

ABERDEEN CITY COUNCIL

COMMITTEE	Audit Risk and Scrutiny Committee
DATE	2 February 2023
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Use of Investigatory Powers- Annual Report 2022
REPORT NUMBER	COM/23/031
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 provide Elected Members with an overview of the Council's use of investigatory powers during 2022, particularly focussing on the Committees role in respect of assurance. Further, Committee is being asked to confirm that the Use of Investigatory Powers Policy is fit for purpose.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Notes the overview of the Council's use of investigatory powers during the calendar year 2022, as set out in this report.
- 2.2 Agrees that the Use of Investigatory Powers Policy remains fit for purpose and requires no amendment.

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 RIPSA 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 permit the Council to use these powers and ensure compliance with the requirements of the IPA.
- 3.3 The Investigatory Powers Commissioner (IPCO) has oversight of both RIPSA 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 as 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 2021. This policy governs compliance with both RIPSA and the IPA. It remains a mandatory requirement that all members of staff wishing to use investigatory powers 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 review of the use of these powers during 2022 and agree that the Use of Investigatory Powers Policy remains fit for purpose.

Use of Investigatory Powers Policy

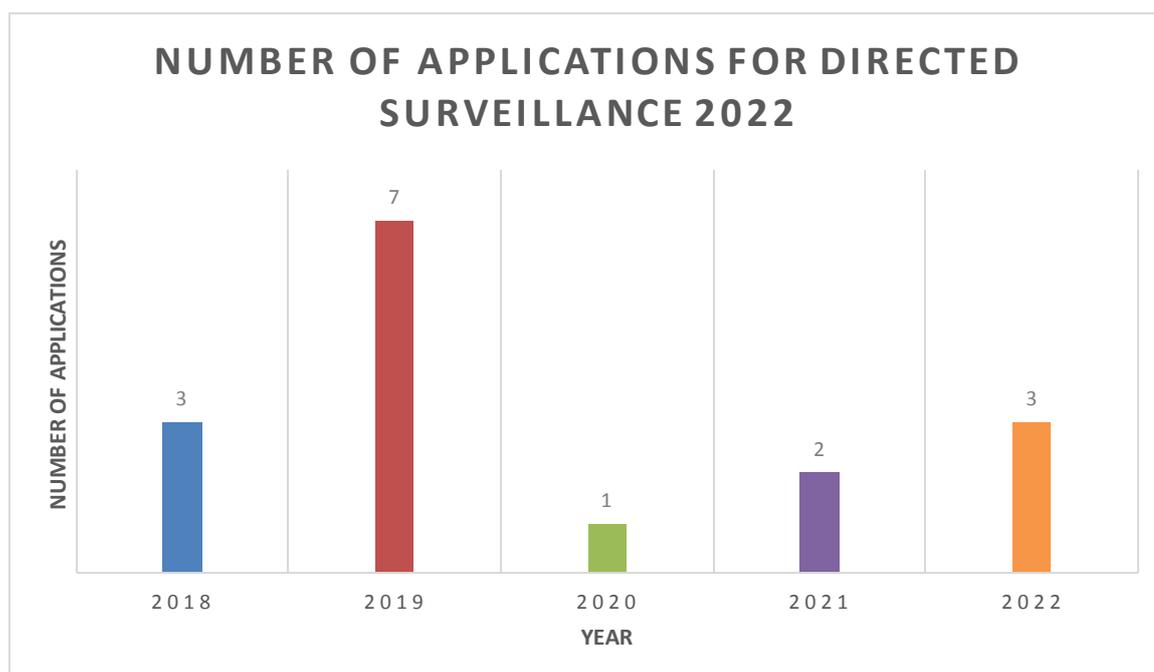
- 3.6 The policy was approved by this Committee in December 2021. The Team Leader, Regulatory and Compliance, Legal Services, as the Council's RIPSA Co-Ordinator, has made a minor change to the policy by deleting references to the Designated Senior Officer, a role which is no longer referred to and confirms that other than that amendment, the policy still remains fit for purpose.
 - 3.7 Committee is asked to note that the Policy is supported by operational procedures. The Covert Surveillance Procedure has also been reviewed and no further changes are required.
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3.8 The Access to Communications Data Procedure has yet to be finalised and signed off. The delay has been due to technical difficulties in accessing the NAFN online training platform.

