

## ABERDEEN CITY COUNCIL

<b>COMMITTEE</b>	Audit, Risk and Scrutiny Committee
<b>DATE</b>	20 February 2025
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Use of Investigatory Powers – Annual Report 2024
<b>REPORT NUMBER</b>	CORS/25/016
<b>EXECUTIVE DIRECTOR</b>	Andy MacDonald
<b>CHIEF OFFICER</b>	Alan Thomson, Acting Chief Officer - Governance
<b>REPORT AUTHOR</b>	John Forsyth
<b>TERMS OF REFERENCE</b>	5.2

### 1. PURPOSE OF REPORT

- 1.1 To provide Elected Members with an overview of the Council's use of investigatory powers during 2024, particularly focussing on the Committee's role in respect of assurance. Further, Committee is being asked to confirm that the Use of Investigatory Powers Policy is fit for purpose.

### 2. RECOMMENDATIONS

That Committee -

- 2.1 Notes the overview of the council's use of investigatory powers during the calendar year 2024, as set out in this report; and
- 2.2 Agrees that the Use of Investigatory Powers Policy Remains fit for purpose.

### 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. It further provides for the duration of that authorisation and for the review, renewal or termination of authorisations.
- 3.2 RIPSA gives the Council powers to conduct two types of covert surveillance:
- 3.2.1 Directed Surveillance. This is covert surveillance in places other than residential premises or private vehicles.
- 3.2.2 the Use of Covert Human Intelligence Sources (CHIS). This is the use of undercover officers.

- 3.3 This Committee has had oversight of covert surveillance activity conducted under RIPSA since 2017 and regularly reviews reports on its use.
- 3.4 The IPA permits the Council to acquire Communications Data for certain purposes. Communications data is the way in which, and by what method, a person or thing communicates with another person or thing. This includes telephone and internet communications. The IPA sets out the processes and authorisations required for the Council to acquire Communications Data. This is supplemented by the Home Office Data Code of Practice.
- 3.5 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 to acquire communications data. The operational procedure in respect of Communications data was reviewed in November 2024 and slightly amended
- 3.6 As is highlighted later in this report, the Council acquired communications data during 2024. This demonstrates that the Policy and procedures developed by officers and approved by this Committee are effective.
- 3.7 The Investigatory Powers Commissioner (IPCO) has oversight of both RIPSA and IPA. Accordingly, IPCO also has oversight of the Council's use and management of the powers granted by these pieces of legislation. IPCO regularly inspects public authorities, including the Council.
- 3.8 The last IPCO inspection of the Council took place in September 2023. This inspected the Council's compliance with RIPSA and the IPA. The Investigation concluded positively and noted that IPCO was satisfied with the Council's ongoing compliance. The next IPCO inspection is expected in 2026.

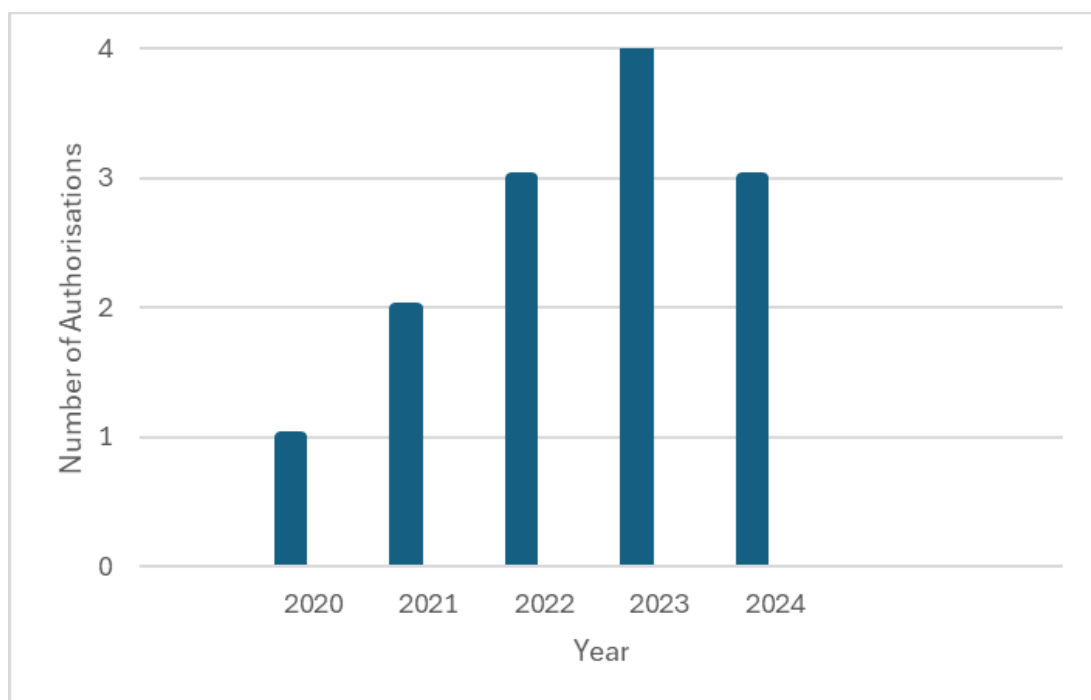
### **Use of Investigatory Powers Policy**

