



Office of Surveillance  
Commissioners

Office of Surveillance  
Aberdeen City Council

26 MAY 2017



Chief  
Surveillance  
Commissioner

**Official -Sensitive**

*[Signature]*

*[Stamp]*  
17 May 2017

### OSC Inspection

Dear *Oris Executive,*

I enclose a copy of the report dated 2 May 2017 prepared by Mr David Buxton, Surveillance Inspector, following his inspection of the arrangements made by the Council to secure compliance with the statutory provisions which govern the use of covert surveillance.

I have studied the report and endorse it.

Dealing with it broadly, this is a positive report. The recommendations made following the 2014 inspection have been completed and are discharged. Of these, the arrangements for training and awareness of some of the complexities of the legislation probably provide the best guarantee against any inadvertent contravention. The "Zone" arrangement should underpin the necessary continuity of what I shall describe as the awareness programme, a feature of particular significance in the context of the availability of social media sites for investigative purposes. The issues are discussed at paragraphs 8.15 to 8.19. Between today and the next inspection I believe that the use of developing technology for investigative purposes, particularly for officials with responsibility for childcare and vulnerable adults, will become more commonplace. The imperative is that the officials should not, when acting in good faith, inadvertently contravene the legislation.

The specific recommendations are carefully explained in the text. The arrangements for reporting to elected members are mandatory. I do not myself see this as a vast bureaucratic exercise. What matters is that the elected members are made aware of the facts. Paragraph 7.4 is clear and is summarised as the first recommendation. In one sense this recommendation links up with the issue discussed at paragraph 8.14, and which forms the basis for the third recommendation. The second recommendation, which relates to directed surveillance, will produce an improved process without, as far as I can see, adding greatly to the drain on limited resources.

As I said at the outset this is a positive report which no doubt reflects the leadership noted in the second sentence of paragraph 9.1.

Yours sincerely,



Angela Scott  
Chief Executive  
Aberdeen City Council  
Marischal College  
Broad Street  
Aberdeen AB10 1AB

**OFFICIAL - SENSITIVE**



**Office of Surveillance  
Commissioners**

**OFFICE OF SURVEILLANCE COMMISSIONERS**

**INSPECTION REPORT**

**Aberdeen City Council**

**25<sup>th</sup> April 2017**

**Surveillance Inspector:  
Mr David Buxton**

**OFFICIAL - SENSITIVE**



## **OFFICIAL- SENSITIVE**

### **DISCLAIMER**

This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Chief Surveillance Commissioner.

The inspection was limited by time and could only sample a small proportion of covert activity in order to make a subjective assessment of compliance. Failure to raise issues in this report should not automatically be construed as endorsement of the unreported practices.

The advice and guidance provided by the inspector(s) during the inspection could only reflect the inspectors' subjective opinion and does not constitute an endorsed judicial interpretation of the legislation. Fundamental changes to practices or procedures should not be implemented unless and until the recommendations in this report are endorsed by the Chief Surveillance Commissioner.

The report is sent only to the recipient of the Chief Surveillance Commissioner's letter (normally the Chief Officer of the authority inspected). Copies of the report, or extracts of it, may be distributed at the recipient's discretion but the version received under the covering letter should remain intact as the master version.

The Office of Surveillance Commissioners is not a public body listed under the Freedom of Information Act 2000, however, requests for the disclosure of the report, or any part of it, or any distribution of the report beyond the recipients own authority is permissible at the discretion of the Chief Officer of the relevant public authority without the permission of the Chief Surveillance Commissioner. Any references to the report, or extracts from it, must be placed in the correct context.

**OFFICIAL – SENSITIVE**





**File ref: OSC/INSP/074**

The Rt. Hon. Lord Igor Judge  
Chief Surveillance Commissioner  
Office of Surveillance Commissioners  
PO Box 29105  
London  
SW1V 1ZU

2<sup>nd</sup> May 2017

### **OSC INSPECTION REPORT – ABERDEEN CITY COUNCIL**

**1. Date of inspection**

1.1 25<sup>th</sup> April 2017

**2. Inspector**

2.1 David Buxton.

**3. Chief Executive/Managing Director**

3.1 The Chief Executive of Aberdeen City Council is Angela Scott and the address for correspondence is Aberdeen City Council, Marischal College, Broad Street, Aberdeen AB10 1AB.

**4. Introduction**

4.1 Aberdeen City Council (the council) is one of the 32 local authorities of Scotland. The Chief Executive of the council is supported by Directors of Governance, Communities, Housing and Infrastructure, and Education and Children's Services. Additionally the Head of Service, Office of Chief Executive and Head of Communications and Promotions report to the Chief Executive. The Chief Adult Health and Social Care is a position shared with the Health Service and reports jointly to the Chief Executives of Aberdeen City Council, and NHS Grampian.