Applications for covert surveillance

3.9 During 2022, there were three Directed Surveillance authorisations, two in Q3 and the other in Q4. As reported throughout the year, these were in relation to the sale of Age Restricted goods, in particular, test purchases of Tobacco and Nicotine Vapour products. All three applications came from the Operations and Protections Cluster. There were no further authorisations under RIPSA in 2022.

3.10 The graph below shows the numbers of applications authorised by year, since 2018. Members will note that surveillance powers were utilised in 2020 and 2021 albeit, not frequently. This was due to the Services who would normally use RIPSA to carry out test purchases, being involved in implementing lockdown measures, restrictions on social distancing and supporting compliance with the Coronavirus legislation to ensure safe practices were being adhered to across the city.



3.11 At the time of writing this report, the Council has not acquired any Communications data. Any activity under the IPA will form part of the normal quarterly reporting cycle to this Committee.

Training

- 3.12 Refresher training on RIPSAs was delivered in Quarter 3 to Council staff who have been trained to apply for, and authorise (where policy prescribes it), covert surveillance. One session was offered in person and two were online sessions via Microsoft Teams. There were interactive parts to all the sessions. The training focussed on a reminder of the essentials/ key principals of RIPSAs, updates in case law and procedure.
- 3.13 Additionally, full training was provided in Quarter 2 to staff whose job requires them to have a working knowledge of RIPSAs and an awareness of surveillance operations.
- 3.14 The Council's Legal Services were commissioned to deliver three RIPSAs training events for a Scottish Council in 2022. Each event consisted of 3 sessions, all were remote, via Teams and each session had interactive elements to encourage audience participation. Feedback from the events were positive, and some are noted below for information;

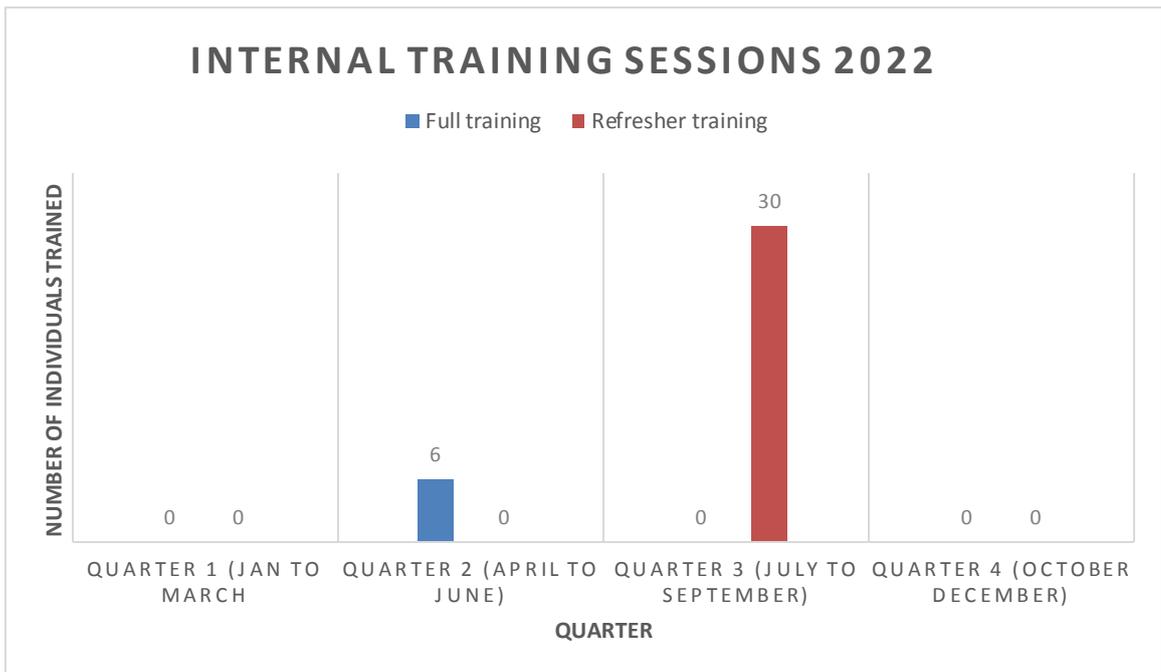
"It was excellent and [the Speaker] has unparalleled practical and legal experience to share".

