



REPORT TO: MORAY COUNCIL ON 12 MAY 2021

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 2018 to 31 March 2019, 1 April 2019 to 31 March 2020 and 1 April 2020 to 31 March 2021 and the acquisition of communications data by Council employees in the course of their duties for the years 2018 to 2021.
- 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 the use of covert surveillance by Council employees in the course of their duties for the 3 years to 31 March 2019 and to 31 March 2020 and to 31 March 2021 and the acquisition of communications data by Council employees in the course of their duties for the years to 31 December 2019 and 2020 and 2021 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 2018 to 31 March 2021 to cover the period for the last three years.

- 3.2 As regards directed surveillance - 2 authorisations were granted during the year to 31 March 2019 and none were in force at the end of the year. These related to investigations into the sale of possible counterfeit goods online and monitoring the sale of tobacco and related products. Between 1 April 2019 and 31 March 2020 there was 1 authorisation granted for monitoring the sale of tobacco and related products. Between 1 April 2020 and 31 March 2021 there were 2 authorisations granted related to investigations into the sale of possible counterfeit goods online and there are currently no live authorisations.
- 3.3 In relation to the use of covert human intelligence sources (CHIS) 2 authorisations were granted during the year to 31 March 2019 and none were in force at the end of the year. These related to investigations into the sale of possible counterfeit goods online and the possible sale of vehicles by an unlicensed dealer. Between 1 April 2019 and 31 March 2020 there were 2 CHIS authorisations granted and these related to investigations into the sale of possible counterfeit goods online and the possible sale of vehicles by an unlicensed dealer. Between 1 April 2020 and 31 March 2021 there were 2 CHIS authorisations granted related to investigations into the sale of possible counterfeit goods online and there are currently no live authorisations.
- 3.4 Although 11 authorisations in total were granted over the course of the last three financial years, a single investigation may require to seek two or more authorisations for directed surveillance and use of CHIS.
- 3.5 In relation to breaches in procedures, there were no material breaches in procedure and minor breaches were addressed 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 2018, 2019 and 2020 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, due to COVID restrictions this years inspection is being done through interview over video conferencing and examination of authorisations and records. Once received the findings of the inspection and any recommendations will be reported to Committee. The recommendations from the previous inspection related to maintain a training record and amending the policy and procedures to ensure the Senior responsible Officer was not also an authorising officer and this has been done.

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 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

There are no risks arising from this report, even though the council has limited use of its powers it is important that staff remain aware of the requirements to ensure compliance.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities/Socio Economic Impact

There are no equalities issues arising from this report, compliance with legislation ensures that equalities impacts are considered.

(h) 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, Lissa Rowan (Committee Services Officer) 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 year to 31 March 2021 and invites the Committee to consider and note the report.**

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

Background Papers:

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