



REPORT TO: CORPORATE COMMITTEE 30 JANUARY 2024

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

BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1. REASON FOR REPORT

- 1.1 To invite Council to note the use made of covert surveillance by Council employees in the course of their duties for the years 1 April 2021 to 31 December 2023, and the acquisition of communications data by Council employees in the course of their duties for the years 2021 to 2023.
- 1.2 This report is submitted to Council in terms of Section I (3) of the Council's Scheme of Administration as this matter would previously have been considered at the Policy and Resources Committee.

2. RECOMMENDATION

2.1 It is recommended that the Council consider and note:

- i) **the use of covert surveillance by Council employees in the course of their duties for the period from 1 April 2021 to 31 December 2023; and**
- ii) **the acquisition of communications data by Council employees in the course of their duties for the years to 31 December 2021, 2022 and 2023 for information purposes only.**

3. BACKGROUND

Covert Surveillance

- 3.1 A report was submitted to the Policy and Resources 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 report covers the period from 1 April 2021 to 31 December 2023 to cover the period for the last three years. The annual report was not submitted to Committee last year nor over the pandemic.

3.2 RIPSAs were introduced to make sure that the surveillance of a person(s) was properly regulated, and to regulate information obtained from third parties when the subject of the activity is not aware of either the surveillance or information gathering. RIPSAs controls:

- Directed surveillance
Directed surveillance is defined as surveillance that is covert ie the person is unaware that it is or may be taking place, but not intrusive, undertaken “for the purposes of a specific investigation or operation” and in such a manner as is likely to result in the obtaining of private information about a person.
- Use of covert human intelligence sources;
A covert human intelligence source (CHIS) is defined as a person who establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating anything that:
i) covertly uses such a relationship to obtain information or to provide access to any information to another person; or
ii) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.
- Intrusive surveillance
Local authorities are not permitted to carry out intrusive surveillance. Intrusive surveillance is covert and targeted at anything taking place on residential premises or in a private vehicle and involves the use of a surveillance device or an individual on the premises or in the vehicle or if not on the premises or in the vehicle it nevertheless provides information of the same quality as if it were.

3.3 As regards directed surveillance - 1 authorisation was granted during the year to 1 April 2021 to 31 March 2022 and none were in force at the end of the year, this related to the sale of vaping products. Between 1 April 2022 and 31 March 2023 there were 3 authorisations granted for monitoring the sale of vaping related products and online claims and activities for services. No authorisations were granted between 1 April 2023 and 31 December 2023; there are currently no live authorisations.

3.4 In relation to the use of covert human intelligence sources (CHIS) 2 authorisations were granted during the year to 1 April 2021 to 31 March 2022, 2 authorisations were granted between 1 April 2022 and 31 March 2023 and no authorisations were granted between 1 April 23 and 31 December 2023, none were in force at the end of the year. These related to investigations into the sale of second hand goods, the sale of vaping products and the possible sale of vehicles by an unlicensed dealer. Although 8 authorisations in total were granted over the course of the last three years, a single investigation may require two or more authorisations for directed surveillance and use of CHIS. The authorisations cover 7 separate investigations.

- 3.5 In relation to breaches in procedures, there were no breaches in procedure and minor issues were considered by addressing the issue with the authorising officer.

Communications Data

- 3.6 A report was submitted to the Policy and Resources 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 Regulation of Investigatory Powers (Scotland) Act 2000. 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.
- 3.7 In the calendar years 2021, 2022 and 2023 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.

Inspection

- 3.8 The Council is inspected every 3 years for compliance with the legislation. The last inspection took place in February 2021 and the Council received a good report with no recommendations for corrective actions.

4. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

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 other implications.

(b) Policy and Legal

The policies enable 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 are no direct financial implications arising from this report.

(d) Risk Implications

None.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities/Socio Economic Impact

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

(h) Climate Change and Biodiversity Impacts

None.

(i) Consultations

Consultation has taken place with the Depute Chief Executive Economy, Environment and Finance, the Legal Services Manager, the Head of Legal and Democratic Services, the Equal Opportunities Officer and Democratic Services Manager and their comments incorporated into the report.

5. CONCLUSION

- 5.1 The report details the use made of covert surveillance by Council employees in the course of their duties for the last 3 years and the acquisition of communications data by Council employees in the course of their duties for the period to 31 December 2023 and invites the Committee to consider and note the report.**

Author of Report: Jim Grant (Head of Economic Growth and Development)

Background Papers:

Ref: SPMAN-813460984-465