

ABERDEEN CITY COUNCIL

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| COMMITTEE | Audit Risk and Scrutiny Committee |
| DATE | 13 December 2022 |
| EXEMPT | No |
| CONFIDENTIAL | No |
| REPORT TITLE | Quarter 3- Use of Investigatory Powers |
| REPORT NUMBER | COM/22/258 |
| DIRECTOR | Gail Beattie |
| CHIEF OFFICER | Jenni Lawson Interim Chief Officer- Governance |
| REPORT AUTHOR | Jess Anderson, Team Leader- Regulatory & Compliance Team, Legal Services |
| TERMS OF REFERENCE | 5.2 |

1. PURPOSE OF REPORT

- 1.1 To ensure that Elected Members review the Council's use of investigatory powers on a quarterly basis and have oversight that those powers are being used consistently in accordance with the Use of Investigatory Powers Policy.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Notes the update within the report in respect of the Council's use of investigatory powers during Quarter 3 of the current year.

3. CURRENT SITUATION

- 3.1 The Council has powers under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), and Investigatory Powers Act 2016 (IPA) to use different investigatory techniques. RIPSA 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. It gives the Council powers to conduct two types of covert surveillance:

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).

This Committee has had oversight of covert surveillance activity under RIPSAs since 2017.

- 3.2 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 Practice¹. The Council has not used Communications data since approximately 2005, however the ability to acquire it still remained. In response to concerns from the Operations and Protective Services cluster that there is an increase in online offences, more so during the pandemic, Legal Services and Trading Standards are working together to put in place operational procedures to ensure compliance with the requirements of the IPA.
- 3.3 The Investigatory Powers Commissioner (IPCO) has oversight of both RIPSAs and IPA and as such, the Council's use, and management of powers under these will form part of the normal inspection process. The last inspection took place in April 2020 and was reported to this Committee on 8th October 2020¹. The next is due 2023/2024.
- 3.4 The Council approved the Use of Investigatory Powers Policy in December 2021². This policy governs compliance with both RIPSAs and the IPA. It remains a mandatory requirement that all members of staff wishing to use investigatory power must undertake training prior to being able to make an application to use such investigatory powers.
- 3.5 Committee is being asked to note the update on the use of these powers, and the Council's compliance with the Policy, particularly in respect of covert surveillance activity during the period (28 September to 13 December 2022, namely Quarter 3 of 2022).

Quarter 3- 2022

Covert Surveillance – RIPSAs

- 3.6 In the period from 28th September until 13th December 2022, there has been one authorisation for Directed Surveillance. The authorisation related to test purchases of age restricted goods- namely tobacco and vapour related items. The authorisation was cancelled in accordance with the Council's procedure.

¹ [Agenda for Audit, Risk and Scrutiny Committee on Thursday, 8th October, 2020, 2.00 pm \(aberdeencity.gov.uk\)](#)

² [Agenda for Audit, Risk and Scrutiny Committee on Thursday, 2nd December, 2021, 2.00 pm \(aberdeencity.gov.uk\)](#)

- 3.7 There have been no further applications for covert surveillance made, or approved, within this quarter.
- 3.8 Members should be aware that the directed surveillance operation authorised on 8th July 2022 was not cancelled until 11th November 2022 due to workload pressures. A Directed Surveillance authorisation ceases to have effect three months after it is authorised. The Council's internal procedure states that the Authorising Officer must cancel a directed surveillance if he/she considers it no longer meets the criteria upon which it was authorised. Whilst this cancellation took some time to come through, members should note that the operation itself ceased within a week of the authorisation being granted. The Chief Officer-Governance is making enquiries with other Services to recruit an additional Authorising Officer which should ease the pressure on existing Authorising Officers. Further, officers in Legal Services shall implement a system to provide reminders to Authorising Officers to ensure this risk is minimised in future applications.

Communications Data- IPA

- 3.9 At the time of writing this report, the Council has not acquired any Communications data but arrangements with NAFN³, to provide services to the Council required by the IPA, have been concluded. Further, operational procedures are being drafted. It is hoped that these are submitted to the Chief Officer- Governance for approval before the end of 2022. No Communications data shall be acquired until training has been delivered and the operational procedure approved.
- 3.10 Any activity under the IPA will form part of the normal quarterly reporting cycle to this Committee.

Training

- 3.11 No training has been delivered to Council staff this quarter. An interactive post was published 2nd December 2022 on the restricted forum. The polls are designed to test knowledge throughout the year and supplements the mandatory training.

