

ABERDEEN CITY COUNCIL

COMMITTEE	Audit, Risk & Scrutiny
DATE	2 December 2021
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Quarter 4- Use of Investigatory Powers
REPORT NUMBER	COM/21/289
DIRECTOR	Gale Beattie – Director of Commissioning
CHIEF OFFICER	Fraser Bell – Chief Officer Governance
REPORT AUTHOR	Jessica Anderson - Team Leader
TERMS OF REFERENCE	5.2

1. PURPOSE OF REPORT

- 1.1 To ensure that Elected Members review the Council's use of investigatory powers on a quarterly basis and have oversight that those powers are being used consistently in accordance with the Use of Investigatory Powers Policy.

2. RECOMMENDATION(S)

It is recommended that the Committee:-

- 2.1 Notes the update within the report in respect of the Council's use of investigatory powers during Quarter 4 of the current year.
- 2.2 Approves the Use of Investigatory Powers Policy in Appendix A.

3. BACKGROUND

- 3.1 There are a range of situations in which Council officers in the course of their duties have to carry out investigations and activities for legitimate purposes and it is necessary and proportionate to use investigatory powers to acquire information about a person, either in their personal capacity or about their trade or business without their knowledge. These investigations and activities are covert, i.e. they are concealed, secret or clandestine. In accordance with the Human Rights Act 1998, it is essential that the use of these investigatory powers 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 Council has powers under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), and Investigatory Powers Act 2016 (IPA) to use different investigatory techniques. RIPSA provides a legal framework for covert surveillance by public authorities, an independent inspection regime to monitor

these activities and 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 (is covert surveillance in places other than residential premises or private vehicles); and
2. the use of a Covert Human Intelligence Source (the use of an undercover officer).

This Committee has had oversight of covert surveillance activity under RIPSA since 2017.

- 3.3 The IPA permits the Council to acquire Communications Data for a lawful purpose. Communications data is the way in which, and by what method, a person or thing communicates with another person or thing. The IPA sets out the manner and process by which Communications data can be obtained and this is supported by the Home Office's Communications Data Code of Practice¹. The Council has not used Communications data since approximately 2005, however the ability to acquire it still remained. In response to concerns from the Operations and Protective Services cluster that there is an increase in online offences, more so during the pandemic, steps have been taken by Legal Services and Trading Standards to put in place operational procedures to ensure compliance with the requirements of the IPA.
- 3.4 The Investigatory Powers Commissioner (IPCO) has oversight of both RIPSA and IPA and as such, the Council's use and management of powers under these will form part of the normal inspection process. Members will note that the last inspection took place in April 2021. The next is due 2024/2025.
- 3.5 The Council has a Corporate Policy (attached at Appendix A) which governs compliance with both RIPSA and the IPA. It remains a mandatory requirement that all members of staff wishing to use investigatory power must undertake training prior to being able to make an application to use such investigatory powers.
- 3.6 Committee is being asked to approve the Corporate Policy on the Use of Investigatory Powers, note the update on the use of these powers, and the Council's compliance with the Policy, particularly in respect of covert surveillance activity during the period 18th September to 1st December 2021, namely Quarter 4 of 2021.

QUARTER 4- 2021

Covert Surveillance – RIPSA

- 3.7 In the period from 18th September until 22 November 2021², there were no authorisations for Directed Surveillance.

¹ November 2018.

² The date of the deadline for this report.

- 3.8 There have been no further applications for covert surveillance made or approved within this quarter.

Communications Data- IPA

- 3.9 At the time of writing this report, the Council has not acquired any Communications data but is progressing arrangements with NAFN³ to provide services to the Council required by the IPA. Further, operational procedures have been drafted and shall be approved by the Chief Officer- Governance once arrangements with NAFN are concluded. No Communications data shall be acquired until training has been delivered and the operational procedure approved.
- 3.10 Any activity under the IPA will form part of the normal quarterly reporting cycle to this Committee.