4.2 The Chief Executive and her team are committed to enhancing their services to make the people of Aberdeen City safer, and in that regard are developing collaborations with other public service leaders in identifying shared priorities and exploring ways of harnessing the potential of new and developing technologies to assist their service delivery. There is a good deal of creativity and innovation evident within the council, which has

Official

## OFFICIAL

won a plethora of awards in recent years for a wide range of its quality and standards of service.

- 4.3 The council was last inspected by the Office of Surveillance Commissioners on 24th April 2014, Mr Les Turnbull being the OSC Inspector on that particular occasion.

### 5. Inspection approach

- 5.1 The purpose of this inspection was twofold; firstly to review and report upon the exercise and performance of the council in relation to the powers provided pursuant of those sections of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) which fall under the responsibility of the Chief Surveillance Commissioner, and also to review and report upon the performance of those persons upon whom the powers and duties of the legislation are conferred or otherwise imposed.

- 5.2 The inspection process was agreed with the council in advance. When attending the council headquarters building I was met by the Chief Executive, Head of Legal and Democratic Services and the Team Leader, Governance. A detailed itinerary had been prepared for me. During the inspection process I spoke with various members of staff, examined documentation and provided feedback as to my initial observations.

- 5.3 Specifically, the members of council staff with whom I met were as follows:

- Angela Scott – Chief Executive
- Fraser Bell – Head of Legal and Democratic Services (Senior Responsible Officer for RIPSA purposes)
- Jess Anderson – Team Leader, Governance (RIPSA Gatekeeper)
- Del Henderson – Trading Standards and Training
- Nicola Murray – ASBIT Manager (including CCTV)
- Matthew Dickinson - Corporate Fraud Officer
- David Francis – Senior Enforcement Officer, Communities and Housing
- Carole Jackson – Protective Services Manager (Authorising Officer).

### 6. Review of Progress against 2014 Recommendations

- 6.1 *The council should amend their protocol and procedures documents to address the issues discussed in the body of this report.*

- 6.2 **Completed** – This recommendation arose from four specific observations documented at paragraph 15 (15(a) to 15 (d) inclusive) of Mr Turnbull's report. The council's RIPSA documentation had been amended to reflect those observations made.



OFFICIAL

- 6.3 *There should be an audit of council staff to identify those who hold either an investigative or enforcement function and then provide training tailored to the needs of these officers on RIPSAs to ensure that they have the knowledge required which is commensurate with their responsibilities.*
- 6.4 **Completed** – An audit had been conducted of job profiles across the council and a number of applicants identified across all relevant departments. They have all been provided with RIPSAs awareness training, indeed RIPSAs is now a mandatory training requirement for all council staff having an investigative or enforcement function. Additional RIPSAs training is now provided across the council by means of a programme of RIPSAs master classes delivered throughout a calendar year, supplemented with refresher training as necessary. All authorising officers had been included in this training schedule. The driving force for this commendable approach was Jess Anderson supported by Del Henderson, who combined their delivery to provide a legal interpretation, supported with examples of practical application of the law. This commitment was clearly reflected in the relevant knowledge levels of all the council staff with whom I met, which I considered to be generally of a good standard.
- 6.5 *Authorisations should always address in full the activity authorised, where and how; this should be monitored by the oversight regime which should also be taking steps to ensure that all authorisations are cancelled as soon as they are no longer required.*
- 6.6 **Completed** – The sample of authorisations which I examined was to a satisfactory standard. Oversight of the quality and timeliness of the RIPSAs authorisation documentation is provided by the Team Leader, Governance and each completed document is subject of an audit process which includes completion of a documented checklist for each authorisation granted, so as to ensure that the relevant legal standards have been applied. This is good practice.

**7. Policies, Procedures and Training**

- 7.1 Paragraph 6.4 above deals with the issue of RIPSAs training within the council.
- 7.2 The council maintains a number of RIPSAs related policies which are made widely available to all relevant council staff on the council intranet site called the "Zone". These documents deal with various subjects including surveillance, CHIS, on-line social media and guidance on proportionality. The content of these documents accords with OSC Procedures and Guidance.

