



ITEM:

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REPORT TO: POLICY AND RESOURCES COMMITTEE ON 8 MAY 2018

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

BY: ACTING 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 years 1 April 2016 to 31 March 2017 and 1 April 2017 to 31 March 2018 and the acquisition of communications data by Council employees in the course of their duties for the years 2016 and 2017;
- 1.2 This report is submitted to Committee in terms of Section III (B) (47) of the Council's Scheme of Administration relating to review of Council wide policy.

2. RECOMMENDATION

- 2.1 It is recommended that the Committee;
- (i) consider and note the use of covert surveillance by Council employees in the course of their duties for the two years to 31 March 2017 and to 31 March 2018 and the acquisition of communications data by Council employees in the course of their duties for the years to 31 December 2016 and 2017 for information purposes only; and
 - (ii) approve the changes to Council policy with the addition of Environmental Health Manager as an authorised signatory as shown in Appendix 1.

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 report covers the period from 1 April 2016 to 31 March 2018 as the annual report was not submitted to Committee last year.
- 3.2 As regards directed surveillance, 2 authorisations were granted during the year to 31 March 2017 and one was in force at the end of the year. These related to investigations into the sale of unlicensed car dealing and age related sales of cigarettes. Between 1 April 2017 and 31 March 2018 there were 3 directed surveillance granted and there are currently no live authorisations. The authorisation related to the investigation of tobacco sales, unlicensed car dealing and sale of illegal decoding devices for media streaming.
- 3.3 In relation to the use of covert human intelligence sources (CHIS), 3 were used during the year to 31 March 2017, use ceased to be made of all 3 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. There were also 3 used during 2017/18 relating to illegal or unlicensed sales.
- 3.4 Although 11 authorisations in total were granted over the course of the last two years, 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 2017 there were 4 investigations/operations involving the use of directed surveillance or covert human intelligence source (or both). These resulted in the following outcomes:-
- Test transactions of tobacco sellers. All suppliers complied with age restricted sales requirements.
 - A second hand car trader was convicted under the Civic Government (Scotland) Act.
 - Investigation into alleged misleading trading practice and unlicensed trading by second hand car trader. Insufficient evidence obtained with case closed.
 - A trader was reported to the PF for alleged sale of counterfeit goods. PF did not proceed with case.

In the year to March 2018 there were 4 investigations /operations involving the use of directed surveillance or cover human intelligence source (or both). These resulted in the following outcomes:-

- A second hand car trader was convicted of an offence under the Consumer Protection From Unfair Trading Regulations.
- Operation into age related sales of tobacco and nicotine vapour products (e-cigarettes) identified 4 illegal sales with 3 fixed penalty notices and a warning letter.
- One investigation into alleged offences under The Trade Marks Act for supply of illegal media streaming devices is ongoing.
- One investigation into alleged sale of counterfeit goods is ongoing.

3.6 In relation to breaches in procedures, there were no 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 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.

3.8 In the years 2016 and 2017 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 (DS) were issued by the Scottish Government in February 2015 which stipulate 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 have been 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.
- 3.15 The Council policy is attached at **Appendix 1** a proposed amendment of the policy is to add the Environmental Health Manager as an authorised officer in **Appendix 1** of the policy as the Trading Standards Manager is due to retire this year.

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 implications.

(b) Policy and Legal

The policies enables the Council to ensure appropriate checks and balances in terms of RIPSA 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/Socio Economic Impact

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 two years to 31 March 2017 and to 31 March 2018 and the acquisition of communications data by Council employees in the course of their duties for the year to 31 December 2016 and 2017 and invites the Committee to consider and note the report.

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Background Papers:
Ref:

Signature:



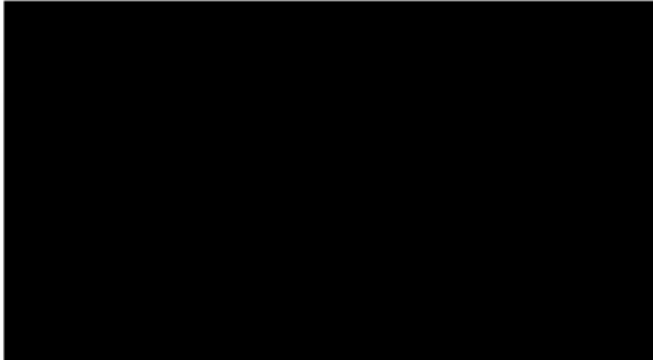
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