

ABERDEEN CITY COUNCIL

COMMITTEE	Audit Risk and Scrutiny Committee
DATE	27 June 2023
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Use of Investigatory Powers- Q2-2023
REPORT NUMBER	COM/23/181
DIRECTOR	Gale Beattie
CHIEF OFFICER	Jenni Lawson- Interim Chief Officer - Governance
REPORT AUTHOR	Vicki Johnstone - 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 Note covert surveillance activity.

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 worked together to put in place operational procedures to ensure compliance with the requirements of the IPA. The operational procedure in respect of Communications data was approved on 27 April 2023.
- 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 8 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 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 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 1 April up and until 15 June 2023.

Quarter 2- 2023

Covert Surveillance – RIPSAs

- 3.6 Members will be aware that no surveillance activity was reported in quarter 1 of 2023 (1 January to 31 March). During the period 1 April until 15 June (the final deadline for reports to this committee for the June meeting), there has been three applications for Directed Surveillance. The first application was refused by the Authorising Officer on proportionality grounds as the Authorising Officer did not feel that the applicant had been clear about the period of surveillance.

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 \(aberdeencity.gov.uk\)](#)

The second application, relating to the same matter as the first application which was refused, was subsequently authorised. The third application, relating to test purchases of age restricted goods, was authorised.

- 3.7 There have been no further applications for covert surveillance made, or approved, within this quarter.

Communications Data- IPA

- 3.8 As noted above, the Chief Officer- Governance has approved the operational procedure in respect of Communications data. Arrangements have been made with NAFN³ to provide services to the Council required by the IPA. Training is being developed and will be rolled out to all officers who require to use powers under the IPA to access Communications Data. It is anticipated that this training will be completed by the end of the next quarter.

- 3.9 Any activity under the IPA will form part of the normal quarterly reporting cycle to this Committee.

Authorising Officers (AO)

- 3.10 An AO meeting was held on 4 April 2023 where an officer from the Anti-Social Behaviour Investigation Team (ASBIT) attended to talk about the work of ASBIT and the investigative nature of that work. An update was also provided to AO's on the latest applications for covert surveillance.

- 3.11 As noted in the Annual Report (February 2023), Legal Services were requiring an additional AO. As of 21 April, Legal Services have trained a new AO, which means that the Council now has three AOs in operation. It is hoped that the additional AO will allow more flexibility and availability for officers. The AO rota has been amended accordingly.

Training

- 3.12 A one on one training session took place on 21 April with the new AO. This training is mandatory for all officers involved with covert surveillance. Further, the new AO has been added to the online portal and Teams sites so that they have access to all the guidance available to other officers, including AOs.

Awareness Raising

- 3.13 A poll was posted on the portal on 18 April. This posed a scenario for officers about covert surveillance. Fifteen members took part in the poll. The pass rate was 100%. Response rate was 30%.

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 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 Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) policy and statistical information on relevant activity on an annual basis.
- 5.5 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
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				Appetite Set?
Strategic Risk	There are no strategic risks		L	Yes
Compliance	<p>That the Council's use of RIPSA 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 RIPSA 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 RIPSA activity would mean that the Council would be at risk of</p>	<p>External inspections on RIPSA activity operate every 3-4 years. This provides external assurance to the Committee of the Council's compliance with RIPSA. Further, whilst there is no</p>	L	Yes

	reputational damage when this is raised by the IPCO in their inspection.	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 <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 RIPSA, 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, 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 \(aberdeencity.gov.uk\)](#)

