

ABERDEEN CITY COUNCIL

COMMITTEE	COUNCIL
DATE	25 January 2012
DIRECTOR	Stewart Carruth
TITLE OF REPORT	OSC Inspection Report 2011
REPORT NUMBER:	CG/12/003

1. PURPOSE OF REPORT

To table the inspection report and supplementary letter from the Office of the Surveillance Commissioner on the Council's compliance with its powers under the Regulation of Investigatory Powers (Scotland) Act 2000 to members for information and update members on progress made with respect to the recommendations made within the report.

2. RECOMMENDATION(S)

2.1 To note the content of the report, and

2.2 To accept the recommendations contained within paragraph 37 of the report, having regard to the Action Plan set out in Appendix 2 of this report.

3. FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

4. OTHER IMPLICATIONS

Failure to implement the recommendations within the inspection report may result in a future negative inspection. The recommendations will enhance the application and authorisation process, which in turn will have an impact in the quality of applications being put forward for authorisation.

5. BACKGROUND/MAIN ISSUES

The Council was last inspected by the Office of the Surveillance Commissioner (OSC) in May 2008, by His Honour Dr Colin Kolbert, Assistant Surveillance Commissioner. Dr Kolbert praised the progress

the Council had made since its previous inspection in 2004 and commended the Council's training and results.

The 2008 inspection report recommended that the Council amend its application forms for covert surveillance by adding prompts to the form which would aid officers to provide a better explanation of *proportionality* and ensure that authorising officers provide a fuller account of what was being authorised.

The previous inspection report was submitted to the Continuous Improvement Committee for approval on 9 September 2008, wherein the Committee accepted the Commissioner's recommendations. Thereafter, officers within Legal Services duly amended the forms with the prompts and devised a guide to completing the application form which were uploaded to the Zone for officers to use.

Since May 2008, the Council has experienced a number of re-organisations, which started with the retiral of Douglas Paterson as Chief Executive in August 2008 and finished in March 2011 with the appointment of Mrs Watts as Chief Executive. In addition, the Council has been through a Voluntary Severance and Early Retirement exercise which has resulted in a number of staff leaving the Council's employment. Due to this, the decision to commence a mass training programme similar to that which took place in 2008 was delayed until the re-organisation had settled down. In February 2011, Legal Services had begun to contact services to ascertain who would require refresher training and who would need to attend full training when notification of the OSC's visit was received. It was decided that training should be postponed until after the inspection and after the Council had received the Commissioner's inspection report, which was received on 11 July 2011. As members will see, a number of matters within the inspection report required clarification/ amendment and the Commissioner's response to that request was dated 15 September and was acknowledged by the Chief Executive's office on 19 September 2011. Members should be aware that some training was provided in the interim period despite the larger training programme not having been devised.

This year's inspection took place on 19th May 2011 and was undertaken by His Honour Norman Jones QC, Assistant Commissioner. Prior to his visit, all relevant documentation in relation to the Council's progress on covert surveillance was forwarded to Mr Jones.

Mr Jones's report sets out four recommendations, namely that the Council should;

- i. Fully discharge the recommendation with respect to the last inspection report.

- ii. Establish a robust RIPSAs management system and quality control.
- iii. Establish a RIPSAs training programme.
- iv. Amend the procedural guide.

A copy of the inspection report, together with supplementary letters are attached at Appendix 1 for your information.

With respect to recommendations i. and iv. above, Members should note that these have already been implemented.

In relation to recommendations ii, and iii, an Action Plan has been produced, which is attached for information, and sets out the various actions which have come out of the inspection report. A copy of the Action Plan will be sent to the Commissioner along with notification of Council's decision.

On a point of clarification, Members will note that with reference to recommendation ii, Mr Jones makes a suggestion at paragraph 20 of the report that a Senior Solicitor assumes the title of RIPSAs Monitoring Officer. Officers are of the view that the Monitoring role in relation to the management of RIPSAs should remain with the Head of Legal and Democratic Services. Such oversight would also come within the remit of the Monitoring Officer. The Senior Solicitor and other officers within Legal Services would continue to provide training (with other officers in Trading Standards), undertake awareness raising and carry out an audit/ quality check of application forms which are submitted to the Central Record which should address the issues raised by Mr Jones in the report.

6. IMPACT

Compliance with the Corporate Policy and Procedure and with the Council's legal obligations under RIPSAs will ensure that Council Services do not unlawfully interfere with a citizen's right to privacy whilst that Service is exercising a statutory function.

An application granted by an unauthorised person could result in the Council infringing the subject of the investigation's human rights, particularly Article 6 (right to a fair trial) and Article 8 (rights to respect of private life, family, home and correspondence). To this end, an Equalities and Human Rights Impact Assessment was undertaken for both the Corporate RIPSAs Protocol and Procedure. The outcome of that assessment was that it identified a potential positive and negative impact, namely that covert surveillance may have an impact on an individual's right to private life, but that this will be proportionate to the particular investigation and that if covert surveillance is used within the parameters of the legislative framework, it would be in the public interest by redressing alleged criminal practices, which are the subject of such an investigation.

7. BACKGROUND PAPERS

OSC Inspection Report dated 7th July 2011, which is attached at Appendix 1.

Letter to OSC dated 16 August 2011

Letter from OSC dated 15 September 2011

Letter to OSC from Mrs Watts dated 19 September 2011.

9. REPORT AUTHOR DETAILS

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