

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Audit Risk and Scrutiny Committee
<b>DATE</b>	14 September 2023
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Use of Investigatory Powers- Q3-2023
<b>REPORT NUMBER</b>	COM/23/292
<b>DIRECTOR</b>	Gale Beattie
<b>CHIEF OFFICER</b>	Jenni Lawson- Interim Chief Officer - Governance
<b>REPORT AUTHOR</b>	Jess Anderson, Team Leader- Regulatory and Compliance, Legal Services
<b>TERMS OF REFERENCE</b>	5.2

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### 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.
- 2.2 Note the update on Communications Data.

### 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 Practice<sup>1</sup>. 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 2020<sup>1</sup>. The IPCO have recently notified the Chief Executive that the Council is due for an inspection and an initial response has been sent to the IPCO. Committee will be updated as the inspection progresses.
- 3.4 The Council approved the Use of Investigatory Powers Policy in December 2021<sup>2</sup>. 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 15 June up until 4 September 2023.

### **Quarter 3- 2023**

#### **Covert Surveillance – RIPSAs**

- 3.6 During the period 15 June until 4 September 2023 (the final deadline for reports to this committee for the meeting), there has been one application for Directed Surveillance. The application related to the sale of age restricted tobacco and vapour products and was cancelled in accordance with the Council's internal procedure. In the report on Q2, the Report Author was unable to advise

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

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

Committee as to the nature the authorisations at the time as these were still “live”. For the sake of completeness and to ensure that reporting on such activity is consistent, Committee is asked to note that both applications have been cancelled and related to alleged Consumer Protection offences.

- 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 NAFN<sup>3</sup> to provide services to the Council required by the IPA. Three training sessions were provided by Legal Services to Officers in Protective Services in July. The training took place on Teams and included interactive elements. The training focused on the Council’s procedure and complemented extensive training modules provided by NAFN. Out of 33 officers in Protective Services invited to attend, 27 attended. Those officers are now able to utilise Communications Data where it is necessary and proportionate to do so.
- 3.9 There have been four applications requested for Communications Data during this quarter.

### **Authorising Officers (AO)**

- 3.10 There was no AO meeting this quarter due to leave arrangements.

### **Training**

- 3.12 During this quarter, training has been delivered to an incumbent Authorising Officer. This AO is now operational.
- 3.13 As noted above, training on Communications Data has also been delivered this quarter.

### **Awareness Raising**

- 3.14 Officers have been advised of the incumbent AO, and details have been provided on the online restricted forum.

## **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 Appetite Set?
<b>Strategic Risk</b>	There are no strategic risks		L	<b>Yes</b>
<b>Compliance</b>	That the Council's	This Committee receives quarterly and annual reports on its	L	<b>Yes</b>

	<p>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>use of investigatory powers under RIPSAs and the IPA and related policy mitigates this risk highlighted in this Section.</p>		
<b>Operational</b>	<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	<b>Yes</b>
<b>Financial</b>	<p>There are no financial risks arising from this report</p>		L	<b>Yes</b>
<b>Reputational</b>	<p>Failure to update Committee on RIPSAs activity would mean that the Council would be at risk of reputational damage when this is raised by the IPCO in their inspection.</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 no requirement to report to Committee about the Council's use of Communication Data, the broader reporting of both demonstrates</p>	L	<b>Yes</b>

		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.		
<b>Environment / Climate</b>	There are no environmental or climate impacts arising from this report.		L	<b>Yes</b>

## 8. OUTCOMES

<u><a href="#">COUNCIL DELIVERY PLAN 2022-2023</a></u>	
	<b>Impact of Report</b>
<b>Aberdeen City Council Policy Statement</b>  <u><a href="#">Working in Partnership for Aberdeen</a></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	

<b>Regional and City Strategies</b>	This report does not have an impact on the Regional and City Strategies.
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## 9. IMPACT ASSESSMENTS

<b>Assessment</b>	<b>Outcome</b>
<b>Integrated Impact Assessment</b>	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.
<b>Data Protection Impact Assessment</b>	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.
<b>Other</b>	There are no other impact assessments relevant to this report.

## 10. BACKGROUND PAPERS

10.1 There are no background papers.

## 11. REPORT AUTHOR CONTACT DETAILS

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