

ABERDEEN CITY COUNCIL

COMMITTEE	Audit, Risk & Scrutiny
DATE	22 February 2022
REPORT TITLE	Use of Investigatory Powers – Annual Report
REPORT NUMBER	COM/22/038
DIRECTOR	Gale Beattie- Director of Commissioning
CHIEF OFFICER	Fraser Bell – Chief Officer
REPORT AUTHOR	Jess Anderson
TERMS OF REFERENCE	5.2 and 6.4

1. PURPOSE OF REPORT

- 1.1 It is recommended as good practice, under paragraph 4.43 of the Scottish Government's Code of Practice for Covert Surveillance and Property interference, that elected members consider a statement on the Council's Use of Investigatory Powers policy and statistical information on relevant activity on an annual basis. This report relates only to surveillance powers under RIPSAs as the Council is not yet acquiring Communications Data. It provides an overview of RIPSAs compliance, progress made in 2021 and sets the workplan for 2022.

2. RECOMMENDATION(S)

That the Committee resolves to: -

- 2.1 Note the report

3. BACKGROUND

- 3.1 The Council has powers under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSAs), and Investigatory Powers Act 2016 (IPA) to use different investigatory techniques. RIPSAs provides a legal framework for covert surveillance by public authorities, an independent inspection regime to monitor these activities and sets out a process for the authorisation of covert surveillance by designated officers, for the duration of that authorisation and for the review, renewal or termination of authorisations. The IPA permits the Council to acquire Communications Data for a lawful purpose. Communications data is the way in which, and by what method, a person or thing communicates with another person or thing. The IPA sets out the manner and process by which Communications data can be obtained and this is supported by the Home Office's Communications Data Code of Practice. This report relates to activity under RIPSAs and in particular the use of;

1. Directed Surveillance (is covert surveillance in places other than residential premises or private vehicles); and

2. the use of a Covert Human Intelligence Source (the use of an undercover officer).

3.2 This Annual review pulls together an analysis of surveillance activity over 2021 (1 January – 31 December 2021) and provides members with a more detailed overview of developments in RIPSAs compliance since the last Annual Report in February 2021¹. The role of this Committee is to monitor compliance with the Policy to ensure that it is being used consistently and that that it remains fit for purpose.

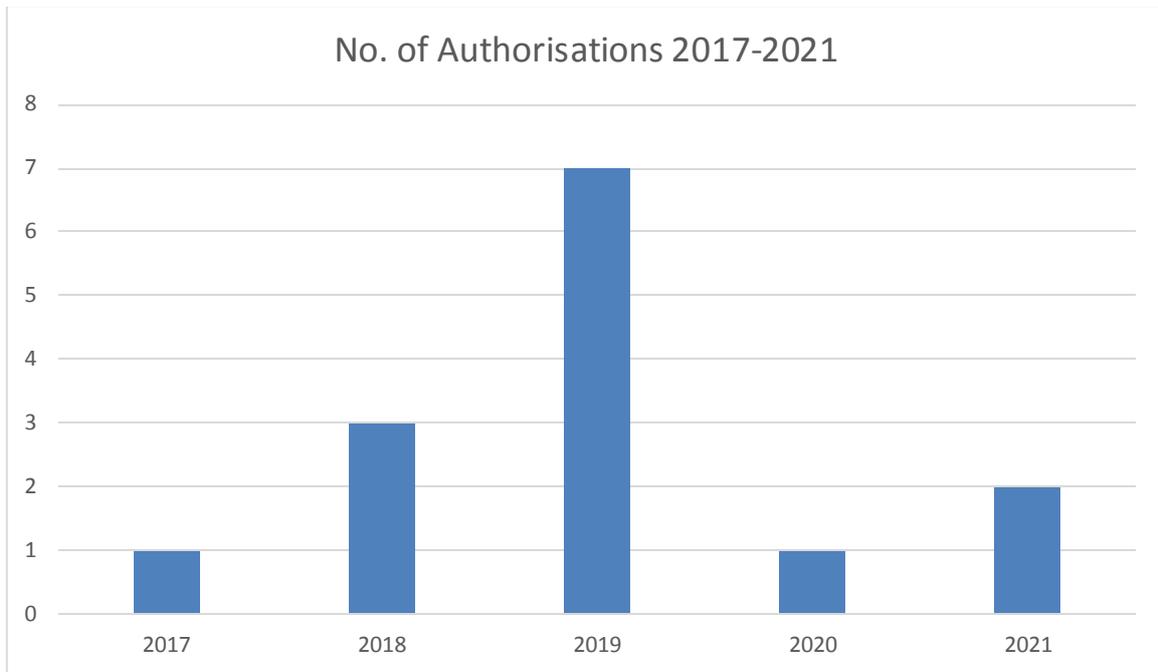
APPLICATIONS FOR COVERT SURVEILLANCE

3.3 During 2021, there were two Directed Surveillance authorisations, one in Q1 and the other in Q3. As reported at the time these were in relation to allegations of the selling of counterfeit goods and blue badge fraud from the Operations and Protections and Finance Clusters respectively. There were no further authorisations under RIPSAs in 2021.