## OFFICIAL

- 7.3 Significantly, the council has processes in place which ensures that all policy and guidance is formally reviewed on an annual basis. In doing so the council ensures that the guidance it provides to its staff remains both relevant and up to date.
- 7.4 One vulnerability within the council's processes is that it does not report matters of RIPSAs policy and activity to elected members in accordance with the requirements of the RIPSAs Codes of Practice. 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 policy at least once a year. The members should also consider internal reports on use of RIPSAs on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose. Similarly paragraph 3.25 of the Scottish Government Codes of Practice for Covert Human Intelligence Sources makes similar provision for the reporting of CHIS matters to elected members, yet makes it clear that the council members should not be involved in making decisions on specific authorisations. The provisions of this Code further suggest that councils may wish to consider providing sufficient training to elected members so that they can discharge their responsibilities in respect of this requirement.
- 7.5 It is recommended that 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 RIPSAs policy and activities accords with those requirements. **RECOMMENDATION 1.**

## 8. Issues Highlighted

### *Context*

- 8.1 Since the last OSC inspection of this council was conducted in 2014, there have been nine authorisations granted for directed surveillance (no authorisations in 2017, five authorisations in 2016 and four authorisations in 2016). There have been no authorisations granted for CHIS during this period. I examined the papers associated with the four most recent directed surveillance authorisations which had been granted.

### *Governance*

- 8.2 The Chief Executive is the Senior Authorising Officer for the council, the Head of Legal and Democratic Services is the Senior Responsible Officer for RIPSAs and the Team Leader, Governance is the RIPSAs co-ordinator/gatekeeper. There are three trained authorising officers within

## OFFICIAL

the council. I was told that normally there were four but one had recently left the council and arrangements were in hand to have another staff member trained.

- 8.3 The council maintains a central record of authorisations for all directed surveillance and CHIS authorisations. I examined the relevant record and acknowledged that it recorded all the information required by the relevant RIPSAs Codes of Practice.

### *Directed Surveillance*

- 8.4 In terms of process, members of the council considering a directed surveillance or CHIS authorisation access electronic forms on the council intranet, obtain a unique reference number from the RIPSAs gatekeeper, complete the application electronically and then download the document for a wet signature. The authorising officer does likewise.
- 8.5 In general the applications and authorisations were completed to quite a good standard, with the key legal elements of necessity and proportionality being properly addressed. The recording of the foreseeable collateral intrusion risks associated with directed surveillance activity being authorised was not quite so well addressed in that rather than setting out the nature of the actual collateral intrusion likely to occur (or having occurred in terms of reviews) a less specific and imprecise narrative was provided.
- 8.6 One issue for the council to consider further, in what was generally an acceptable standard of documentation, is the duration of authorisations granted by the authorising officer. A written authorisation for directed surveillance must be for the statutory period of three months. Note 84 OSC Procedures and Guidance (OSCP&G) provides further information in that regard. There were examples within the small sample of authorisations examined, where the authorising officer had authorised directed surveillance for less than the statutory period. Examples are DS000076 and DS000077 where the authorising officer granted an authorisation for one week only. It is acknowledged that the authorising officer in these examples was endeavouring to demonstrate tight control over the authorisation granted, however this may be achieved by means of setting shorter review periods if considered necessary, rather than unnecessarily restricting operational activity by setting shorter authorisation periods than the law allows.
- 8.7 It is recommended that authorisations for directed surveillance should be granted for the statutory period of three months in accordance with Note 87 OSCP&G. **RECOMMENDATION 2.**

OFFICIAL

- 8.8 Cancellations were conducted in a timely manner however the cancellation comments of the authorising officer did not address the information recommended at Note 110 OSCP&G, particularly in relation to providing direction as to how any surveillance product (e.g. surveillance logs, photographs, video images) should be managed. To help in that regard, when completing cancellations of directed authorisations, applicants should be specific as to the nature of any surveillance product which has been obtained as a result of their authorised activities. The authorising officers should familiarise themselves with the aforementioned guidance and thereafter ensure that they address their thoughts and endorse their comments accordingly when cancelling a directed surveillance authorisation.

*CHIS*

- 8.9 No CHIS activity has been authorised within the council for more than three years.

*CCTV*

- 8.10 The council operates something in the region of 357 CCTV cameras across 42 locations both inside and outside of council property. There is in addition, a small store of mobile deployable cameras which are overt in nature and accompanied by large signs informing the public of their presence. The CCTV system is monitored around the clock by eight members of staff.

- 8.11 At the time of my inspection, the council was in the midst of developing a new protocol with Police Scotland to facilitate requests by the police to use the council CCTV system in connection with directed surveillance activity authorised by the police. It is important that when considering the final content of any agreed protocol to accord with Note 272 OSCP&G that it is for the council to set the terms for use of their CCTV system by the police and others and not have those terms imposed upon them, and also, as a minimum standard the council should see the wording of the police authorisation (redacted if necessary to prevent disclosure of sensitive information) and only allow its equipment to be used in accordance with it.