- 3.9 This Committee approved the Council's Use of Investigatory Powers Policy in December 2021. This policy governs compliance with both RIPSA 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.
- 3.10 This Committee is asked every year to confirm that the Use of Investigatory Powers Policy remains fit for purpose. There have been no substantive changes to the Use of Investigatory Powers Policy since the Policy was reviewed last year. The IPCO are also content with the policy at the last inspection. The Policy is supported by a number of operational procedures, which are kept under regular review.
- 3.11 The Team Leader, Regulatory and Compliance, Legal Services, as the Council's RIPSA Co-Ordinator has reviewed the Policy and confirms that the Policy still remains fit for purpose.

## Applications for Covert Surveillance

### RIPSA

- 3.12 As reported to this Committee through regular quarterly reports, there were three Directed Surveillance authorisations during 2024. The Authorisations related to the test purchases of Tobacco and Nicotine Vapour Products at premises throughout Aberdeen.
- 3.13 All three applications came from the Operations and Protective Services Cluster. There were no further authorisations under RIPSA in 2024.
- 3.14 These applications allowed the Operations and Protective Services Cluster to significantly exceed their targeted number of test purchases. The Cluster is expected to, each year, attempt test purchases at 10% of premises registered to sell tobacco products and 10% of premises selling nicotine vapor products. This resulted in a target of 15 premises for tobacco and 16 for nicotine vapor products. The authorisations allowed the Cluster to undertake sixteen test purchases for tobacco and to undertake fifty-eight test purchases for nicotine vapour products.
- 3.15 The graph below shows the number of authorisations by year for the previous five years. The number of authorisations in 2024 remained consistent with previous years.



### IPA

- 3.16 There was one authorisation for the acquisition of Communications Data in 2024. As with the authorisations for Directed Surveillance, this related to the

sale of age restricted products, being tobacco and nicotine vapour products. After it was no longer required, this authorisation was cancelled in accordance with Council procedure and the law. This authorisation was obtained by the Operations and Protective Services Cluster.

- 3.17 As noted above, this was the first time that the Council had acquired communications data since approximately 2005. A review was undertaken of the Access to Communications procedure ensuring that the application process described therein reflects experience now that officers have undertaken that process. This resulted in a number of changes being made. These changes to the procedure were approved by the Interim Chief Officer- Governance in November 2024 under General Delegation 21 of the Powers Delegated to Officers.

### **Authorising Officers**

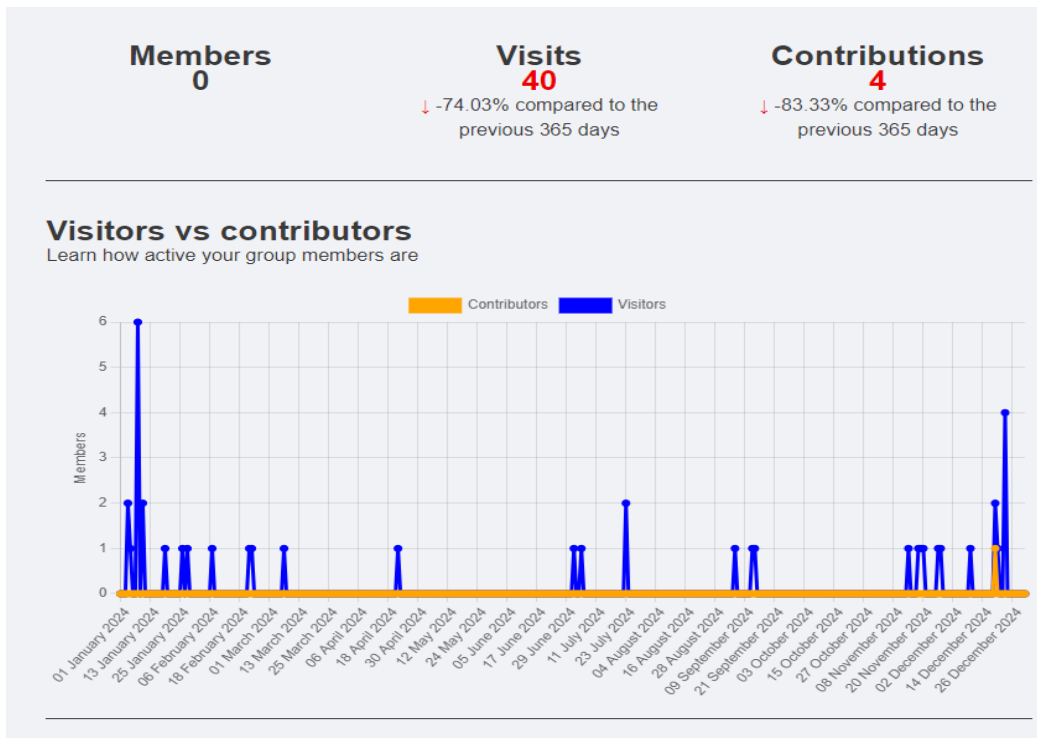
- 3.18 There continue to be four Authorising Officers in post. These officers are responsible for authorising applications for the use of investigatory powers by Council officers. These Authorising Officers have been appropriately trained and operate on a rota basis.

