

COMMITTEE	AUDIT RISK & SCRUTINY
DATE	SEPTEMBER 2017
REPORT TITLE	RIPSA – OFFICE OF THE SURVEILLANCE COMMISSIONER'S INSPECTION REPORT
REPORT NUMBER	CG/17/112
DIRECTOR	FRASER BELL
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## **1. PURPOSE OF REPORT:-**

The purpose of this report is to advise Members of the recommendations arising from an inspection undertaken by the Office of the Surveillance Commissioners (OSC) of the Councils governance of covert activities and compliance with the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA).

## **2. RECOMMENDATION(S)**

It is recommended that Committee:-

- 2.1 Note the Inspection report;
- 2.2 Instructs the Head of Legal and Democratic Services to ensure that this Committee receives updates on the Council's activities in accordance with paragraph 10.1 of the OSC Inspection Report;
- 2.3 Notes that guidance on test purchases has been amended and communicated to all staff involved with RIPSA activity.

## **3. BACKGROUND**

- 3.1 There are a range of situations in which the Council's employees, in the course of their duties, have to carry out investigations and activities which, by their very nature are covert, i.e. they are concealed, secret or clandestine. In accordance with the Human Rights Act 1998, it is essential that covert investigations are compatible with Article 8 of European Convention on Human Rights (ECHR) which states that: "everyone has the right to respect of family and private life, his home and correspondence".
- 3.2 RIPSA came into force on 29<sup>th</sup> September 2000 and is applicable in Scotland only. It provides a legal framework for covert surveillance by public authorities and an independent inspection regime to monitor these activities. RIPSA sets out a process for the authorisation of covert surveillance by

designated officers, for the duration of that authorisation and for the review, termination or renewal of authorisations.

- 3.3 The Office of the Surveillance Commissioner (OSC) is responsible for overseeing the use of covert surveillance by designated public authorities based in the UK, of which the Council is one. The aim of OSC is to provide effective and efficient oversight so that the conduct of covert activities by public authorities is human rights compliant in accordance with RIPSA.
- 3.4 OSC conducts an inspection of the Council's arrangements in respect of RIPSA every three years. Previous inspections took place in 2005, 2008, 2011 and 2014. The OSC came to undertake an inspection of the Council's arrangements on 25<sup>th</sup> April 2017.
- 3.5 In the course of the inspection, the Surveillance Inspector met with the Chief Executive and the Head of Legal & Democratic Services. In addition, the Surveillance Inspector met with one of the Council's RIPSA Authorising Officers, a group of officers who made operational use of RIPSA and Fraud Investigators.
- 3.6 The Inspection Report is contained in Appendix A to this report for Members' information.
- 3.7 The overall conclusion of the 2017 Inspection was that it was a positive inspection, which recognised continued investment in the levels of knowledge and awareness of council staff the Inspector regarded as commendable. The recommendations are intended to assist the Council to continue to improve its standards of compliance.
- 3.8 The Inspection Report makes three recommendations, namely:
  - 3.8.1 The Council should re-visit the provisions of paragraph 3.29 of the Scottish Government Code of Practice for Covert Surveillance and Property Interference and also paragraph 3.25 of the Scottish Government Codes of Practice for Covert Human Intelligence Sources and thereafter ensure that the reporting of its RIPSA policy and activities to elected members accords with those requirements.
  - 3.8.2 It is recommended that authorisations for directed surveillance should be granted for the statutory period of three months in accordance with Note 87 of the Office of the Surveillance Commissioners Procedures and Guidance.
  - 3.8.3 When conducting test purchase activities using juveniles to purchase age restricted goods, the council should review its approach in this regard in consideration of the guidance provided at Note 84 OSC Procedures and Guidance and ensure that clear policy and guidance is provided to its staff as to how to address the RIPSA issues which fall to be considered.
- 3.9 All the recommendations have been considered, accepted and implemented. As such, there is no Action Plan appended to this report, more that the body of the report provides clarification of how officers have responded to those recommendations.

