



REPORT TO: POLICY AND RESOURCES COMMITTEE ON 15 APRIL 2014

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

**BY: CORPORATE DIRECTOR (CORPORATE SERVICES) AND
ACTING CORPORATE DIRECTOR (ENVIRONMENTAL
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 2014 and the acquisition of communications data by Council employees in the course of their duties for the year to 31 December 2013; and consider and note the main findings of the inspection report received from the Interception of Communications Commissioners Office on 4 March 2014.
- 1.2 This report is submitted to Committee in terms of Section III (A)(56) of the Council's Administrative Scheme relating to review of Council wide policy.

2. RECOMMENDATION

2.1 It is recommended that the Committee considers and notes the:

- (i) use of covert surveillance by Council employees in the course of their duties for the year to 31 March 2014 and the acquisition of communications data by Council employees in the course of their duties for the year to 31 December 2013 for information purposes only; and**
- (ii) the main findings of the inspection report received from the Interception of Communication Commissioners Office.**

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 2014.

- 3.2 As regards directed surveillance, five authorisations were granted during the year to 31 March 2014. One was in force at the end of the year. The five authorisations related to illegal and underage sales of tobacco, sales of counterfeit goods and unlicensed and misleading sales of motor vehicles.
- 3.3 In relation to the use of covert human intelligence sources (CHIS), seven were used during the year to 31 March 2014, use ceased to be made of six during the same year leaving two at the end of the year. The seven authorisations related to illegal and misleading sales of domestic appliances, illegal sales of cigarettes, sales of counterfeit goods and unlicensed and misleading sales of motor vehicles.
- 3.4 There were no significant breaches in procedures.

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.
- 3.6 In the year to 31 December 2013 there were no notices requiring disclosure of communications data; 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 (NAFN).

Interception of Communications Commissioners Office Inspection

- 3.7 The Council was inspected by the Interception of Communications Commissioners Office (IOCCO) on 21 January 2014. A report on the outcome of this inspection was received on 4 March 2014.
- 3.8 The report found that the Council emerged reasonably well from the inspection and that the Council is acquiring communications data for a correct statutory purpose. The report found that the Council had incorrectly destroyed records prior to 2008. The previous policy had incorrectly specified a two year

retention period for records. This was corrected in the new policy introduced in 2013 and now requires retention to allow for audit and inspection. The policy also covers retention under service procedures for the management of investigations and disclosure of evidence in criminal proceedings.

- 3.9 The report made two minor recommendations for action which were already in place following the appointment of NAFN. No further action is required.

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 RIPAs 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

There are none.

(f) Property

There are 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 2014 and the acquisition of communications data by Council employees in the course of their duties for the year to 31 December 2013 and invites the Committee to consider and note the report received from the Interception of Communications Commissioners Office.**

Author of Report: Margaret Forrest, Legal Services Manager (Litigation and Licensing) and Peter Adamson, Trading Standards Manager

Background Papers: None

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