

The Rt Hon. Sir Christopher Rose



Office of Surveillance  
Commissioners

Office of Chief Commissioner  
Aberdeen

11 JUL 2011

7<sup>th</sup> July 2011



Chief  
Surveillance  
Commissioner

Restricted

*Dear Mrs Watts,*

**Covert Surveillance**

On 19<sup>th</sup> May 2011, an Assistant Surveillance Commissioner, HH Norman Jones QC, visited your Council on my behalf to review your management of covert activities. I am grateful to you for the facilities afforded for the inspection.

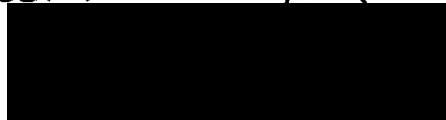
I enclose a copy of Mr Jones's report which I endorse. I am pleased to see that your Council is conscious of the need for RIP(S)A compliance. You have clear and succinct guides and your officers responsible for management are highly competent. What is now need is for those producing authorisations, in particular, to take advantage of this ready source of help and advice, so that, with robust quality control, your Council can return to the high standards prevailing at the time of the last inspection 3 years ago.

The recommendations are that the recommendations made at the last inspection 3 years ago be fully discharged, that a robust system of RIP(S)A management and quality control be established, that a RIP(S)A training programme be established and that your procedure guides be amended as indicated in para 29 of the report.

I shall be glad to learn that your Council accepts the recommendations and will see that they are implemented.

One of the main functions of review is to enable public authorities to improve their understanding and conduct of covert activities. I hope your Council finds this process constructive. Please let this Office know if it can help at any time.

*Yours sincerely,*



M/s Valerie Watts  
Chief Executive  
Aberdeen City Council  
Town House  
Broad Street  
Aberdeen  
AB10 1AQ

PO Box 29105 London SW1V 1ZU Tel 020 7035 0074 Fax 020 7035 3114  
Web: [www.surveillancecommissioners.gov.uk](http://www.surveillancecommissioners.gov.uk) email: [oscmalbox@osc.gsi.gov.uk](mailto:oscmalbox@osc.gsi.gov.uk)

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Office of Surveillance  
Commissioners

Chief Surveillance Commissioner,  
Office of Surveillance Commissioners,  
PO Box 29105,  
London,  
SW1V 1ZU.

5<sup>th</sup> June 2011

### INSPECTION REPORT ABERDEEN CITY COUNCIL

Inspection 19<sup>th</sup> May 2011.

Inspector His Honour Norman Jones QC.  
Assistant Commissioner

#### **Aberdeen City Council.**

1. Aberdeen is the third largest City in Scotland. Hitherto known colloquially as the "Granite City" because of its granite buildings, it is now often called the "Oil Capital of Europe" from its economic development as the base for North Sea oil operations. The City has a population of about 210,000 and the City Council is responsible for its local government administration.
2. The Senior Corporate Management Structure is headed by the Chief Executive, Ms. Valerie Watts, who assumed her post as recently as March of this year. She is supported by five Directors and Heads of Services answer to the Directors.
3. The Council was last inspected in May 2008 by His Honour Dr. Colin Kolbert, Assistant Surveillance Commissioner.
4. The Council continues to be a limited user of *RIP(S)A* having granted thirteen authorisations since the last inspection, twelve for *directed surveillance* and one for *CHIS*. Seven were authorised for Trading Standards, two for Public Protection, three for Benefit Fraud and one for Housing. None were *urgent*, concerned *confidential information* or were self authorised. All were justified.
5. The Council headquarters is at The Town House, Broad Street, Aberdeen, AB10 1AQ.

PO Box 29105 London SW1V 1ZU Tel 020 7035 0074 Fax 020 7035 3114  
Web: [www.surveillancecommissioners.gov.uk](http://www.surveillancecommissioners.gov.uk) email: [oscmalbox@osc.gsi.gov.uk](mailto:oscmalbox@osc.gsi.gov.uk)

