

ABERDEEN CITY COUNCIL

COMMITTEE	Audit, Risk and Scrutiny Committee
DATE	28 November 2024
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Use of Investigatory Powers - Q3 & Q4, 2024
REPORT NUMBER	CORP/24/251
DIRECTOR	Andy MacDonald
CHIEF OFFICER	Alan Thomson/Vikki Cuthbert – Interim Chief Officer - Governance
REPORT AUTHOR	Vicki Johnstone, Solicitor - Regulatory and Compliance, Legal Services
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)

That the Committee:-

- 2.1 Note the Council's use of covert surveillance activity during Q3 and Q4.

3. CURRENT SITUATION

- 3.1 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 RIPSAs since 2017.

- 3.2 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, Legal Services and Trading Standards worked together to put in place operational procedures to ensure compliance with the requirements of the IPA. The operational procedure in respect of Communications data was reviewed in April 2024 and no amendments were made.
- 3.3 The Investigatory Powers Commissioner (IPCO) has oversight of both RIPSAs and IPA and as such, the Council's use and management of powers under these will form part of the normal inspection process. The Council's next inspection is due on or around Spring 2026.
- 3.4 The Council determined that the Use of Investigatory Powers Policy was fit for purpose when it considered the Annual Report in February 2024. This policy governs compliance with both RIPSAs and the IPA. It remains a mandatory requirement that all members of staff wishing to use investigatory powers must undertake training prior to being able to make an application to use such investigatory powers.
- 3.5 Committee is being asked to 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 Q3 and Q4.

Covert Surveillance – RIPSAs

Quarter 3- 2024

- 3.6 During the period 17 June to 16 September 2024, there was one application for Directed Surveillance. The application related to the sale of age restricted tobacco and vapour products and was cancelled in accordance with the Council's internal procedure.

Quarter 4 - 2024

- 3.7 During the period 16 September to 18 November 2024 (the submission of this report to committee), there have been no applications for covert surveillance made or approved.

Communications Data- IPA

Quarter 3 – 2024

- 3.8 There were no applications for Communications Data.

Quarter 4 - 2024

- 3.9 There has been one application for Communications Data this quarter. The powers under the IPA to acquire communications data were utilised by Trading Standards in the investigation of alleged counterfeit goods and illicit tobacco. The authorisation was cancelled after it was no longer required in accordance with the procedure.
- 3.10 A review has been undertaken of the Access to Communications procedure ensuring that the application process described therein reflects experience now that officers have undertaken that process. The change to the procedure was approved by the Interim Chief Officer- Governance in November 2024.

Authorising Officers (AO)

- 3.11 There was an AO meeting on 27 August 2024. Attendees were given an update on covert surveillance activity this quarter and future training needs were raised and feedback requested.

The meeting scheduled for the 5th November was cancelled as there was no update.

Training

- 3.12 There has been no training this quarter.

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 Senior Responsible Officer.
- 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 It is recommended as good practice, under paragraph 4.43 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.
- 5.5 The management, knowledge and awareness of those involved with RIPSA activity was something which was commended by the IPCO in the 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. ENVIRONMENTAL IMPLICATIONS

- 6.1 There are no environmental/ climate risks arising from the recommendations in this report.

7. RISK

The assessment of risk contained within the table below is considered to be consistent with the Council's Risk Appetite Statement.

Category	Risks	Primary Controls/Control Actions to achieve Target Risk Level	*Target Risk Level (L, M or H) *taking into account controls/control actions	*Does Target Risk Level Match Appetite Set?
Strategic Risk	There are no strategic risks		L	Yes
Compliance	That the Council's use of RIPSA is not legally compliant. The Council's acquisition of communications data does not comply with the Home Office Code of Practice.	This Committee receives quarterly and annual reports on its use of investigatory powers under RIPSA and the IPA and related policy mitigates this risk highlighted in this Section.	L	Yes
Operational	Employees are not suitably trained for	Appropriate and mandatory training arms staff with the	L	Yes

	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.	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		L	Yes
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.	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.	L	Yes
Environment / Climate	There are no environmental or climate impacts arising from this report.		L	Yes

8. OUTCOMES

<u>COUNCIL DELIVERY PLAN 2023-2024</u>	
	Impact of Report
Aberdeen City Council Policy Statement <u>Working in Partnership for Aberdeen</u>	The report does not have an impact on the Policy Statement
Prosperous Economy Stretch Outcomes	Whilst the recommendations of this report are for noting, 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 People 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 by tackling the selling of counterfeit goods.
Prosperous Place Stretch Outcomes	
Regional and City Strategies	This report does not have an impact on the Regional and City Strategies.

9. IMPACT ASSESSMENTS

Assessment	Outcome
Integrated Impact Assessment	No assessment required. I confirm this has been discussed and agreed with Vikki Cuthbert, Interim Chief Officer – Governance on 23 October 2024. The purpose of this report is to update Committee on the Council's use of investigatory powers. 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 on this type of activity.
Data Protection Impact Assessment	The purpose of this report is to update Committee on the Council's use of investigatory powers. As such, a Data Protection Impact Assessment is not required.
Other	There are no other impact assessments relevant to this report.

10. BACKGROUND PAPERS

10.1 There are no background papers to this report.

11. REPORT AUTHOR CONTACT DETAILS

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