3.4 The graph below shows the numbers of applications authorised by year, since 2017. Members will note that there was only 1 application in 2017 similar to 2020. Members will see there was a rise in authorisations in 2019 with applications predominantly from Trading Standards, with part of this directly relating to a change in guidance around test purchases such that a Directed Surveillance application was necessary.

3.5 While enforcement activity continued in 2020 and 2021, the Services who would normally use RIPSAs to carry out test purchases were unable to do so due to lockdown measures and restrictions on social distancing and so the number of authorisations granted naturally fell. Not only that, services like Trading Standards and Environmental Health were working together throughout the pandemic, supporting compliance with the emerging and changing Coronavirus legislation to ensure safe practices were being adhered to across the city. Despite a reduction in the number of authorisations granted, the use of covert surveillance has remained a necessary investigatory tool.

¹ Item 12 - [Agenda for Audit, Risk and Scrutiny Committee on Wednesday, 24th February, 2021, 2.00 pm \(aberdeencity.gov.uk\)](https://www.aberdeencity.gov.uk)



3.6 As previously reported the two authorisations were cancelled within the statutory timescales and in accordance with the Policy and associated procedure. This approach continues to be supported by the Investigatory Powers Commissioner.

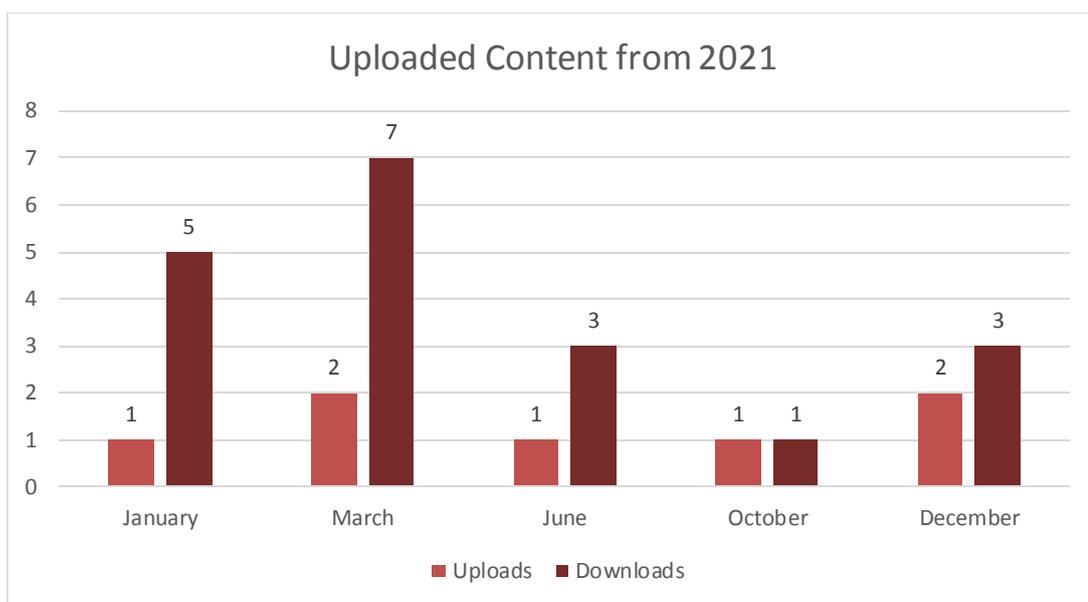
AWARENESS RAISING

3.7 Since the launch of the Covert Surveillance page on the Council’s intranet in October 2020 it has had 268 views. The page contains the Policy and associated guidance for those officers who make enquiries about surveillance but who are not trained.

3.8 The online interactive restricted forum is operational. It is a requirement that mandatory RIPSAs training must be had before access can be granted to the forum. Invitations to the forum are issued by the Regulatory and Compliance Team after training has been attended. The current total number of members is 29.

