

ABERDEEN CITY COUNCIL

COMMITTEE	Audit Risk and Scrutiny Committee
DATE	12 February 2024
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	Use of Investigatory Powers - Annual Report 2023
REPORT NUMBER	COM/24/010
DIRECTOR	Gale Beattie
CHIEF OFFICER	Jenni Lawson- Interim Chief Officer - Governance
REPORT AUTHOR	Vicki Johnstone - Regulatory and Compliance, 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 2023, particularly focussing on the Committee's 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 2023, as set out in this report; and
- 2.2 Agrees that the Use of Investigatory Powers Policy remains fit for purpose.

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 September 2023 and Committee was verbally updated on 14 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 will next inspect the Council in 2026.
- 3.4 The Council approved the Use of Investigatory Powers Policy in December 2021¹. 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 asked every year to confirm that the Use of Investigatory Powers Policy remains fit for purpose. Accordingly, Committee is being asked to agree that the Use of Investigatory Powers Policy remains fit for purpose. There have been no substantive changes to the Use of Investigatory Powers Policy since the Policy was reviewed last year. The IPCO are also content with the Use of

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

Investigatory Powers Policy. Further, Committee is being asked to note the overview of the Council's use of investigatory powers during 2023.

Use of Investigatory Powers Policy

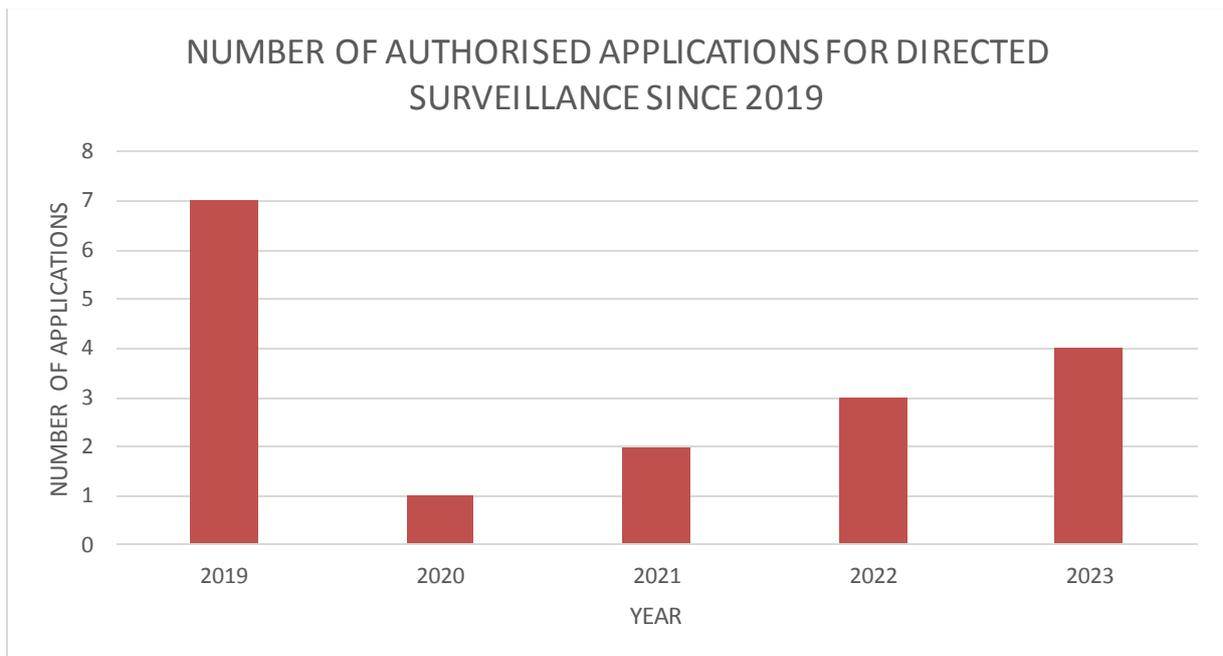
- 3.6 The Policy was approved by this Committee in December 2021. The Team Leader, Regulatory and Compliance, Legal Services, as the Council's RIPSAs Co-Ordinator has reviewed the Policy and confirms that the Policy still remains fit for purpose.
- 3.7 Committee is asked to note that the Policy is supported by operational procedures. One of these operational procedures has been renamed and is now called Aberdeen City Council - Corporate Procedure on Communications Data. The Covert Surveillance Procedure has also been reviewed and no further changes are required.