**Inspection.**

6. The Inspection was warmly welcomed by Ms. Jess Anderson, Senior Solicitor. She introduced Ms. Jane MacEachran, Head of Legal and Democratic Services. Later the Chief Executive Officer attended, indicating the importance that the Council attaches to *RIP(S)A*. Following my examination of the applications/authorisations, reviews, renewals and cancellations retained with the Central Record the inspection was joined by Ms. Carole Jackson, Trading Standards and Commercial Premises Manager and authorising officer, and by Mr. Del Henderson, Principal Trading Standards Officer. I would like to express my appreciation for the knowledgeable assistance afforded by each officer.
7. The inspection was conducted by means of discussion and interview with the officers with a final feedback to the senior officers. My initial discussion with Ms. MacEachran and Ms. Anderson was joined by Ms. Watts. After examining the retained documents I discussed my findings with Ms. Anderson, Ms. Jackson and Mr. Henderson. Among the issues discussed were progress on previous recommendations, the structure of *RIP(S)A* management, the role and number of authorising officers, the Council *RIP(S)A* training programme, its *RIP(S)A* policy and procedures and the role of Councillors.

**Previous recommendations.**

8. Dr. Kolbert made the following concluding remark in his report:

*The Council is as well prepared to make effective use of RIP(S)A as one can reasonably expect.*

He went on to praise the progress made by the Council and to commend its training and results.
9. One recommendation featured in his Report:

*Little remains to be done, save to keep up the good work, and give attention in future training to matters referred to (in the report). (These included adopting into the forms in use the prompts found in the Home Office forms, fuller descriptions of operations, better explanation of proportionality and a fuller account by authorising officers of what was authorised.)*
10. Unfortunately, although the forms were redesigned shortly after the last inspection, they were inadvertently not put onto the Council intranet. The result, as observed in the examination of documents, was that the older forms criticised by Dr. Kolbert, remained in use.

X Since my inspection Ms. Anderson has been kind enough to forward me copies of the redrafted forms which include the Home Office prompts. This is a considerable improvement which will undoubtedly assist both applicants and authorising officers. However each of the forms (application/authorisation and renewal for *directed surveillance* and *CHIS*) would benefit from having the expiry date included, and the authorising officer's comment box for *CHIS* authorisations should bear the same requirement to consider *necessity and proportionality* as found in the *directed surveillance* form.

11. The overall standard found in the forms varied from the good to the barely acceptable with some departments doing better than others. The single authorisation from Housing was of a high standard. The applications from Benefit Fraud were of good standard. That from Public Protection was particularly poor, *proportionality* and *necessity* barely being considered at all by either applicant or authorising officer. The overall pattern of authorisation could be improved upon.
12. It may be as a result of the failure to adopt the amended forms but the quality of consideration of *necessity* and *proportionality* in both applications and authorisations still leaves a deal to be desired. Dr. Kolbert explained the principles involved in the last report and I shall do so again. *Necessity* should embrace a consideration of *why the use of covert surveillance is necessary in the investigation*. *Proportionality* should contain a consideration of the three elements (a) *that the proposed covert surveillance is proportional to the mischief under investigation*; (b) *that it is proportional to the degree of anticipated intrusion on the target and others*, and (c) *it is the only option, other overt means having been considered and discounted*. Generally the applications were better than the authorisations, with some authorising officers apparently still unaware that they are required to give their personal consideration to the two issues. *action.*
13. Authorising officers in some cases are still not detailing what they are authorising. The prompts in the amended form should hopefully stimulate them to do so in the future.
14. The detail provided by applicants of what they require to be authorised and why is now of a good standard with an outline of the intelligence case. Whilst Trading Standards authorisations for test purchasing operations often relate to multiple premises it is made clear that each premise is one in relation to which there are grounds to suspect illegal activity and following the delivery of warning letters that juvenile test purchasers may be employed.
15. This recommendation has been partially discharged.

**See recommendation**

**Other matters arising from examination of documents.**

16. The Central Record was compliant with *RIP(S)A* and maintained up to date. A very good practice was that each bundle of documents relating to a particular authorisation had attached to it a summary sheet of activities engaged in under the authorisation. This enables the *RIP(S)A* Monitoring Officer to monitor activity occurring under the authorisation.
17. A tendency was seen in some applications to describe the acquisition of *confidential information* as "unlikely". This expression leaves open the possibility of some likelihood which would require authorisation by the Chief Executive. In reality there was no likelihood and the application should say so. *Training point*
18. The single *CHIS* authorisation was for the anticipated formation of a relationship with a seller of advertised cheap goods. The application was of a good standard with arrangements for the handling and management of the *CHIS* and for the recording of information. However the authorisation failed to deal with *necessity* or *proportionality* and set no review date. In the event it was cancelled because the subject was found to live outside the Council boundaries. *TS. Training*
19. Review dates were set in some authorisations and not in others. None contained an expiry date, probably due to the fact that there is no expiry box. Cancellations were correctly carried out.

