

ABERDEEN CITY COUNCIL

COMMITTEE	Audit, Risk & Scrutiny
DATE	4 December 2018
REPORT TITLE	RIPSA - Quarterly Report
REPORT NUMBER	GOV-18-073
DIRECTOR	Chief Executive
CHIEF OFFICER	Fraser Bell - Chief Officer
REPORT AUTHOR	Jess Anderson /Alan Thomson
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 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 3- 2018

- 3.4 In the period from September until 12th November 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 and has also been audited by the Governance team- Legal Services as is normal practice.
- 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, and thus proves necessary to continued education and enforcement with sellers of age restricted goods such as tobacco and nicotine.
- 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.

TRAINING

- 3.10 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.
- 3.11 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.
- 3.12 Training was given on the 14th September, 4th October and 16th November 2018. The Chief Officer – Governance formally appointed two new Authorising Officers who were trained on 4th October 2018. Another officer has been trained as an Authorising Officer on 16th November and is awaiting formal appointment.
- 3.13 At the end of November, there will be a quarterly meeting with Authorising Officers. In December, a Quarterly Bulletin will be sent to all Authorising Officers, which will provide updates on case law, examples of best practice and lessons learnt from audits, updates on internal management processes and any communications from the Investigatory Powers Commissioner.

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 RIPSAs on a quarterly basis. This is also a matter which is taken into account by the Investigatory Powers Commissioner when they carry out their inspections.
- 5.2 A review of the Council's RIPSAs activity by elected members provides assurance that the Council's use of RIPSAs 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 RIPSAs activity was something which was commended by the Commissioner in his inspection in 2017. The reporting of RIPSAs activity to Committee provides another level of scrutiny and assurance on the use of RIPSAs.

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 RIPSAs 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 RIPSAs activity and the related policy to members, mitigates the risks highlighted in this section.
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 RIPSAs 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 RIPSAs activity would mean that the Council would be at risk of negative reputational damage when this is raised by the Surveillance	L	External inspections on RIPSAs activity operate every 3-4 years. This provides external assurance to the Committee of the Council's compliance with RIPSAs. The Inspection Report is shared with Committee and any

	Commissioner in their inspection.		Action Plan created, endorsed and approved by Committee.
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7. OUTCOMES

Local Outcome Improvement Plan Themes	
	Impact of Report
Prosperous Economy	<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>
Prosperous Place	<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>

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. 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.

Privacy Impact Assessment	The purpose of this report is to update Committee on the Council's use of RIPSAs. 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 RIPSAs activity.

9. BACKGROUND PAPERS

None

10. APPENDICES (if applicable)

None

11. REPORT AUTHOR CONTACT DETAILS

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