

REPORT TO: POLICY AND RESOURCES COMMITTEE ON 4 JUNE 2013

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

BY: CORPORATE DIRECTOR (CORPORATE SERVICES)

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 2013 and the acquisition of communications data by Council employees in the course of their duties for the year to 31 December 2012.
- 1.2 To update the list of authorised officers in the Council's Policy and Authorisation Procedure on Covert Surveillance and Covert Human Intelligence Sources.
- 1.3 This report is submitted to Committee in terms of Section A(56) of the Council's Administrative Scheme relating to review of Council wide policy.

2. RECOMMENDATION

2.1 It is recommended that the Council:

- (i) **notes the use of covert surveillance by Council employees in the course of their duties for the year to 31 March 2013 and the acquisition of communications data by Council employees in the course of their duties for the year to 31 December 2012 for information purposes only; and**
- (ii) **approves the addition to the list of authorised officers in the Council's Policy and Authorisation Procedure on Covert Surveillance and Covert Human Intelligence Sources as detailed in paragraph 3.7**

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 Council 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 2013.
- 3.2 As regards directed surveillance, seven authorisations were granted during the year to 31 March 2013. Two were in force at the end of the year.
- 3.3 In relation to the use of covert human intelligence sources (CHIS), 5 were used during the year to 31 March 2013, use ceased to be made of 3 during the same year leaving 2 at the end of the year.
- 3.4 In relation to breach in procedures, there is an obligation to self report breaches and one occurred during the year. It was fairly minor in nature but after discussions with the Office of the Surveillance Commissioner (OSC) was still technically a breach so correctly self reported. The matter has been raised with the Officers concerned to avoid a repetition of this.

Communications Data

- 3.5 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 Council 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. Although the report made to Committee on 12 March 2013 included information for the year to 31 December 2012 this information is repeated here to bring all related information together in one report as requested.
- 3.6 In the year to 31 December 2012 there was one notice 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.

Authorised Officer List

- 3.7 The Council's Policy and Authorised Procedure on Covert Surveillance and Covert Human Intelligence Sources lists the Council Officers who can authorise surveillance activity. At present the Head of Development Services is listed to cover (amongst others) Trading Standards and Environmental Health. It is proposed to add the Trading Services Manager post to this list to cover Trading Standards. This would be consistent with the level of Authorising Officer listed for other departments. Additionally, due to the Trading Standards Manager's narrower remit it would provide greater expertise in the area of highest RIPSAs activity within the Council, but nevertheless still be remote enough from an investigation to effectively scrutinise applications and authorise accordingly

4. **SUMMARY OF IMPLICATIONS**

(a) Council / Community Planning Priorities

The use of investigatory powers, where appropriate, contribute towards National Outcome 9 – we live our lives safe from crime, disorder and danger.

(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

Although a certain breach in procedure is highlighted within this report it has been addressed.

(e) Staffing Implications

There are none.

(f) Property

There are none.

(g) Equalities

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

(h) Consultations

The Head of Development Services and the Trading Standards Manager both agreed with the proposed addition to the list of authorised officers.

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 2013 and the acquisition of communications data by Council employees in the course of their duties for the year to 31 December 2012 and seeks to add to the list of authorised officers.

Author of Report: Margaret Forrest, Legal Services Manager (Litigation and Licensing)

Background Papers: None

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