

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Audit, Risk & Scrutiny
<b>DATE</b>	26 June 2018
<b>REPORT TITLE</b>	RIPSA - Quarterly Report
<b>REPORT NUMBER</b>	GOV/18/025
<b>DIRECTOR</b>	Chief Executive
<b>CHIEF OFFICER</b>	Fraser Bell - Chief Officer
<b>REPORT AUTHOR</b>	Jess Anderson
<b>TERMS OF REFERENCE</b>	5.2

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### 1. PURPOSE OF REPORT

- 1.1 It is a requirement, under paragraph 3.29 of the Scottish Government's Code of Practice for Covert Surveillance and Property interference, that elected members review the authority's use of covert surveillance on a quarterly basis to ensure that it is being used consistently with the local authority's policy and that that policy remains fit for purpose.

### 2. RECOMMENDATION(S)

That the Committee: -

- 2.1 Note the update within the report.

### BACKGROUND

- 3.1 The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), gives the Council powers to conduct two types of covert surveillance:
1. Directed Surveillance; and
  2. the use of a Covert Human Intelligence Source (the use of an undercover officer).
- 3.2 The Council has a policy in place which governs the use and management of covert surveillance. Further, all members of staff wishing to use RIPSA, are required to undertake training prior to being able to make an application under RIPSA.

- 3.3 Various Council services use RIPSAs as an investigatory tool. It is considered the “tool of last resort” in light of its intrusiveness into the privacy of the person(s) being surveyed. Council services such as Trading Standards, Environmental Health and Benefit Fraud are most likely to use RIPSAs.

#### **QUARTER 1- 2018**

- 3.4 In the period from February – May 2018, there has been one authorisation for Directed Surveillance, from Trading Standards. It was cancelled within the statutory three-month period. The surveillance was for Tobacco and Nicotine Vapour Products Test Purchasing. The authorisation was executed in accordance with the Council’s policy on covert surveillance and RIPSAs.
- 3.5 Test purchases for underage sale of tobacco and nicotine products are part of an enforcement initiative promoted by the Scottish Government. One part of that enforcement activity is undertaking test purchases. This can either be a random check or as part of a planned operation after complaints have been made about the shop(s) targeted. A test purchase is the only way in which Trading Standards can ascertain whether the shop is selling age restricted goods or not.
- 3.6 The use of covert surveillance is restricted to certain legal purposes; crime prevention and detection, public health and public safety. The continued ability to use surveillance, in appropriate circumstances, for the investigation of offences such as the selling of age restricted goods is connected to the themes; Prosperous Place, Prosperous People and Prosperous Economy in the Local Outcome Improvement Plan (LOIP). The investigation and enforcement of regulatory laws (such as the sale of age restricted goods) by the Council, ensure that young people are protected, and communities can be assured that the Council is proactively enforcing its powers and making communities safe.
- 3.7 After an application for a covert surveillance operation is authorised by a senior officer, known as an Authorising Officer, it is sent through to the Chief Officer-Governance for logging and auditing. Members of the Governance Team within Legal Services then carry out an audit of the authorisation and raise any matters of good practice, policy or procedure with the Authorising Officer and the applicant. Officers within Legal services do not interfere with the authorisation as that responsibility lies with the Authorising Officer. This approach has been agreed and was supported by the Surveillance Commissioner.
- 3.7 There have been no further applications for covert surveillance made or approved within this quarter.
- 3.8 There have been no changes to the Protocol and it remains fit for purpose. No training has been provided during this quarter. There is likely to be full training delivered later in 2018, as some services have indicated training may be required.

#### **FUTURE REPORTING**

- 3.8 As the Council's use of RIPSA is infrequent, reports will only be tabled to Committee when there has been RIPSA activity in that relevant quarter. Where there has been no RIPSA activity, an update on policy, procedure and compliance will be provided in the Committee Business Planner.

#### **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 Office of the Surveillance Commissioners when they carry out their inspections.
- 5.2 A review of the Council's RIPSA activity by elected members provides assurance that the Council's use of RIPSA is being used consistently and that the standards set by its policy remain fit for purpose.
- 5.3 The management, knowledge and awareness of those involved with RIPSA activity was something which was commended by the Commissioner in his inspection in 2017. The reporting of RIPSA activity to Committee provides another level of scrutiny and assurance on the use of RIPSA.

#### **6. MANAGEMENT OF RISK**

	<b>Risk</b>	<b>Low (L), Medium (M), High (H)</b>	<b>Mitigation</b>
<b>Financial</b>	there are no financial risks arising from this report.	L	
<b>Legal</b>	Reporting on the use of RIPSA ensures that the Council continues to comply with the Code of Practice and that elected members continue to provide a level of scrutiny on matters of policy.	L	Quarterly reporting on RIPSA activity and the related policy to members, mitigates the risks highlighted in this section.

<b>Employee</b>	There are no employee risks related to this report.	L	
<b>Customer</b>	Failure to report to and update Committee on RIPSA activity means that it would undermine public confidence in the Council and how it operates.	L	
<b>Environment</b>	There are no environmental risks arising from this report.	L	
<b>Technology</b>	There are no technological risks arising from this report	L	
<b>Reputational</b>	Failure to not update Committee on RIPSA activity would mean that the Council would be at risk of negative reputational damage when this is raised by the Surveillance Commissioner in their inspection.	L	External inspections on RIPSA activity operate every 3-4 years. This provides external assurance to the Committee of the Council's compliance with RIPSA. The Inspection Report is shared with Committee and any Action Plan created, endorsed and approved by Committee.

## 7. OUTCOMES

Local Outcome Improvement Plan Themes	
	Impact of Report
<b>Prosperous Economy</b>	<i>This report does not link to this theme directly. The use of RIPSA activity 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.</i>

<b>Prosperous Place</b>	<i>Enforcement activity undertaken by the Council by using, where appropriate, its powers under RIPSA, may have an impact on this theme by tackling the selling of counterfeit goods.</i>
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<b>Design Principles of Target Operating Model</b>	
	<b>Impact of Report</b>
<b>Governance</b>	Reporting to this Committee on the Councils use of RIPSA ensures compliance with the Code of Practice and gives Committee assurances that the Council's use of RIPSA is being done according to its policy.

## 8. IMPACT ASSESSMENTS

<b>Assessment</b>	<b>Outcome</b>
<b>Equality &amp; Human Rights Impact Assessment</b>	The purpose of this report is to update Committee on the Council's use of RIPSA. This report does not propose or endorse any changes to the Councils policy on RIPSA not its procedure and as such, an EHIRA is not required.
<b>Privacy Impact Assessment</b>	The purpose of this report is to update Committee on the Council's use of RIPSA. As such, an Privacy Impact Assessment is not required.
<b>Duty of Due Regard / Fairer Scotland Duty</b>	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 RIPSA activity.

## 9. BACKGROUND PAPERS

Audit and Risk Committee Meeting – RIPSA Activity Report – 26<sup>th</sup> September 2018

## 10. APPENDICES (if applicable)

**None**

## **11. REPORT AUTHOR CONTACT DETAILS**

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