#### ***RIP(S)A* management structure.**

20. Ms. MacEachran, Head of Legal and Democratic Services and to whom Ms. Anderson is immediately responsible, is the present *RIP(S)A* Monitoring Officer. However she conceded that that was more by way of a formality, since Ms. Anderson has responsibility for *RIP(S)A* within her department. This means that Ms. Anderson is the *de facto* *RIP(S)A* Monitoring Officer. Since one of the requirements of good management of *RIP(S)A* is having a focal point within the Council to whom officers may turn, it may be considered beneficial if Ms. Anderson assumed the title of *RIP(S)A* Monitoring Officer. *Discuss*
21. The day to day responsibilities of the *RIP(S)A Monitoring Officer* should include: (a) maintaining the Central Record of Authorisations and collating the original applications/authorisations, reviews, renewals and cancellations; (b) oversight of submitted *RIP(S)A* documentation; (c) organising a *(RIPA)* training programme; and (d) raising *RIP(S)A* awareness within the Council. *○*
22. The practice at present is for each department to be responsible for quality control of its authorisations. This is clearly not working, and it is difficult to see how it could work since it requires officers to quality control their own applications/authorisations, reviews, renewals and cancellations. It appears that only occasional reviews are carried out by the central officers. Original documents are retained in the

departments and copies sent to the Central Record. This should be reversed with all original documents being submitted to the *RIP(S)A Monitoring Officer* on completion and working copies retained in the departments. The *RIP(S)A Monitoring Officer* should oversee each document as it is submitted and if it is not of appropriate standard refer it back to the author either for amendment, if possible, or cancellation and a new authorisation.

*discuss*

23. The Central Record is maintained by Ms. MacEachran's personal assistant. She allocates a Central Record URN to each applicant when an application is proposed, and she keeps an oversight on the timetable for each authorisation. She is doing a good job and there is no reason why she should not continue. The record should provide the *RIP(S)A Monitoring Officer* with an excellent support in her oversight duties.
24. Raising *RIP(S)A* awareness in the Council is of importance since it is the best means of ensuring that unauthorised covert surveillance is not being undertaken. Simple means of achieving this were discussed including using the Council intranet, short articles in internal staff newsletters and cascading information down to departments through departmental meetings.

*action plan*

#### See recommendation

i.

#### Training

25. The last large scale *RIP(S)A* training was undertaken in 2008 although some training on a more limited scale was undertaken in 2010. Ms. MacEachran and Ms. Anderson recognise that training on a much wider scale is now necessary, and my findings from the examination of documents support that view. An additional factor is that there have been large scale changes in the officers at Aberdeen City Council since Dr. Kolbert's visit. The Chief Executive Officer has changed twice, all Directors have changed and there have been seventeen new appointments as Heads of Service.
26. I was concerned about the lack of training afforded in particular to the Trading Standards Department. My impression was that virtually all training was done within the department, with very little recourse to that provided by the professional bodies. A deal depended on what was picked up by officers from their contacts with such bodies as NPIA and LACORS.
27. Training is organised for September of this year and will cover all those who are likely to be involved in the *RIP(S)A* process. That should include the Chief Executive and whoever may deputise for her, since they are the only officers who may authorise the acquisition of *confidential information* or the employment of juvenile or vulnerable *CH/S*. I have had an opportunity of seeing the PowerPoint display

which Ms. Anderson will use and it is of an excellent standard. She impresses with her knowledge of *RIP(S)A* and the regulatory framework and with her determination to keep abreast of case law developments. She is keen to ensure that the Council achieves a high *RIP(S)A* standard. Following that it is important to institute a programme of regular refresher training for authorising officers and regular applicants.

**See recommendation**

**Authorising officers**

28. Four officers, together with the Chief Executive and her deputy, are empowered to authorise covert surveillance. This is considered to be adequate and has the advantage of ensuring that all should undertake at least some authorising. All have received *RIP(S)A* training, but it is clear that most would benefit from the course proposed for later in the year. It should be emphasised to them that in the event of a forensic challenge to their authorisation they would be the one having to stand in the witness box and be cross examined. Some of the authorisations seen would not withstand that process.

