

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Audit Risk and Scrutiny Committee
<b>DATE</b>	23 November 2023
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Use of Investigatory Powers- Q4-2023
<b>REPORT NUMBER</b>	COM/23/355
<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 and IPCO's letter of 5<sup>th</sup> September attached to this report, and;
- 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 September 2023 and Committee was verbally updated on 14<sup>th</sup> September 2023. The IPCO undertook an inspection of Aberdeen City Council's compliance with RIPSAs and the IPA and concluded that they were *"satisfied that [the Council's] reply provided assurance that ongoing compliance with RIP(S)A 2000 and the Investigatory Powers Act 2016 will be maintained. As such your Council will not require further inspection this year"*. The IPCO's letter is attached at Appendix A. The IPCO will next inspect the Council in 2026.
- 3.4 The Council approved the Use of Investigatory Powers Policy in December 2021<sup>1</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 4 September 2023 to 14<sup>th</sup> November 2023.

#### **Quarter 4- 2023**

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<sup>1</sup> [Agenda for Audit, Risk and Scrutiny Committee on Thursday, 2nd December, 2021, 2.00 pm \(aberdeencity.gov.uk\)](#)

## **Covert Surveillance – RIPSA**

- 3.6 During the period 4 September and 14<sup>th</sup> November 2023 (the submission of this report to committee), 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.
- 3.7 There have been no further applications for covert surveillance made, or approved, within this quarter.

## **Communications Data- IPA**

- 3.8 As noted in the report for Q3 there were four applications requested for Communications Data. These applications were submitted but not progressed as there is a technical issue with the application system. The matter is being looked into with NAFN.

## **Authorising Officers (AO)**

- 3.9 At the AO meeting this an update was provided on the inspection from the Investigatory Powers Commissioner which took place during the last quarter. There are no follow up actions for the Council arising from the inspection.

## **Training**

- 3.10 No training has been delivered this quarter.
- 3.11 The Council's RIPSA Co-Ordinator was asked to speak at the Society of Advocates and Lawyers Association (SOLAR) Annual Conference on 10 November 2023 on RIPSA. This was aimed at the Legal Service and its role in RIPSA compliance.

## **Awareness Raising**

- 3.12 A Frequently Asked Questions guide was produced for officers guiding them through the rules around the use of social media and intelligence gathering. This will be added to the restricted online forum before the end of the year.

## **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 the 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 use of investigatory	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>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

<b><u>COUNCIL DELIVERY PLAN 2022-2023</u></b>	
	<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 to this report.

## 11. REPORT AUTHOR CONTACT DETAILS

<b>Name</b>	Jess Anderson
<b>Title</b>	Team Leader, Regulatory and Compliance, Legal Services, Governance, Commissioning.
<b>Email Address</b>	<a href="mailto:JeAnderson@aberdeencity.gov.uk">JeAnderson@aberdeencity.gov.uk</a>
<b>Tel</b>	01224 053608

12. Appendix A- Letter from the Investigatory Powers Commissioner re the Inspection Report, Aberdeen City Council, September 2023