3.9 During 2021, the online forum has been regularly updated. The chart below shows the number of items added to the forum throughout the year and how many times documents were downloaded by members in that same month. It’s worth noting that “Uploads” are the documents that have been added to the online forum such as; the Policy, procedures, guidance notes, Application and Authorisation forms, as well as, Committee reports, news articles and IPCO publications. Uploads does not include where an announcement has been

added to the site. Whereas “Downloads” shows the number of times members have proceeded to download a document from the forum. This is encouraging and provides assurance that the forum is being used by members throughout the year. Furthermore, members are notified by email when a new item is added and if they are so minded, to start a discussion on a particular item or seek further clarification if that’s required. Whilst these numbers appear low, it does correlate to the number of authorisations processed in 2021 and so does not give any cause for concern.

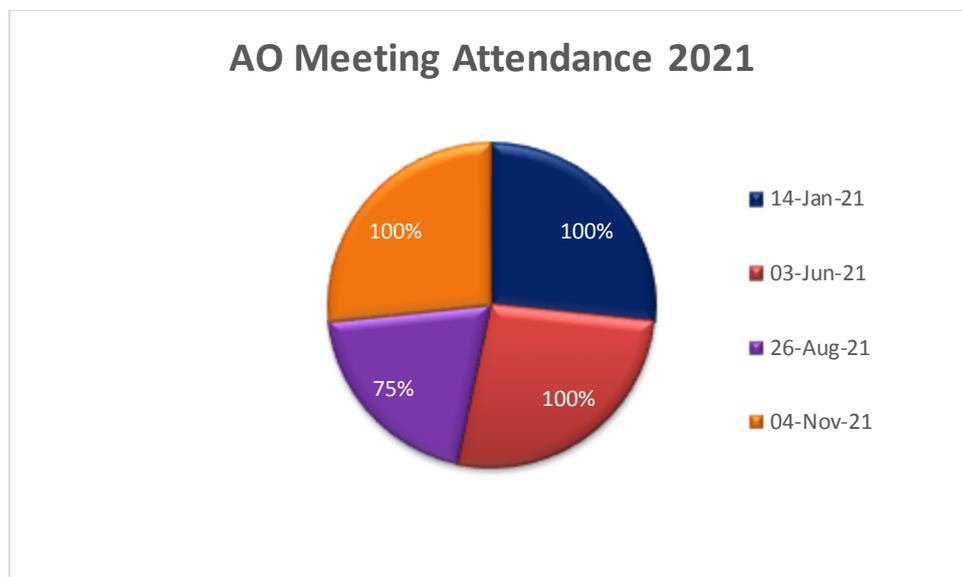


3.10 This Committee approved the Use of Investigatory Powers Policy on 2nd December 2021. The policy sets out the Council's ability to use investigatory powers for covert surveillance (under RIPSAs) and Communications Data (under the IPA 2016). The Policy also reflects the Council's new policy template and is supported by two operational procedures; Covert Surveillance and the Acquisition of Communications Data, the latter is still in development. As there are no changes to the Policy since its approval, the requirement of members to "set" policy in terms of the Code of Practice, is therefore discharged

TRAINING

3.11 Full training was delivered remotely to four ACC Officers who were deemed to require training on covert surveillance as part of their job. The Team Leader for Regulatory and Compliance delivered the training between 19-21 May 2021 through 3 one-hour Microsoft Teams’ sessions. The sessions each included case studies and interactive elements to allow the participants to test their knowledge as the training progressed. Participants found the training to be informative, relevant, and interactive, with all attendees enjoying the working examples used.

- 3.12 The Regulatory and Compliance team undertakes quarterly meetings with Authorising Officers (AO). These dates are set at the beginning of each calendar year and coincide with the reporting cycle to this Committee. Attendance at these meetings is strongly encouraged and despite the challenges to the Services which the AO's represent, as can be seen from the chart below, attendance was encouragingly high throughout the year. The meetings allow time for discussions about feedback from any audits of application and authorisation forms and general practice.
- 3.13 In the Annual Report 2020 it was advised that a restricted AO Microsoft Teams Channel was to be set up. This Channel was created in 2021 and has provided an instant method of communication between AO meetings and gives Authorising Officers the space to ask general queries about authorisations.



- 3.14 The first AO meeting this year took place on the 27 January 2022. The number of Authorising Officers has reduced from 4 to 3, and that level will be monitored over the coming months. The AO meetings have been scheduled to coincide with the reporting cycle to this Committee for 2022.