"Very bright and accommodating; I certainly felt engaged throughout the sessions and got the impression we were being given more than a simple script, very excellent"

"Very good, made all the information very easy to understand, and made a subject that is normally difficult to keep engaged with very easy to stay tuned."

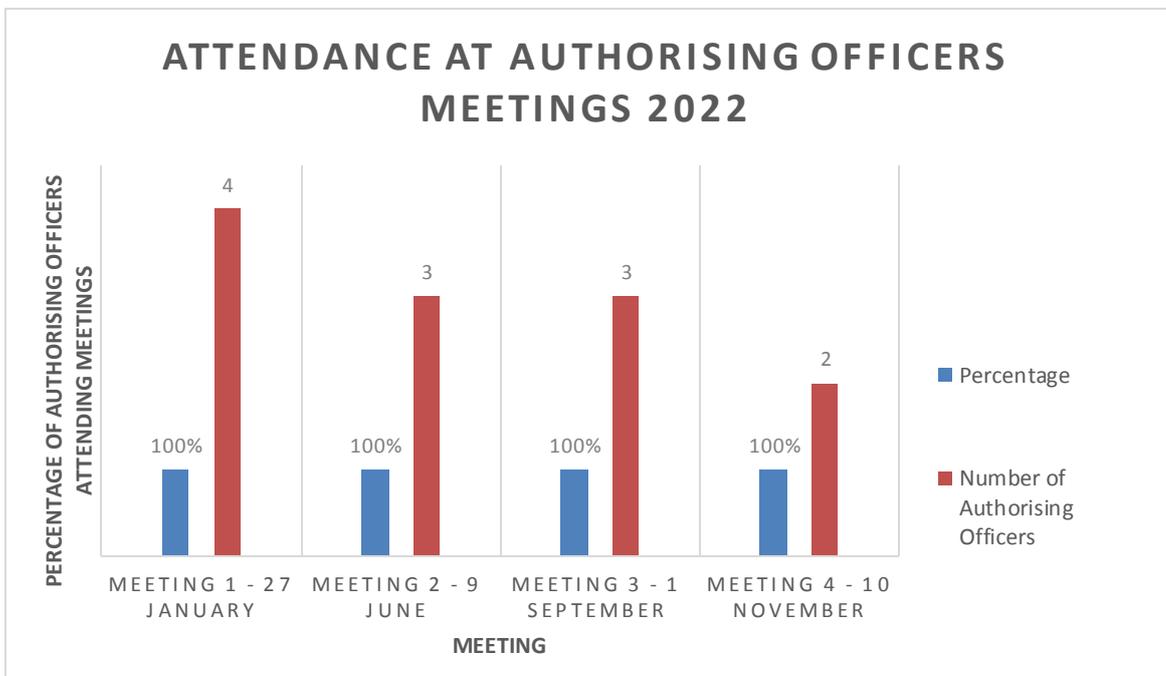
"The course was engaging and fun, made understanding the content very easy!"





Awareness Raising

3.15 The Authorising Officers (AO's) meetings take place after the Directors' Deadline for the committee reporting cycle. This is so that AO's can be made aware of any matters which will be raised in the upcoming quarterly report to Committee. As such, we've had 4 AO meetings throughout 2022. The attendance rate is shown below.

