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REPORT TO: POLICY AND RESOURCES COMMITTEE ON 7 JUNE 2016

SUBJECT: REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 AND REGULATION OF INVESTIGATORY POWERS ACT 2000

BY: CORPORATE DIRECTOR (CORPORATE SERVICES) AND CORPORATE DIRECTOR (ECONOMIC DEVELOPMENT, PLANNING AND INFRASTRUCTURE)

1. REASON FOR REPORT

- 1.1 To invite the Committee to note the use made of covert surveillance by Council employees in the course of their duties for the year to 31 March 2016 and the acquisition of communications data by Council employees in the course of their duties for the year to 31 December 2015.
- 1.2 This report is submitted to Committee in terms of Section III (A) (49) of the Council's Scheme of Administration relating to review of Council wide policy.

2. RECOMMENDATION

- 2.1 **It is recommended that the Committee consider and note the use of covert surveillance by Council employees in the course of their duties for the year to 31 March 2016 and the acquisition of communications data by Council employees in the course of their duties for the year to 31 December 2015 for information purposes only.**

3. BACKGROUND

Covert Surveillance

- 3.1 A report was submitted to this Committee on 27 April 2010 (para 7 of the Minute refers) regarding a revised policy for the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA). The Committee approved the revised policy and decided, as surveillance is such a sensitive issue, that an annual report on the use of surveillance by Council employees in the course of their duties be submitted. Annual reports provide information to 31 March in any

given year to tie in with the statistical return period used by the Office of the Surveillance Commissioner. This is the annual report for the year to 31 March 2016.

- 3.2 As regards directed surveillance, 9 authorisations were granted during the year to 31 March 2016 but none were in force at the end of the year. These related to investigations into the sale of counterfeit clothing, unlicensed car dealing, the illegal sale of cigarettes/tobacco and age related sales of cigarettes.
- 3.3 In relation to the use of covert human intelligence sources (CHIS), 8 were used during the year to 31 March 2016, use ceased to be made of all 8 during the same year leaving none being used at the end of the year. These related to investigations into the sale of counterfeit clothing, unlicensed car dealing and the illegal sale of cigarettes /tobacco.
- 3.4 Although 17 authorisations in total were granted over the course of the last year, a single investigation may require to seek two or more authorisations for directed surveillance and use of CHIS.
- 3.5 In the year to 31 March 2016, there were 7 investigations undertaken which resulted in the following outcomes:-
- 2 Reports to Procurator Fiscal – unlicensed/undisclosed motor vehicle trading.
 - 1 Report to Procurator Fiscal pending – counterfeit tobacco / unregistered seller.
 - 5 Fixed penalty notices – selling tobacco to under 18s.
 - 2 Fixed penalty notices – unregistered tobacco seller /illicit goods (duty not paid).
 - Advisory letter to trader – counterfeit goods.
 - Advisory letter to trader – alleged sale of cigarettes to under 18s.
- 3.6 In relation to breaches in procedures, there were no significant breaches in procedure and minor breaches were addressed by addressing the issue with the authorising officer.

Communications Data

- 3.7 A report was submitted to this Committee on 12 March 2013 (para 9 of the Minute refers) regarding a revised policy for accessing communication data in terms of the Regulation of Investigatory Powers Act 2000 (RIPA). The Committee approved the revised policy and decided that an annual report on the acquisition of communications data by Council employees in the course of their duties be combined with the report on the use of surveillance under the RIPA. Annual reports provide information to 31 December in any given year to tie in with the statistical return period used by the Interception of Communications Commissioner Office.
- 3.8 In the year to 31 December 2015 there were no notices requiring disclosure of communications data; there were no authorisations of conduct to acquire communications data; no applications submitted to a Designated Person were

rejected; and no authorisations or notices were processed via the National Anti-Fraud Network.

Senior Responsible Officer

- 3.9 New statutory Codes of Practice in respect of CHIS and Covert Surveillance (CS) were issued by the Scottish Government in February 2015 which stipulates that it is good practice to appoint a Senior Responsible Officer in every public authority.
- 3.10 The Head of Development Services fulfils the role of Senior Responsible Officer for the purposes of RIPSA. This role includes responsibility for :-
- the integrity of the process in place within the public authority to authorise directed and intrusive surveillance and interference with property or wireless telegraphy;
 - compliance with RIP(S)A, Part III of the 1997 Act and with the relevant codes of practice;
 - engagement with the Surveillance Commissioners and Inspectors when they conduct their inspections, and
 - where necessary, overseeing the implementation of any post-inspection action plans recommended or approved by a Surveillance Commissioner.
- 3.11 An inspection of the authority by the Office of Surveillance commissioners was carried out in November 2015. The inspector found that the standard of application and authorisation were for the most part very good. Recommendations made related to separating the policy between Covert Human Intelligence Source (CHIS) and directed surveillance and explaining the role of the Senior Responsible Officer within the policy, changing the numbering and referencing system so that it is easier to follow and reviewing the forms and process for urgent approvals. These recommendations are being implemented.
- 3.12 A further recommendation was made with regard to the situation where the Authorising Officer for a CHIS also acts as the Controller providing oversight of an operation. This has been standard practice within Trading Standards where the Trading Standards Manager authorises applications for a CHIS with the Principal Trading Standards Officer taking the role of the Handler (day to day supervision of the operator) and Trading standards Officers fulfil the role of the CHIS. The inspector suggests that the Code of Practice does not allow the role of Controller and Authoriser to be the same person; however this is not an interpretation with which the Council Officers agree.
- 3.13 The main reason for the concern from the OSC is the safety of the CHIS, as the people concerned are staff of the Council we have a responsibility under the Health and Safety at Work Act 1974 and risk assessments are undertaken when considering operations.

- 3.14 As we are a small Authority with relatively few RIPSAs applications it is better to ensure the quality of the authorisations under the current system of authorisation. As a compromise we have agreed with the OSC that we will record such cases as a self authorisation and bring them to the inspector's attention at the time of the next inspection. This allows us to continue the current system of authorisation that has resulted in the positive report from the inspector on the quality of our processes and authorisations.

4. SUMMARY OF IMPLICATIONS

(a) Moray 2023: A Plan for the Future/Service Plan/Health and Social Care Integration

The use of investigatory powers, where appropriate, contribute towards National Outcome 9 – we live our lives safe from crime, disorder and danger. There are no implications.

(b) Policy and Legal

The policies enables the Council to ensure appropriate checks and balances in terms of RIPSAs and RIPA are in place within Moray thereby ensuring that covert surveillance activities and acquisition of communications data is conducted in an efficient and proportionate manner and in accordance with the legislation.

(c) Financial implications

There is no direct financial implications arising from this report.

(d) Risk Implications

None.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities

There are none because the recommended actions do not affect people.

(h) Consultations

None.

5. CONCLUSION

- 5.1 The report details the use made of covert surveillance by Council employees in the course of their duties for the year to 31 March 2016 and the acquisition of communications data by Council employees in the course of their duties for the year to 31 December 2015 and invites the Committee to consider and note the report.**

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Background Papers: None
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