurance practice and updates on case law which were discussed during the Inspection,
- new guidance on operational matters such as Reviews and the management of surveillance devices, and
- a refresh of the training pack
- signposting to revised guidance on Social Media use, Identifying a CHIS.
- signposting to new guidance on the management of Surveillance devices.

3.17 The amendments to the Corporate Protocol and Procedure were shared with the IPCO for information ahead of the Inspection Report being published. Thereafter, and in accordance with the General Delegation 22- Powers Delegated to Officers March 2020 (*"To create and amend procedures, protocols and guidance"*), the Chief Officer- Governance approved the amendments on 15th July 2020.

3.18 As is a requirement under the Scottish Government Code of Practice on Covert Surveillance and Property Interference, Elected Members are to have oversight of policy and ensure it remains fit for purpose. Committee is being asked to note the amendments to the Corporate Protocol and Procedure set out in Appendix 1, (such changes are highlighted in yellow, for ease of reference). The Protocol and Procedure is reviewed annually, but maybe subject to an earlier review where necessary.

AWARENESS RAISING

3.19 At the time Committee considered the Annual Report the online forum was in test mode with it being available to Authorising officers. That forum is now fully

operational and all applicants who have been trained in RIPSAs now have access. Membership to the forum is managed and monitored by the Regulatory & Compliance Team, Legal Services.

3.20 Further, by the time Committee meets a new covert surveillance page will have been published on the Council's Intranet which will contain the Protocol and associated material for those officers who make enquiries about surveillance but who are not trained. Meantime, any new guidance, case law or bulletins of interest can be posted on the Forum reaching all applicants and Authorising Officers instantly.

3.21 On 19th June, and 10th September 2020, the second and third quarterly meetings of the Authorising Officers (AO's) took place remotely. These sessions raise awareness with AO's on operational matters and are a chance for AO's to raise any queries they might have. As part of the Workplan the aim is to, where possible, make these sessions more developmental, so that AO's have the opportunity to develop their knowledge of RIPSAs and those who use it.

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 RIPSAs 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 RIPSAs activity by elected members provides assurance that the Council's use of RIPSAs 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 RIPSAs activity was something which was commended by the Commissioner in his inspection in 2020. The reporting of RIPSAs activity to Committee provides another level of scrutiny and assurance on the use of RIPSAs.

6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Strategic Risk	There are no strategic risks arising from this report.	N/A	
Compliance	That the Council's use of RIPSAs is not legally compliant	L	This Committee receives quarterly and annual reports on RIPSAs activity

			and related policy mitigates this risk highlighted in this section.
Operational	<p>Employees are not suitably trained for RIPSA work</p> <p>Failure to report to and update Committee on RIPSA activity means that it would undermine public confidence in the Council and how it operates.</p>	L	<p>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.</p> <p>Reporting to Committee occurs quarterly on RIPSA activity.</p>
Financial	There are no financial risks arising from this report.	N/A	
Reputational	Failure to update Committee on RIPSA activity would mean that the Council would be at risk of reputational damage when this is raised by the IPCO in their inspection.	L	<p>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 an Action Plan created (where necessary) and is endorsed and approved by Committee.</p>
Environment / Climate	There are no environmental/ climate risks arising from this report.	N/A	

7. OUTCOMES

<u>COUNCIL DELIVERY PLAN</u>	
Impact of Report	
Aberdeen City Council Policy Statement	
The report does not have an impact on the Policy Statement.	

Aberdeen City Local Outcome Improvement Plan	
Prosperous Economy Stretch Outcomes	The use of RIPSAs 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 Stretch Outcomes	Enforcement activity undertaken by the Council by using, where appropriate, its powers under RIPSAs, may have an impact on this theme by tackling the selling of counterfeit goods.
Regional and City Strategies This report does not have an impact on the Regional and City Strategies.	
UK and Scottish Legislative and Policy Programmes This report does not have an impact on the UK and Scottish Legislative and Policy Programmes	

8. IMPACT ASSESSMENTS

Assessment	Outcome
Impact Assessment	The purpose of this report is to update Committee on the Council's use of RIPSAs. Whilst this report notes changes to the Council's Protocol and Procedure on RIPSAs, those changes are enhancements and do not affect the purpose of the Protocol and Procedure. As such, an EHRA is not required. Further, 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 RIPSAs activity.
Data Protection Impact Assessment	The purpose of this report is to update Committee on the Council's use of RIPSAs and the enhancements made to the Protocol and Procedure. As such, a Data Protection Impact Assessment is not required.

9. BACKGROUND PAPERS

None

10. APPENDICES

1. Revised Corporate Protocol and Procedure on Covert Surveillance
2. Investigatory Powers Commissioner's Inspection Report.

11. REPORT AUTHOR CONTACT DETAILS

Name	Jess Anderson
Title	Team Leader, Regulatory & Compliance Team, Legal Services
Email Address	JeAnderson@aberdeencity.gov.uk
Tel	01224 52 2553