Communications data - operational procedure

- 3.8 As noted above, the Chief Officer - Governance approved the operational procedure in respect of Communications data on 27 April 2023. Arrangements have been made with the National Anti Fraud Network (NAFN) to provide services to the Council required by the IPA. The operational procedure in respect of Communications data has also been reviewed and no further changes are required.

Applications for covert surveillance

- 3.9 During 2023, there were four Directed Surveillance authorisations (two in Q2, one in Q3 and one 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 four applications came from the Operations and Protective Services Cluster. There were no further authorisations under RIPSAs in 2023. One application was refused by the Authorising Officer on proportionality grounds in Q2 as the Authorising Officer did not feel that the applicant had been clear about the period of surveillance. A further application (relating to the same matter as the application which was refused), was subsequently authorised in Q2.
- 3.10 The graph below shows the numbers of applications authorised by year, since 2019. Members will note that surveillance powers were utilised in 2020 and 2021 albeit, not frequently. This was due to the Coronavirus pandemic and Services prioritising supporting that legislation to ensure safe practices were being adhered to across the city.



Applications for Communications Data

- 3.11 During 2023, there were four applications requested for Communications Data. These applications were submitted but not progressed as there was a technical issue with the application system. The matter is being looked into by NAFN and ACC IT.

Authorising Officers (AO)

- 3.12 At the start of 2023 there were two AOs in post. During 2023, two additional AOs were obtained. Legal Services have trained these two new AOs, which means that the Council now has four AOs in operation. It is hoped that the additional AOs will allow more flexibility and availability for officers. The AO rota has been amended accordingly.

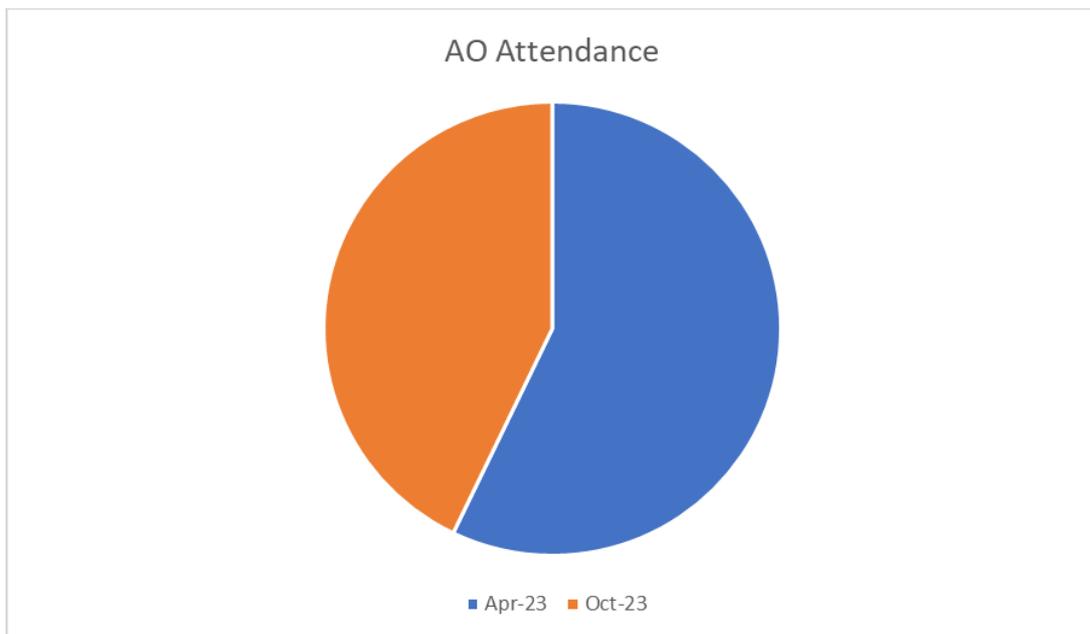
Training

- 3.13 Two one on one training sessions took place on 21 April and 11 August 2023 with each of the new AOs. This training is mandatory for all officers involved with covert surveillance. Further, the new AOs have been added to the online restricted portal and Teams sites so that they have access to all the guidance available to other officers, including AOs.
- 3.14 Three training sessions on Communications Data were provided by Legal Services to Officers in Protective Services in July 2023. 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.