2022 – WORKPLAN

- 3.15 The focus for this year is to roll out Refresher training to all staff (both AOs and Applicants). This training will have a strong focus on use of social media during investigative work, but also be much more interactive in nature than the full training module. The aim is to roll that out to officers between February and June 2022.
- 3.16 Additionally, the online restricted forum will continue be used to “test” knowledge more frequently throughout the year, with new or interactive content

linked to related news articles and questions posed to create discussion between members. Members of the site have been reminded of the importance to log in when they receive any notifications and take part in the interactive polls, or access bulletins. Below is an example of a Poll in 2021. For Committee's information, the answer is no. Staff should not use their own personal social media profiles for work related purposes and particularly for surveillance. All responses were correct.



- 3.17 Finally, it is hoped a new Communications Data operational procedure will be completed and training can be delivered. Communications data activity will be reported to this Committee on a quarterly basis as is the case with covert surveillance.

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. The Code also reflects that elected members should set the Policy on an annual basis. This Annual Report brings together a review of all RIPSAs activity throughout the last year and provides members with an overview of the Council's compliance. Regular scrutiny by members is also a matter which is taken into account by the Investigatory Powers Commissioner's Office (IPCO) when they carry out their inspections. Although IPA does not have a similar requirement, Aberdeen City Council have taken the position that the Policy shall govern the use of investigatory powers under both RIPSAs and the IPA and that this Committee shall have that extended overview.
- 5.2 The Home Office Code of Practice on Communications Data states that any public authority wishing to acquire Communications Data must have regard to the Code and that there should be a robust process in place for accessing such data which should be overseen by the Senior Responsible Officer (SRO) which is currently the Chief Officer - Governance.
- 5.3 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, this is done by reporting to this Committee quarterly.

5.4 The management, knowledge and awareness of those involved with RIPSA activity was something which was commended by the Commissioner in the 2020 inspection report. The reporting of RIPSA activity to Committee provides another level of scrutiny and assurance on the use of RIPSA. The next Investigatory Powers Commissioner's Office (IPCO) inspection is expected to be in 2023.

6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Strategic Risk	There are no strategic risks arising from this report.	L	
Compliance	That the Council's use of RIPSA is not legally compliant. The Council's acquisition of communications data does not comply with the Home Office Code of Practice.	L	This Committee receives quarterly and annual reports on its use of investigatory powers under RIPSA and the IPA and related policy mitigates this risk highlighted in this section.
Operational	Failure to report to and update Committee on RIPSA activity means that it would undermine public confidence in the Council and how it operates. There are no employee risks related to this report. There are no technological risks arising from this report.	L	Regular reporting to the Audit, Risk and Scrutiny Committee.
Financial	There are no financial risks arising from this report. There are no environmental risks	L	

	arising from this report.		
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 Investigatory Powers Commissioner's report in their inspection.	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 Action Plan created, endorsed and approved by Committee.
Environment / Climate	There are no environmental risks arising from this report.	L	

7. OUTCOMES

<u>COUNCIL DELIVERY PLAN</u>	
Impact of Report	
Aberdeen City Council Policy Statement	This report does not have an impact on the policy statement.
Aberdeen City Local Outcome Improvement Plan	
Prosperous Economy Stretch Outcomes	This report does not link to this theme directly. The use of investigatory powers by the Council as investigatory tools 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 Stretch Outcomes	Enforcement activity undertaken by the Council by using, where appropriate, its powers under both the IPA and RIPSA, may have an impact on this theme by tackling the selling of counterfeit goods.
Regional and City Strategies	This report does not have an impact on the Regional and City Strategies.
UK and Scottish Legislative and Policy Programmes	This report sets out the Use of investigatory Powers Annual Report, which fulfils the requirements placed upon the Council under paragraph 4.43 of the Scottish Government's Code of Practice for Covert Surveillance and Property interference.

8. IMPACT ASSESSMENTS

Assessment	Outcome
Impact Assessment	The purpose of this report is to provide an overview to Committee on the Council's use of investigatory powers under RIPSA and the IPA. With the focus of the 2021 report providing an update of use under RIPSA . Further, 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.
Data Protection Impact Assessment	The purpose of this report is to provide an overview to Committee on the Council's use of investigatory powers in 2021. As such, a Data Protection Impact Assessment is not required.

9. BACKGROUND PAPERS

None

10. APPENDICES

None

11. REPORT AUTHOR CONTACT DETAILS

Name	Debbie Grant/ Jessica Anderson
Title	Trainee Solicitor/ Regulatory and Compliance Team Team Leader, Regulatory and Compliance,
Email Address	JeAnderson@aberdeencity.gov.uk
Tel	01224 52 2553