*Test Purchase of Sales to Juveniles*

- 8.12 The council conducts a number of operations throughout any given year which involve young people attempting to purchase age restricted items at suspected premises. The nature of the activities undertaken involves an adult in plain clothes covertly watching the young person and any interaction they have with staff working at the target premises. If a test purchase attempt is successful in securing evidence of an offence then

OFFICIAL

the activity will be repeated at a later date. On this second occasion the adult being covertly on the subject premises will endeavour to visually record the activity taking place using a council owned mobile phone with recording capability.

- 8.13 I was told that the approach taken within this council was that a directed surveillance authorisation would be sought to accommodate the recording activity being undertaken on the second visit, but that one would not be sought for the first visit. Note 244 OSCP&G provides that it would be desirable to obtain a directed surveillance authorisation in the first instance described.
- 8.14 There was no clarity offered as to whether the decision to not seek an authorisation for directed surveillance in the first instance as being a general practice of the council, rather than considering each case on its merits, was a policy of the council which was agreed by the Senior Responsible Officer, or an expedient approach which had become a matter of informally accepted routine. It is a matter for the council to determine what its approach will be in such circumstances in consideration of the requirements of RIPSAs and the guidance proffered by the OSC. It would be sensible in such circumstances for the council to review its approach in this regard and offer clear policy/guidance to its staff, supported by advice from its legal advisors as appropriate.
- RECOMMENDATION 3**

*Social Media and Internet Based Research Activity*

- 8.15 The council does not routinely conduct covert research of open source and social media sites. Indeed I was told that there was a single non attributable on line persona on Facebook in use, which is simply used for single access research in connection with fraud related activity.
- 8.16 The ability of the council to conduct research of open source information which is published in the public domain using the internet is more and more becoming a core requirement of organisations who seek to protect or work in support of the public interest. Whether it is to acquire information in support of an operation or investigation, or obtain information which aids the assessment of risk to others or indeed council front line staff, activity of this nature is not always confined to those departments within organisations who undertake an investigative role.
- 8.17 Of course the primary consideration from a RIPSAs perspective is that in some circumstances the repeated viewing of publicly posted information which is placed on social media sites may amount to be considered as being private information, and if conducted covertly the activity being undertaken may amount to being considered to be directed surveillance

## OFFICIAL

and therefore requiring of an authorisation under the Act. Staff who do not routinely work in investigative or enforcement departments may not always be aware of these issues and therefore may be at risk of acting in contravention of RIPSA.

- 8.18 Similarly, in the absence of clear corporate guidance, staff may not realise that the use of their personal social media facilities to conduct council related research may risk compromising themselves and the work of the council. In this particular regard, such activity using personal resources should be expressly prohibited by the organisation.
- 8.19 The policy currently in use by the council appears satisfactory for its current purpose. However the demands and pressures for the council to become more able within the digital domain, and with it the requirement for the council to demonstrate that it acts lawfully, ethically and with integrity when conducting such activities, will doubtless continue to grow. The importance of keeping current guidance under review as these pressures develop, and developing close cooperation by the council with other organisations such as the police, are essential ingredients of the council regime going forwards which will help to ensure that breaches of the legislation are less likely to occur by well meaning members of staff.

## 9. Conclusions

- 9.1 This was a positive inspection in many regards. I was particularly impressed by the attitude of the Chief Executive and the determination and approach of the Team Leader Governance to their respective responsibilities under the terms of RIPSA. The continued investment in the levels of knowledge and awareness of council staff is commendable and acknowledged. It was particularly refreshing to encounter a number of council officers from a number of departments and disciplines who had a good understanding of the RIPSA legislation, regardless of the infrequency of use of the requisite legislation. In such circumstances this continued investment in a proportionate level of awareness of RIPSA amongst staff will help ensure that good standards of legislative compliance continue to be achieved, and breaches of the law less likely to occur. These are after all, matters of significant public interest and confidence.
- 9.2 The recommendations made within this report are intended to assist the council to continue to improve its standards of compliance.
- 9.3 My thanks are extended to Mrs Jess Anderson for her work in preparing for and facilitating the inspection process.

**OFFICIAL**

**10 Recommendations**

- 10.1 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 RIPSAs policy and activities to elected members accords with those requirements.
- 10.2 It is recommended that authorisations for directed surveillance should be granted for the statutory period of three months in accordance with Note 87 OSCP&G.
- 10.3 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 RIPSAs issues which fall to be considered.

**David Buxton**  
**Surveillance Inspector**