## **PROPOSAL**

- 3.10 Paragraph 3.29 of the Scottish Government Code of Practice for Covert Surveillance and Property Interference provides that elected members of a local authority should review the authority's use of RIPSAs and set the Policy at least once a year. They should consider internal reports on the use of RIPSAs quarterly to ensure its being used consistently with the Policy. Elected members do not have a remit in operational matters concerning RIPSAs (such as any decision making in connection with an authorisation), and as such the specifics of any operation will not form part of the update.
- 3.11 It is considered appropriate for a statement on the Council's RIPSAs policy and the statistical information on RIPSAs activity to be reported to this Committee on an annual basis.
- 3.12 It is recommended that the quarterly updates on policy/compliance is reported to the Audit, Scrutiny and Risk Committee. Such an update would include an update on training delivered, the number of applications "live" and extant, and any new procedural requirements.
- 3.13 In respect of recommendation two in the Inspection report, guidance was provided to Authorising Officers prior to the inspection as it was picked up in an Audit. Whilst the Surveillance Inspector did not criticise the reasons behind shortening the timeframe of the authorisation, clarity was provided in the potential impact of undertaking this approach and has been cascaded to all staff in refresher training earlier this year. Since the inspection and at a subsequent meeting with Authorising Officers, this was raised and discussed and all Authorising Officers are clear that an authorisation should be granted for the duration of three months.
- 3.14 The last recommendation in the Inspection Report directed the Council to reconsider and clarify its position on test purchases and its use or not, of RIPSAs. The Inspection report sets out that clarity is sought on the practice described within the report and for that to be endorsed as policy. The Senior Responsible Officer (SRO) for RIPSAs, Fraser Bell, had not endorsed this practice.
- 3.15 Clarification on the legal tests around the use of test purchases and RIPSAs has now been provided which is endorsed by the SRO to the effect that where an officer from Trading Standards wishes to use a young person to undertake a test purchase of an age restricted item, and an officer is to be present in the premises, it would be prudent for the officer to apply for and obtain, an authorisation for Directed Surveillance prior to conducting that test purchase. This has been communicated to all staff who have been on RIPSAs training and will be uploaded to the Council's intranet.

## **4. FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from the recommendations of this report.

## 5. LEGAL IMPLICATIONS

Failure to have proper arrangements in place for the management of covert activities may leave the Council open to challenge on the legality of investigations and would have detrimental impact on the operation of a number of areas of investigatory and enforcement work.

Further, the recommendations in the Inspection report only seek to enhance the Council's continued compliance with RIPSA and its policies. The OSC will be looking for the recommendations to be discharged at its next inspection.

## 6. MANAGEMENT OF RISK

The continued compliance with RIPSA and its policies will ensure that the risk associated with RIPSA activity is managed and mitigated.

Financial- as noted above, there are no direct financial implications which arise out of this report and its recommendations. Non-compliance with human rights law could result in the Council being involved in a litigious claim which may seek compensation but such a risk is unlikely having regard to the recommendations within this report.

Employee- devising clear guidance for staff will ensure that they continue to be trained on the law and any new and relevant developments within that. This in turn, will demonstrate to the Senior Responsible Officer through the audits undertaken by his service of authorisations for RIPSA activity that the Council is complying with RIPSA.

Customer / citizen- approval and implementation of the recommendations within this report will continue to demonstrate that the Council complies with the law around covert surveillance activity. Customers and citizens of Aberdeen may be the subject of a covert surveillance operation and in light of the nature and intrusiveness of a covert activity, it is imperative that the Council continues to have a robust system of governance around RIPSA use.

Environmental- None

Technological- None

Legal- as set out in section 5 above, ensuring all necessary procedures and policy documents are compliant with the law minimises the risk of challenge in respect of any enforcement activity pursued as a result of a covert operation.

Reputational- The OSC will expect the three recommendations to be implemented at by the time of their next inspection, Failure to do so, may result in negative publicity for the Council.

Having regard to the risks highlighted above, and the recommendations within this report, the overall risk to the Council is considered LOW.

## 7. IMPACT SECTION

This section demonstrates how the proposals within this report impact on the strategic themes of Aberdeen City Council and Community Planning Aberdeen, as set out in the [Aberdeen City Local Outcome Improvement Plan 2016-26](#) and the [Aberdeen City Council Strategic Business Plan](#).

## **Economy**

The proposals in this report have no impact on the Economy.

## **People**

The application and authorisation of covert activity under RIPSAs may result in any person who resides/operates a business or visits the City being a potential target. Any covert activity is properly authorised and complies with the law.

## **Place**

There is no impact on the City of Aberdeen as a result of this report or its recommendations.

## **Technology**

There is no impact on the City of Aberdeen as a result of this report or its recommendations.

### **8. BACKGROUND PAPERS**

There are no background papers.

### **9. APPENDICES (if applicable)**

Appendix 1- OSC Inspection Report 2017

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