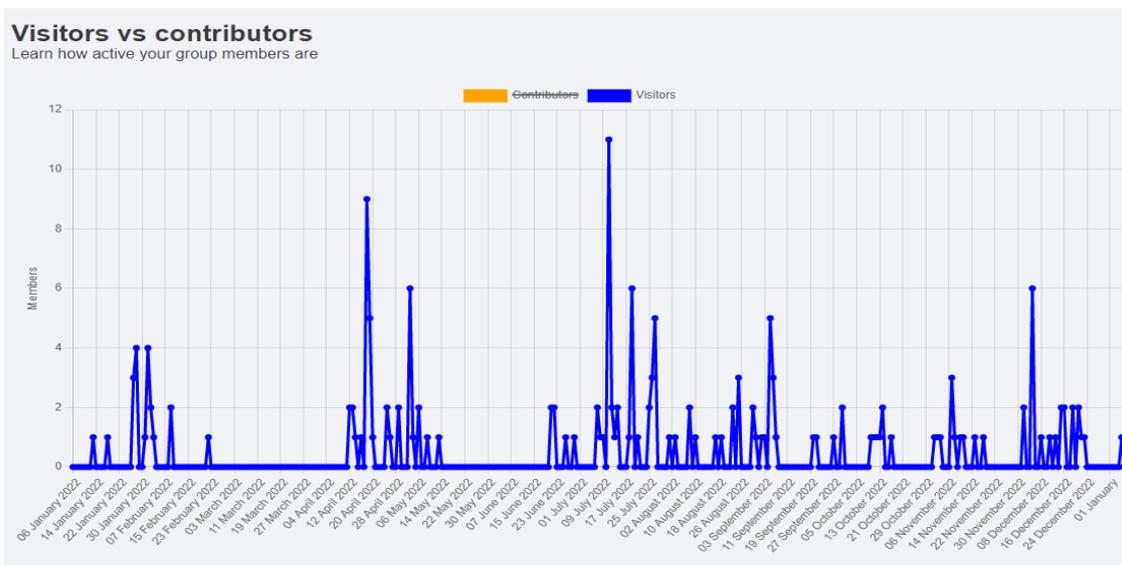


3.16 At the start of 2022 there were four AOs in post. Presently there are now two, due to staff changes. As reported in December 2022, Legal Services are in the

process of trying to obtain another AO to ensure that there is enough cover when an application is submitted. Whilst the Council usually authorises 5-6 covert surveillance operations per year and these are planned, the need to have an AO available on a certain day can be an additional burden for those AO's currently carrying out these duties. It is hoped that an additional AO will allow more flexibility.

3.17 In addition to AO meetings, Legal Services have been keeping the restricted online portal updated throughout the year. There are 49 members. During 2022, there were 172 visits to the portal with 38 contributions being made. Reports show that there were 126.32% more visits in 2022 compared to 2021. This is not concerning and should be viewed in context; there was only one authorisation in 2021 due to the pandemic, so we expected less activity online. The graph below shows when staff accessed the system in 2022 (shown in Blue).²

3.18 It should be noted whilst there are 49 members of the online portal, not all will have used covert surveillance powers. It is a mandatory requirement of the Use of Investigatory Powers Policy that all staff MUST have been trained in order to be able to apply for covert surveillance, however, many have had no need to apply to use such powers. It is within this context that members are asked to consider the statistics referred to in this report.