Awareness Raising

- 3.12 The last Authorising Officer's meeting was 10th November 2022. The Environmental Health Manager came along to speak to Authorising Officers about his role and what investigatory/ enforcement work is carried out. These developments sessions provide Authorising Officers with an insight into how parts of the Council operate and whether there is scope for the use of investigatory powers. Feedback was provided to the Authorising Officers on the audit of authorisation forms made during this quarter.

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 IPCO when they carry out their inspections.

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.

5.3 Quarterly reporting of the Council's use of investigatory powers to Elected Members provides assurance that the Council's use of such powers is being used consistently and that the standards set by its policy remain fit for purpose.

5.4 The management, knowledge and awareness of those involved with RIPSAs activity was something which was commended by the IPCO in his inspection in 2020. Officers hope that reporting on the use of investigatory powers more broadly, enhances transparency and provides another level of scrutiny and assurance on the use of these powers.

6. ENVIRONMENTAL IMPLICATIONS

6.1 There are no environmental/ climate risks arising from the recommendations in this report.

7. RISK

The assessment of risk contained within the table below is considered to be consistent with the Council's Risk Appetite Statement"

| Category | Risks | Primary Controls/Control Actions to achieve Target Risk Level | *Target Risk Level (L, M or H) *taking into account controls/control actions | *Does Target Risk Level Match Appetite Set? |
|-----------------|--------------|--|---|--|
|-----------------|--------------|--|---|--|

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| Strategic Risk | There are no strategic risks | | L | Yes |
| Compliance | <p>That the Council's use of RIPSAs is not legally compliant.</p> <p>The Council's acquisition of communications data does not comply with the Home Office Code of Practice.</p> | <p>This Committee receives quarterly and annual reports on its use of investigatory powers under RIPSAs and the IPA and related policy mitigates this risk highlighted in this section.</p> | L | Yes |
| Operational | <p>Employees are not suitably trained for surveillance work. Failure to report to and update Committee on surveillance activity means that it would undermine public confidence in the Council and how it operates.</p> | <p>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.</p> <p>Reporting to Committee occurs quarterly on surveillance activity.</p> | L | Yes |
| Financial | There are no financial risks arising from this report | | L | Yes |
| Reputational | <p>Failure to update Committee on RIPSAs activity would mean that the Council would be at risk of</p> | <p>External inspections on RIPSAs activity operate every 3-4 years. This provides external assurance to the Committee of the Council's compliance with RIPSAs. Further, whilst there is</p> | L | Yes |

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| | reputational damage when this is raised by the IPCO in their inspection. | no requirement to report to Committee about the Council's use of Communication Data, the broader reporting of both demonstrates the Council's wish to be transparent about its use of such powers. The Inspection Report is shared with Committee and an Action Plan created (where necessary) and is endorsed and approved by Committee. | | |
| Environment / Climate | There are no environmental or climate impacts arising from this report. | | L | Yes |

8. OUTCOMES

| <u>COUNCIL DELIVERY PLAN 2022-2023</u> | |
|--|---|
| | Impact of Report |
| Aberdeen City Council Policy Statement | The report does not have an impact on the Policy Statement |
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| Prosperous Economy Stretch Outcomes | Whilst the recommendations of this report are for noting, the use of investigatory powers 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. |

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| Prosperous People Stretch Outcomes | Enforcement activity undertaken by the Council by using, where appropriate, its powers under the IPA and RIPSA, may have an impact on this by tackling the selling of counterfeit goods. |
| Prosperous Place Stretch Outcomes | |
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| Regional and City Strategies | This report does not have an impact on the Regional and City Strategies. |

9. IMPACT ASSESSMENTS

| Assessment | Outcome |
|--|--|
| Integrated Impact Assessment | The purpose of this report is to update Committee on the Council's use of investigatory powers. 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 on this type of activity. |
| Data Protection Impact Assessment | The purpose of this report is to update Committee on the Council's use of investigatory powers. As such, a Data Protection Impact Assessment is not required. |
| Other | There are no other impact assessments relevant to this report. |

10. BACKGROUND PAPERS

10.1 Use of Investigatory Powers Policy, December, 2021³

11. REPORT AUTHOR CONTACT DETAILS

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³ [Agenda for Audit, Risk and Scrutiny Committee on Thursday, 2nd December, 2021, 2.00 pm \(aberdeencity.gov.uk\)](#)