POLICY

- 3.11 As noted at paragraph 3.3, officers have put in place procedures to enable the Council to exercise powers it has under the IPA to acquire Communications Data for a lawful purpose.
- 3.12 Officers within Legal Services, in consultation with the Senior Responsible Officer (SRO)⁴, felt that whilst not required under the IPA or the Home Office's Code of Practice, this Committee should also be sited on the use of the Council's investigatory powers more broadly and, so in doing, the quarterly reporting of covert surveillance activity would be expanded to include some information on Communications data requests, where that was appropriate.
- 3.13 Further, as the two legislative regimes come within the remit of the IPCO, officers felt it was more transparent to have a holistic policy setting out a monitoring and assurance framework demonstrating compliance with both. The Use of Investigatory Powers Policy, attached at Appendix A, reflects the Council's standard policy template. It has been reviewed by the Policy Group and Risk Board prior to being considered by this committee and has also been shared with key officers involved in activities which fall within its scope. The implementation of the new policy has no impact on any operational processes that are in place for covert surveillance, it's merely taking the policy sections out of a procedural document which in turn, makes it more operational and user friendly in nature.
- 3.14 The role of elected members in setting policy for covert surveillance remains the same, this is to be done annually. Members will be asked to set the policy as part of the Annual Report in February 2023. The quarterly reporting on the use of investigatory powers will include an update on the policy's effectiveness,

³ NAFN is a body recognised by the Home Office to provide necessary services to local authorities who wish to acquire Communications Data.

⁴ Chief Officer- Governance.

so Committee is getting assurance throughout the year that it remains fit for purpose. Thus, it is recommended that Members approve the Use of Investigatory Powers Policy and agree that this supersedes the Corporate Protocol and Procedure for Covert Surveillance with immediate effect.

TRAINING

- 3.15 There have been no requests for full training in this Quarter. Refresher training for all officers who have been trained is in development. This training will be more practical and interactive than the full training and will have more of a focus on online investigations. It will be delivered remotely via Microsoft teams by officers within Legal Services.

AWARENESS RAISING

- 3.16 The last Authorising Officer's meeting of this year took place on 5th November 2021. There was a 100% attendance rate. A representative from Trading Standards was invited along to talk to Authorising Officers about the importance of online investigations.
- 3.17 There has been a change in postholder with regard to one of the Authorising Officers this quarter. The incumbent postholder has already had full RIPSAs training and undertook a separate training session with the Team Leader-Regulatory & Compliance in November, prior to being able to authorise any applications for covert surveillance. The SRO has formally appointed the postholder as an Authorising Officer.

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 IPCO when they carry out their inspections.
- 5.2 The Home Office Code of Practice on Communications Data states that any public authority wishing to acquire Communications Data must have regard to the Code and that there should be a robust process in place for accessing such data which should be overseen by the SRO.
- 5.3 Quarterly reporting of the Council's use of investigatory powers to Elected Members provides assurance that the Council's use of such powers is being used consistently and that the standards set by its policy remain fit for purpose.
- 5.4 The management, knowledge and awareness of those involved with RIPSAs activity was something which was commended by the Commissioner in his

inspection in 2020. Officers hope that reporting on the use of investigatory powers more broadly, enhances transparency and provides another level of scrutiny and assurance on the use of these powers.

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. The Council's acquisition of communications data does not comply with the Home Office Code of Practice.	L	This Committee receives quarterly and annual reports on its use of investigatory powers under RIPSAs and the IPA and related policy mitigates this risk highlighted in this section.
Operational	Employees are not suitably trained for surveillance work Failure to report to and update Committee on surveillance activity means that it would undermine public confidence in the Council and how it operates.	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. Reporting to Committee occurs quarterly on surveillance activity.
Financial	There are no financial risks arising from this report.	N/A	
Reputational	Failure to update Committee on RIPSAs activity would mean that the Council would be at risk of reputational damage when this is raised by the IPCO in their inspection.	L	External inspections on RIPSAs activity operate every 3-4 years. This provides external assurance to the Committee of the Council's compliance with RIPSAs. Further, whilst there is no requirement to report to Committee about the Council's use of Communication Data, the

			broader reporting of both demonstrates the Council's wish to be transparent about its use of such powers. The Inspection Report is shared with Committee and an Action Plan created (where necessary) and is endorsed and approved by Committee.
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 investigatory powers 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 the IPA and RIPSA, 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 RIPSA. 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 RIPSA activity.
Data Protection Impact Assessment	The purpose of this report is to update Committee on the Council's use of RIPSA. As such, a Data Protection Impact Assessment is not required.

9. BACKGROUND PAPERS

None.

10. APPENDICES

Appendix A- Use of Investigatory Powers Policy.

11. REPORT AUTHOR CONTACT DETAILS

Name	Jessica Anderson
Title	Regulatory and Compliance Team Leader
Email Address	JeAnderson@aberdeencity.gov.uk
Tel	01224 52 2553