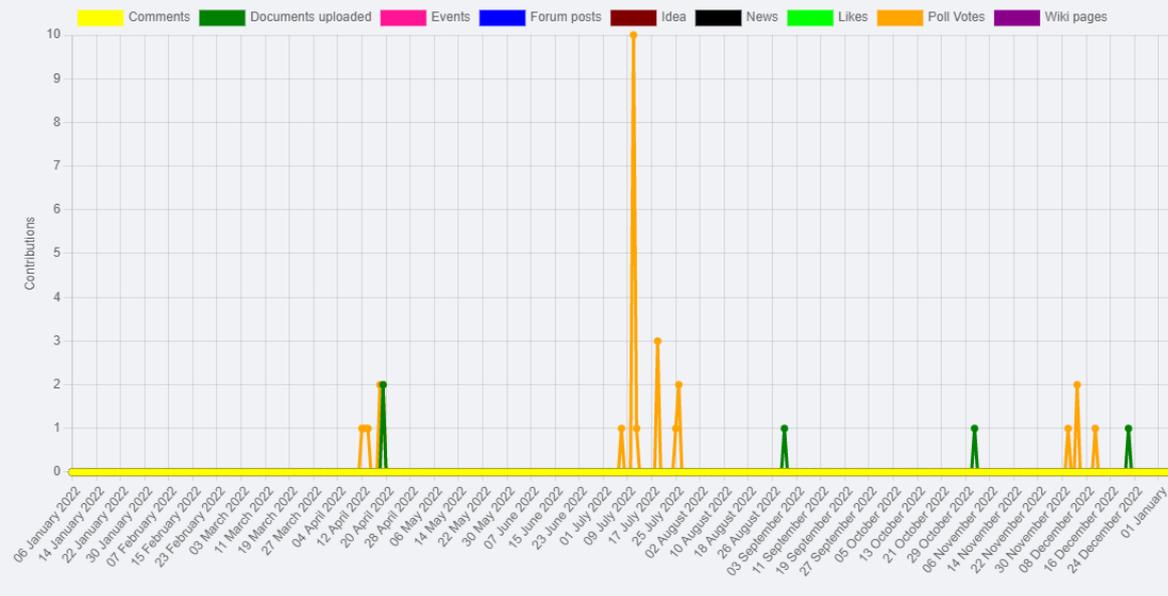


3.19 There were 38 contributions to the portal throughout the year. These are shown in the graph below. Members will see that these relate to documents uploaded and polls posted on the site by. The documents uploaded related to IPCO newsletters, the IPCO Annual Report and the Refresher training slides.

² Contributors means how many visitors made a contribution.

Contributions by content type

Learn what information is shared in your group - Click the labels to show or hide each



Workplan 2023

- 3.20 The focus this year is to encourage members to visit and interact with the online portal. Legal Services will aim to generate more interactive posts, online discussions about topics of interest (where this is appropriate) and updates from the AO meetings. This is building on areas of good practice currently in place but perhaps focusing it in a more targeted way.
- 3.21 Further, we will look to continue to invite officers from other parts of the Council to attend AO meetings to inform AO's of the investigatory/ enforcement work they undertake. These sessions help to develop an AO's knowledge of the work of the Council but also broadens their understanding of overt investigatory powers and what options might be expected to be utilised before covert surveillance is required.
- 3.22 The IPCO inspect the Councils use and management of RIPSAs every 3/ 4 years. The last inspection was 2020 so it is likely that the Council will be inspected this year. Members will be updated in the quarterly reporting cycle if the Council receives notification that an inspection will be conducted.

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 Annual and 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 the 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?
Strategic Risk	There are no strategic risks		L	Yes
Compliance	That the Council's use of RIPSAs is not legally compliant.	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	L	Yes

	The Council's acquisition of communications data does not comply with the Home Office Code of Practice.	Scottish Government's Code of Practice for Covert Surveillance and Property interference. Further, this Committee receives quarterly reports on its use of investigatory powers under RIPSAs and the IPA and related policy mitigates this risk highlighted in this section.		
Operational	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.	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. Reporting to Committee occurs quarterly on surveillance activity.	L	Yes
Financial	There are no financial risks arising from this report		L	Yes
Reputational	Failure to update Committee on RIPSAs activity would mean that the Council would be at risk of reputational damage when this is raised	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 no requirement to report to Committee	L	Yes

	by the IPCO in their Inspection.	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 <u>Working in Partnership for Aberdeen</u>	The report does not have an impact on the Policy Statement
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.
Prosperous People Stretch Outcomes	Enforcement activity undertaken by the Council by using, where appropriate, its powers under the IPA and RIPSAs, may have an impact on this by tackling the selling of counterfeit goods.

Prosperous Place Stretch Outcomes	
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, (v.2 February 2023) (attached)
 Use of Investigatory Powers policy Integrated Impact Assessment Refresh 2023 (attached)

11. REPORT AUTHOR CONTACT DETAILS

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