**Policy and procedures.**

29. The Council produces two *RIP(S)A* guides for the assistance of officers. One relates to *directed surveillance* and the other to *CHIS*. They are clear and succinct guides which cover all the essential issues. Save for one or two minor amendments, which were discussed at the inspection, there are only two matters of substance:
- The paragraphs concerning authorising officers should be redrafted and should set out clearly their number and in which appendix to the guide they may be identified.
  - The paragraphs relating to Monitoring and Quality Control and Security and Retention of Documents should be redrafted to reflect the management restructuring proposed in this report, and should outline the duties and responsibilities of the *RIP(S)A* Monitoring Officer.

**See recommendation**

**Councillors.**

30. The responsibility of Councillors was discussed. Consideration will be given to providing an annual report to Councillors to ensure that they have sufficient information to satisfy themselves that the *RIP(S)A* policy is fit for purpose and being correctly applied. Officers are aware that Councillors may not be directly involved with individual authorisations.

**CCTV**



- 34.03.01
31. The CCTV system in operation in Aberdeen is the responsibility of the police.
  32. The detail provided by applicants of what they require to be authorised and why is now of a good standard with an outline of the intelligence case. Whilst Trading Standards authorisations for test purchasing operations often relate to multiple premises it is made clear that each premise is one in relation to which there are grounds to suspect illegal activity and following the delivery of warning letters that juvenile test purchasers may be employed.

This recommendation has been partially discharged.

**See recommendation**

33. Aberdeen Council is highly conscious of the need to be *RIP(S)A* compliant. The officers responsible for *RIP(S)A* management are highly competent. Ms. Anderson particularly impresses with her enthusiasm and knowledge of the subject. As a result there is available to officers using covert surveillance a ready source of help and advice.
34. Whilst there is evidence of improvement in the quality of applications, unfortunately those producing authorisations do not appear to have maintained the same progress. Indeed there is evidence of slippage. It is to be hoped that with a new robust structure of management of *RIP(S)A*, and with quality control resting on the *RIP(S)A* Monitoring Officer, the quality of authorisation will again improve to resume the standard found at the time of the last inspection.
35. Doubtless the substantial changes of Council officers cannot have assisted in the efficient management of *RIP(S)A* in recent times. However, by the time of the next inspection, that will have bedded down.
36. Ms. MacEachran and Ms. Anderson had already recognised the need for fresh training and Ms. Anderson has put in place the arrangements for this to be undertaken. With that, the admirable guides and the reconstructed forms all relevant officers should be able to apply or authorise efficiently.

**Recommendations.**

37.
  - I. Fully discharge the recommendations from the previous inspection report. (paragraphs 9 to 15)
  - II. Establish a robust system of *RIP(S)A* management and quality control. (paragraphs 20 to 24)
  - III. Establish a *RIP(S)A* training programme. (paragraphs 25 to 27)

IV. Amend the procedural guides. (paragraph 29)

**His Honour Norman Jones, QC.**  
**Assistant Surveillance Commissioner.**

Our Ref.  
Your Ref. P110023  
Contact Mrs J Anderson  
Email [JeAnderson@aberdeencity.gov.uk](mailto:JeAnderson@aberdeencity.gov.uk)  
Direct Dial 01224 52 2553  
Direct Fax 01224 52 2937



16<sup>th</sup> August 2011

The Rt Hon. Sir Christopher Rose  
Chief Surveillance Commissioner  
Office of the Surveillance Commissioners  
PO Box 29105  
London  
SW1V 1ZU

Legal and Democratic Services  
**Corporate Governance**  
Third Floor  
Town House  
Broad Street  
Aberdeen  
AB10 1AQ

Tel 01224 522000  
Minicom 01224 522381  
DX 529451, Aberdeen 9  
[www.aberdeencity.gov.uk](http://www.aberdeencity.gov.uk)

Dear Sirs

### **COVERT SURVEILLANCE INSPECTION: ABERDEEN CITY COUNCIL**

I refer to your letter of 7<sup>th</sup> July 2011 enclosing His Honour Norman Jones QC's inspection report and write to acknowledge receipt of same.

I am unable to come back to you on the recommendations at this time as the report requires to be submitted to the relevant Committee for approval. However, I can advise that an Action Plan will be devised which will set out how the Council will progress any recommendation where further action is deemed necessary. That Action Plan will accompany the inspection report when it is tabled before Committee and will be forwarded to you for information.