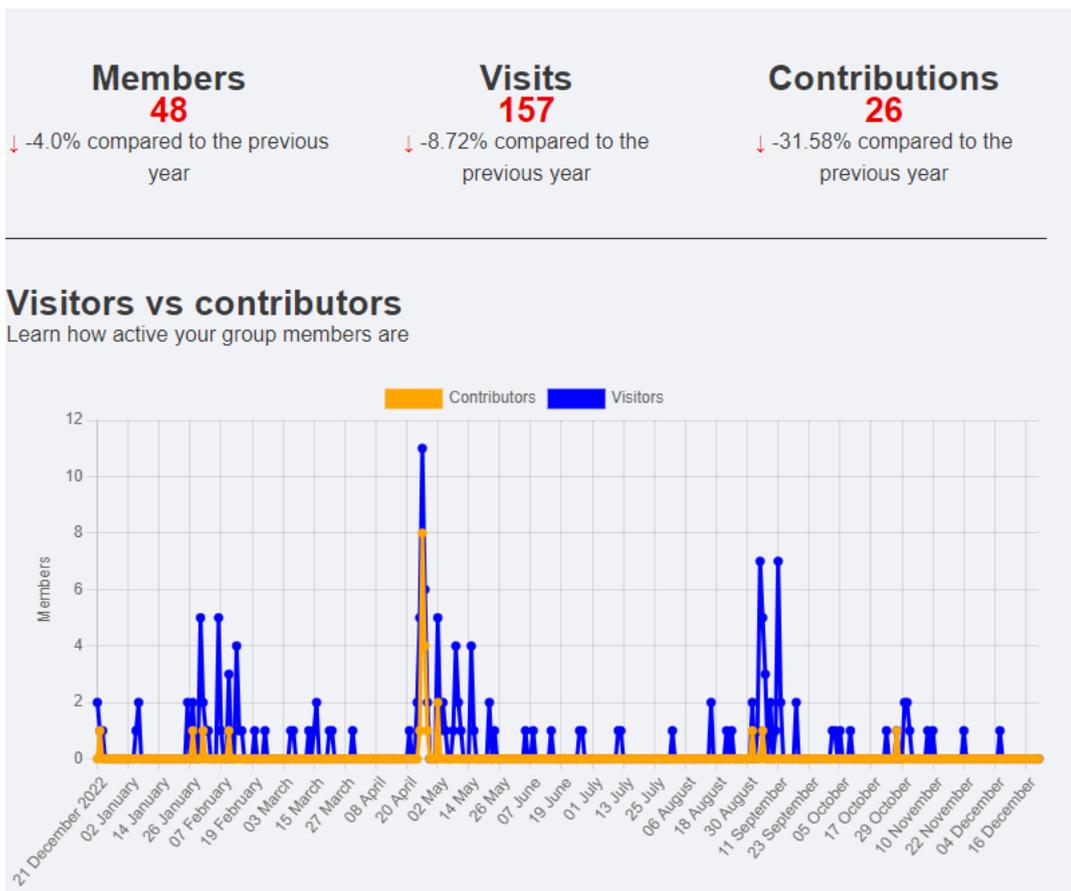
3.15 The Council's RIPSAs Co-Ordinator was asked to speak at the in-house Society of Advocates and Lawyers Association (SOLAR) Annual Conference on 10 November 2023 on RIPSAs. This was aimed at the Legal Service and its role in RIPSAs compliance.

