

ABERDEEN CITY COUNCIL

COMMITTEE	Audit, Risk & Scrutiny
DATE	26 September 2018
REPORT TITLE	RIPSA - Annual Report
REPORT NUMBER	GOV-18-073
DIRECTOR	Chief Executive
CHIEF OFFICER	Fraser Bell - Chief Officer
REPORT AUTHOR	Jess Anderson
TERMS OF REFERENCE	5.2

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 consider a statement on the Council's Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) policy and statistical information on relevant activity on an annual basis.

2. RECOMMENDATION(S)

That the Committee: -

- 2.1 Note the update within the report and Protocol.

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 protocol 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.

APPLICATIONS FOR COVERT SURVEILLANCE

- 3.4 During the period September 2017 to the present, there have been three authorisations for covert applications. All three applications were for Directed Surveillance operations.
- 3.5 In the period from June 2018 until 13th September 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 protocol on covert surveillance and RIPSAs and has also been audited by the Governance team- Legal Services as is normal practice.
- 3.6 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, and thus proves necessary to continued education and enforcement with sellers of age restricted goods such as tobacco and nicotine.
- 3.7 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.
- 3.8 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 then Surveillance Commissioner.
- 3.9 There have been no further applications for covert surveillance made or approved within this quarter.

POLICY

- 3.10 There have been minor changes to the Protocol and it still remains fit for purpose. A copy of the Protocol is attached in the Appendix for members to note. This will be uploaded to the Zone after the Committee meeting.
- 3.11 The Scottish Government have revised their Codes of Practice in respect of Directed Surveillance and the Use of a Covert Human Intelligence Source. The revised Codes do not affect the way in which the Council undertakes surveillance operations but merely provides further clarity around existing procedures. Training materials and guidance, the protocol and supplementary guidance has been updated to reflect this, where this relevant.
- 3.12 The Council was contacted recently by the Children's and Young People's Commissioner in respect of their concerns about using children in covert surveillance operations. They noted that whilst they understood that risk assessments are done for covert applications which require the use of a young person, they were concerned that the risk assessments perhaps did not go as far as to consider the rights of the young person, his/her welfare and whether the use of children for covert operations was in their best interests. The types of surveillance referred to by the Commissioner related to children (or juveniles) acting as a covert human intelligence sources (undercover). Whilst the Council's policy reflects the law on this area, any officer considering the use of a juvenile, is required to contact the Governance Team, Legal Services prior to completing an application form. Aberdeen City Council has not authorised the use of a juvenile in any CHIS operations since 2005, when the Governance Team took over the compliance arrangements of RIPSAs activity.

TRAINING

- 3.13 Training forms a large part of RIPSAs compliance and is something which all officers must have before they are permitted to carry out covert surveillance under RIPSAs. The Council's training regime is something which has been commended on by the Surveillance Commissioner on the last three inspections.
- 3.14 The mandatory course is run by solicitors in Governance, Legal Services and a senior Trading Standards officer. It consists of theory, practice and practical application of the rules and procedures around RIPSAs, with the aim that all attendees are equipped with the skills to apply for, and have granted, a covert surveillance application and that all attendees are trained to the same standard.
- 3.15 Two training dates have been set for September and October 2018 and invites have been sent out to officers requiring training. Attendance can be monitored, and a record of the training will be pulled through to each staff member's personnel record. There are approximately 20 officers who have been put forward for training.
- 3.16 This Quarter also sees two Authorising Officer's leave the Council. Contact has been made with the Chief Officer- Operations and Chief Officer -Early

Intervention and Community Empowerment, and nominations for 3 new Authorising Officers have been received. These officers will also require training on the role of the Authorising Officer and thereafter will be duly appointed by the Chief Officer- Governance, with their details being updated on the Zone.

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. The Code also reflects that elected members should set the Policy on an annual basis. This annual report brings together a review of all RIPSA activity throughout the last year and provides members an overview of the Council's compliance and updated Protocol. Regular scrutiny by members is also a matter which is taken into account by the Investigatory Powers Commissioner's Office 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, this is done by reporting to this Committee quarterly.

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

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

	provide a level of scrutiny on matters of policy.		
Employee	There are no employee risks related to this report.	L	Appropriate and mandatory training arms staff with the correct skills to carry out surveillance and thus, there is little to no risk to staff . All requests for training are met.
Customer	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	
Environment	There are no environmental risks arising from this report.	L	
Technology	There are no technological risks arising from this report	L	
Reputational	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

Prosperous Economy	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.
Prosperous Place	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.

Design Principles of Target Operating Model	
	Impact of Report
Governance	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

Assessment	Outcome
Equality & Human Rights Impact Assessment	The purpose of this report is to update Committee on the Council's use of RIPSA. Minimal changes have been made to the Protocol, but not to the extent that it changes how officers implement or comply with the Protocol and therefore an EHIRA is not required.
Privacy Impact Assessment	The purpose of this report is to update Committee on the Council's use of RIPSA. As such, a Privacy Impact Assessment is not required.
Duty of Due Regard / Fairer Scotland Duty	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

None

10. APPENDICES (if applicable)

RIPSA Protocol

11. REPORT AUTHOR CONTACT DETAILS

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