It is likely that the Inspection report will be considered at Committee as a public paper. In light of that, there are one or two matters which I would prefer were addressed prior to the report being circulated to a wider audience and wonder if you could forward a revised copy with the undernoted matters duly addressed?

1. Within the report there are references to "Mr Del Henderson", this should be amended to "Ms Del Henderson".
2. At paragraph 21 it refers to "RIPA training programme", should this read "RIPSA"?
3. At paragraph 26, Judge Jones discusses training with a particular reference to Trading Standards. I am unclear whether his comment in that paragraph relates to the department or the Authorising Officer, Ms Carole Jackson, who has line management responsibility for the Trading Standards officers, but who is not by profession, a Trading Standards Officer.

At the meeting, Del Henderson pointed out that Trading Standards attend external training events, courses and focus groups with other members of the public sector and have access to a number of newsletters. These forums, whilst not specific RIPSA training events, do have a RIPSA focus which is debated/ deliberated when attendees discuss operational matters. The

STEWART CARRUTH  
CORPORATE DIRECTOR

Authorising Officer is not a Trading Standards officer and therefore would not be in attendance at such events. The recommendations in relation to internal training, refresher training and awareness raising should address any training needs highlighted by the inspection.

As the reports notes the Council takes RIPSAs and its compliance with that regime seriously and would be obliged if the matters highlighted above could be dealt with as soon as possible to allow officers to report to Committee and progress the Action Plan.

Yours sincerely

**Valerie Watts**  
**Chief Executive**

COPY

Your Ref.  
Our Ref. VW/CM/SA  
Contact Valerie Watts  
Email [chiefexec@aberdeencity.gov.uk](mailto:chiefexec@aberdeencity.gov.uk)  
Direct Dial 01224 522500  
Direct Fax 01224 644346



## ABERDEEN CITY COUNCIL

19 September 2011

The Rt Hon Sir Christopher Rose  
Office of Surveillance Commissioners  
PO Box 29105  
London  
SW1V 1ZU

**Office of Chief Executive**  
Aberdeen City Council  
2<sup>nd</sup> Floor  
Town House  
Broad Street  
Aberdeen AB10 1FY

Tel 0845 608 09 10  
Minicom 01224 522381  
DX 529451, Aberdeen 9  
[www.aberdeencity.gov.uk](http://www.aberdeencity.gov.uk)

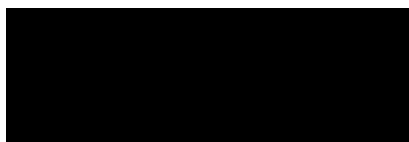
Dear Sir Christopher

### **Covert Surveillance Inspection**

Thank you for your letter of 15 September about the above and for the clarification you helpfully provided on various matters.

I have passed your correspondence to Jane MacEachran, Head of Legal and Democratic Services, for her interest. She will provide the requested update on the Council's progress in addressing the report's recommendations.

Yours sincerely



**Valerie Watts**  
Chief Executive

Copy to: Jane MacEachran, Head of Legal and Democratic Services

VALERIE WATTS  
CHIEF EXECUTIVE



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Aberdeen City Council

19 SEP 2011



Chief  
Surveillance  
Commissioner

15<sup>th</sup> September 2011

Dear M/s Watts,

Covert surveillance inspection

Thank you for your letter of 16<sup>th</sup> August, on which I have obtained HH Norman Jones's comments.

I confirm that the references in the report to Mr Del Henderson should be to M/s Del Henderson and that the single reference to RIPA in para 2 should be to RIP(S)A which is referred to in 35 other places in the report, including 3 in para 21. I regret these errors. Mr Jones's comments in para 26 are based on the replies he received about the Trading Standards Department, which he did not understand to be confined to the authorising officer or to any individual officer.

As to the second para in point 3 of your letter, Mr Jones understood, and your letter seems to confirm, that no specific RIP(S)A training has been provided to officers of the Trading Standards Department and that improved training of authorising officers and regular applicants is necessary. Hence recommendation 37 III referring to paras 25-27 of the report.

I hope this clarifies matters. I look forward to hearing that the recommendations are being addressed.

Yours sincerely,



M/s Valerie Watts  
Chief Executive  
Aberdeen City Council  
Town House  
Broad Street  
Aberdeen  
AB10 1AQ