

ABERDEEN CITY COUNCIL

COMMITTEE	Audit, Risk and Scrutiny Committee
DATE	8 May 2025
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Use of Investigatory Powers – Q1, 2025
REPORT NUMBER	CORS/25/084
DIRECTOR	Andy MacDonald
CHIEF OFFICER	Alan Thomson/Vikki Cuthbert – Interim Chief Officer - Governance
REPORT AUTHOR	Jess Anderson, Team Leader- Regulatory & Compliance Team, 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 Q1.
- 2.2 Note there have been no applications to acquire communications data during Q1.

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 (CHIS) (e.g. the use of an undercover officer).

RIPSA defines Directed Surveillance as covert surveillance which is not intrusive, is related to a specific investigation or operation, likely to result in the obtaining of private information about a person and is not an immediate response to events, or circumstances. A CHIS defined as establishing or maintaining a personal or other [false] relationship with another, and using that [false] relationship for the purposes of obtaining or providing information, or using that [false] relationship for disclosing information. The operational procedures which sit under the Use of Investigatory Powers Policy, clearly set out the internal process for the application and authorisation of both.

This Committee has had oversight of covert surveillance activity under RIPSA 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 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 RIPSA 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 2025. 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.
- 3.5 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 Q1.

Covert Surveillance – RIPSA

- 3.6 During the period 18 November 2024 to 27 April 2025 (the submission of this report to committee), there were two applications for Directed Surveillance. One application related to the sale of age restricted tobacco and vapour products and was cancelled in accordance with the Council's internal procedure. The other application relates to the alleged sale of counterfeit goods and is ongoing.

An application for the use and conduct of a Covert Human Intelligence Source (CHIS) was authorised during this quarter. The CHIS authorisation relates to the alleged sale of counterfeit goods online. This authorisation is still active.

Communications Data- IPA

- 3.7 There were no applications for Communications Data during Q1.

Authorising Officers (AO)

- 3.8 There was an Authorising Officer's meeting on 22 April 2025. It was agreed that at the next meeting, there will be a refresh for AO's on the authorisation process in relation to the use of a Covert Human Intelligence Source. This is in light of the most recent application (referred to in this report) and to ensure that all AO's are clear about the additional requirements relating to the authorisation for the use and conduct of a CHIS.

Training

- 3.9 A one to one training session for a new Authorising Officer was carried out on 24 April 2025. The officer was appointed by the Chief Officer – Governance in accordance with delegated power 17 of the Powers Delegated to Officers, Chief Officer- Governance of the Aberdeen City Council Scheme of Governance.
- 3.10 The number of Authorising Officers authorised to approve covert surveillance remains at four.

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. 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 surveillance work. Failure to report to and update Committee on surveillance activity means that it would undermine public confidence in	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.	L	Yes

	the Council and how it operates.			
Financial	There are no financial risks arising from this report		L	Yes
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.	External inspections on RIPSA activity operate every 3-4 years. This provides external assurance to the Committee of the Council's compliance with RIPSA. 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

COUNCIL DELIVERY PLAN 2023-2024	
	Impact of Report
Aberdeen City Council Policy Statement	The report does not have an impact on the Policy Statement

<u>Working in Partnership for Aberdeen</u>	
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.
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 15 April 2025. 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

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