### **Training**

- 3.19 The Council's RIPSAs Co-Ordinator was asked to provide training to officers in another local authority. This was provided in person in June 2024, with the training aimed at those officers operationally involved in the use of investigatory powers in that authority.

### **Awareness Raising**

- 3.20 Legal services continue to maintain the restricted access online portal. Membership of the portal has remained static at 48 members. During 2024, the portal saw reduced usage when compared to 2023. The graph below highlights the usage of the portal. It should be noted that the '0' recorded against membership highlights that there has been no change.



- 3.21 It should be noted whilst there are 48 members of the online portal, not all will have used covert surveillance powers. It is a mandatory requirement of the Use of Investigatory Powers Policy that all staff MUST have been trained in order to be able to apply for covert surveillance, however, many have had no need to apply to use such powers. It is within this context that members are asked to consider the statistics referred to in this report.
- 3.22 While there has been a decrease in usage of the online portal, this does not mean that there has been a corresponding decrease in officer engagement with the Policy and procedures involved with the use of investigatory powers. Officers have been focused on the operational delivery of their services using these powers. This can be seen with the considerable work undertaken by officers to acquire communications data for the first time in almost twenty years.
- 3.23 There are also regular meetings between legal services and authorising officers throughout the year. These meetings provide a useful forum for authorising officers to raise issues they have encountered and to be made aware of any forthcoming changes or issues. As with 2023, there were two authorising officer meetings throughout 2024.

## Workplan 2025

- 3.24 The intended main focus of 2025 is to continue to develop the operational understanding and usage of the IPA and around acquisition of communications data. Feedback from the Operations and Protective Services Cluster has been that communications data will play an ever larger role in their investigative work. As such, the focus of 2025 is to continue to support their ongoing investigations.

#### **4. FINANCIAL IMPLICATIONS**

4.1 There are no direct financial implications arising from the recommendations in 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 Annual and 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 Council's management, knowledge and awareness of those involved with RIPSA activity was something which was particularly 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 direct environmental implications arising from the recommendations in this report.

#### **7. RISK**

7.1 The assessment of risk contained within the table below is considered to be consistent with the Council's risk appetite statement.

<b>Category</b>	<b>Risks</b>	<b>Primary Controls/Control Actions to achieve Target Risk Level</b>	<b>*Target Risk Level (L, M or H)</b>	<b>*Does Target Risk Level Match</b>
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			*taking into account controls/control actions	Appetite Set?
<b>Strategic Risk</b>	None identified		L	Yes
<b>Compliance</b>	That the Council's use of investigatory powers is not legally compliant.	<p>This report sets out the methods by which Members can take assurance that the use of these powers is legally compliant.</p> <p>This committee receives quarterly and annual reports on the use of investigatory powers and policies and undertakes scrutiny thereof.</p> <p>This report also fulfils the requirement in para 4.4.3 of the Scottish Government's Code of Practice for Covert Surveillance and Property Interference.</p>	L	Yes
<b>Operational</b>	<p>Employees are not suitably trained for surveillance work.</p> <p>Failure to report to and update Committee on surveillance activity means that it would undermine public confidence in the Council and how it operates.</p>	<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 surveillance activity.</p>	L	Yes

<b>Financial</b>	None identified		L	<b>Yes</b>
<b>Reputational</b>	Failure to update Committee on RIPSAs activity would mean that the Council would be at risk of reputational damage when identified in an IPCO 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	<b>Yes</b>
<b>Environment / Climate</b>	None identified		L	<b>Yes</b>

## 8. OUTCOMES

<a href="#">Local Outcome Improvement Plan 2016-2026</a>	
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 RIPSAs, may have an impact on this by tackling the selling of counterfeit goods.



## 9. IMPACT ASSESSMENTS

Assessment	Outcome
<b>Integrated Impact Assessment</b>	No assessment required. I confirm this has been discussed and agreed with Alan Thomson, Acting Chief Officer – Governance on 9 January 2025.
<b>Data Protection Impact Assessment</b>	Not required.
<b>Other</b>	There are no other impact assessments relevant to this report.

## 10. BACKGROUND PAPERS

10.1 Use of Investigatory Powers Policy

## 11. APPENDICES (if applicable)

11.1 None

## 12. REPORT AUTHOR CONTACT DETAILS

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