Awareness Raising

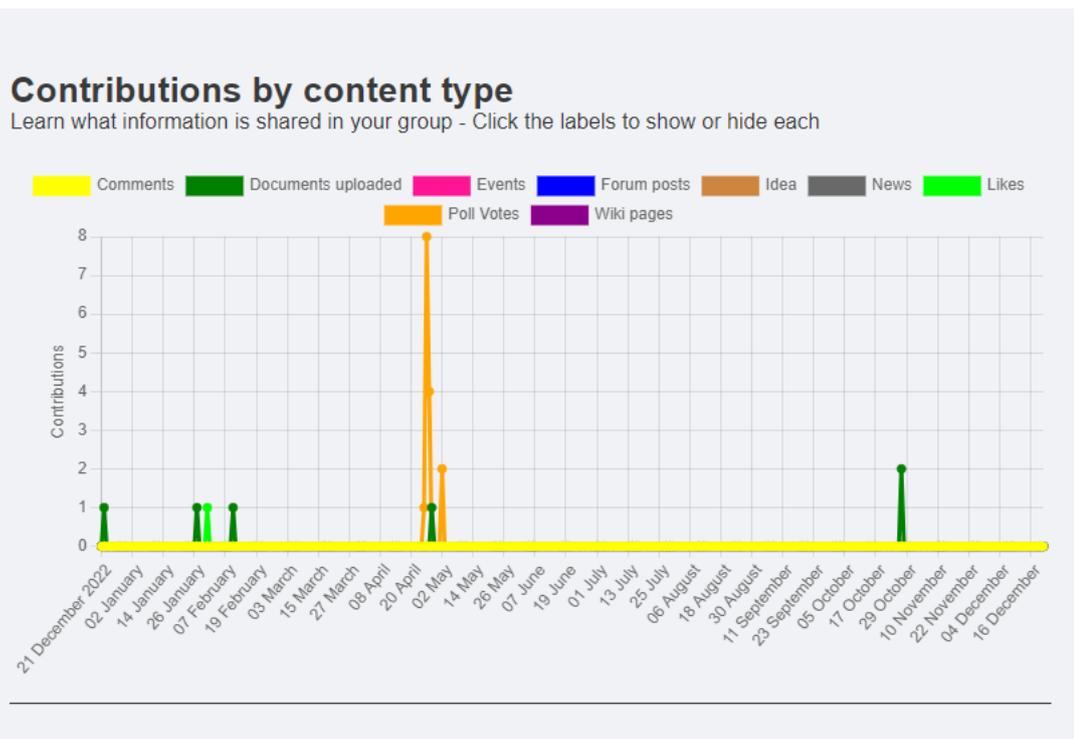
3.16 The AO's meetings take place after the Directors' Deadline for the committee reporting cycle. This is so that AO's can be made aware of any matters which will be raised in the upcoming quarterly report to Committee. As such, we've had 2 AO meetings throughout 2023. The attendance rate is shown below.



3.17 In addition to AO meetings, Legal Services have been keeping the restricted online portal updated throughout the year. There are 48 members. During 2023, there were 157 visits to the restricted online portal with 26 contributions being made. Reports show that there were 8.72% less visits in 2023 compared to 2022. The graph below shows when staff accessed the system in 2023.



- 3.18 It should be noted whilst there are 48 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 26 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. The documents uploaded related to IPCO newsletters and the Aberdeen City Council - Corporate Procedure on Communications Data. There were 38 contributions to the restricted online portal throughout 2022. Although there were 12 more contributions to the portal in 2022 compared to 2023, there were more poll votes submitted by members of the online portal in 2022 than in 2023. This is due to the fact that there were two polls posted on the restricted online portal in 2022 compared to one poll in 2023.



Workplan 2024

- 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.

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 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 RIPSA 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?
Strategic Risk	There are no strategic risks		L	Yes
Compliance	That the Council's use of RIPSA is not legally compliant. The Council's acquisition of communications	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 Scottish	L	Yes

	data does not comply with the Home Office Code of Practice.	Government's Code of Practice for Covert Surveillance and Property interference. Further, 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.		
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	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	L	Yes

	<p>this is raised by the IPCO in their inspection.</p>	<p>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.</p>		
<p>Environment / Climate</p>	<p>There are no environmental or climate impacts arising from this report.</p>		<p>L</p>	<p>Yes</p>

8. OUTCOMES

<u>COUNCIL DELIVERY PLAN 2022-2023</u>	
	Impact of Report
<p>Aberdeen City Council Policy Statement</p> <p><u>Working in Partnership for Aberdeen</u></p>	<p>The report does not have an impact on the Policy Statement</p>
<p>Prosperous Economy Stretch Outcomes</p>	<p>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.</p>
<p>Prosperous People Stretch Outcomes</p>	<p>Enforcement activity undertaken by the Council by</p>

	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	It is confirmed by Chief Officer Jenni Lawson (Interim Chief Officer – Governance) that no Integrated Impact Assessment is required.
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 2024) (attached)

11. REPORT AUTHOR CONTACT DETAILS

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