

REPORT TO BUSINESS SERVICES COMMITTEE - 16 NOVEMBER 2017

MONITORING OF ACTIVITY UNDER THE REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 POLICY

1 Recommendations

The Committee is recommended to:

- 1.1 **Agree the proposals for monitoring of Regulation of Investigatory Powers (Scotland) Act 2000 activity and policy review as set out in this report;**

2 Background / Discussion

- 2.1 On 22 June 2017 following the outcome of an inspection by the Office of the Surveillance Commissioner, the Committee approved a revised Policy on the Authorisation of Surveillance under the Regulation of Investigatory Powers (Scotland) Act 2000. It was noted that proposals for regular monitoring and scrutiny of activity under the Policy would be brought forward to the Committee at a later date. This report now seeks to set out proposals for reporting to Committee on surveillance activity.
- 2.2 In 2014 the Scottish Government issued Codes of Practice in relation to the use of Covert Human Intelligence Sources and in relation to Covert Surveillance and Property Interference. Section 26 of the 2000 Act requires any person exercising or performing any power or duty under the Act to have regard to the provisions of the Code of Practice. It is therefore best practice to comply with the Codes of Practice.
- 2.3 Both current Codes of Practice refer to the need for scrutiny by elected members. The Codes of Practice provide that elected members of a local authority should review the authority's use of surveillance under the 2000 Act and set the policy at least once per year. The Code further states that members should consider reports on use of the surveillance powers under the Act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose. It is important however to highlight that members should not be involved in making decisions regarding specific authorisations.
- 2.4 Whilst the Council has no statutory duty to comply with the Code of Practice, failure to do so in the face of specific comments from the Commissioner during the recent inspection could result in further criticism and potential reputational risk. The method of reporting as set out in this report will be sufficient to address the requirements of the Code whilst ensuring that meaningful information is provided to Members in an appropriate format and through appropriate channels.

- 2.5 It is proposed that Members received quarterly information bulletins by email with details of activity and any impact on the policy. Members will be alerted to any legislative changes or case law and if required a report may follow to the Committee proposing changes to the policy to reflect same.
- 2.6 The bulletins will be issued to Members of the Business Services Committee only. The Senior Solicitor will prepare the bulletin and forward to the Committee Services Officers for issue. A template for the bulletin forms Appendix 1 to this note. It is considered that there will be minimal impact on staffing resources – the information contained in the bulletin will be mostly replicated from information contained in the RIPSAs log which the Senior Solicitor is required to maintain. Discussions with Committee Services have indicated that they have capacity to issue the bulletins on a quarterly basis.
- 2.7 In addition to the quarterly bulletins, an annual report will be presented to this Committee. The report will summarise the use of surveillance under the 2000 Act over the previous 12 months and propose recommendations for review of the policy.
- 2.8 The quarterly bulletins will ensure compliance with the Code of Practice whilst mitigating the volume of business going before this Committee. Committee Members will have the opportunity to avail themselves of the information presented by way of bulletin which will alert them to any issues of note whilst the annual report will ensure that due consideration can be given to surveillance activity and review of the policy.
- 2.9 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

3 Scheme of Governance

- 3.1 The Committee is able to consider and take a decision on this item in terms of Section C.1.1.g of the List of Committee Powers in Part 2A of the Scheme of Governance as it has responsibility for Legal and Governance who in turn have responsibility for updating the policy on Authorisation of Surveillance under the Regulation of Investigatory Powers (Scotland) Act 2000

4 Implications and Risk

- 4.1 An equality impact assessment is not required because there are no direct material outcomes from this report and the proposals do not have a differential impact on any of the protected characteristics.
- 4.2 There are no staffing and financial implications arising from this report.
- 4.3 The following Risks have been identified as relevant to this matter on a Corporate Level:-

ACORP002 – Regular reporting of activity will ensure Members are advised timeously of any changes to national policy, legislation and regulation that may impact on Council policy, enabling appropriate action to be taken.

ACORP006 – Reputation Management: Failure to take action to comply with the Code of Practice and recommendations by the Office of the Surveillance Commissioner could result in the Council being criticised in future inspection reports.

- 4.4 There is no town centre impact arising from this report therefore an assessment is not required.

Ritchie Johnson
Director of Business Services

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Date: 16 October 2017

APPENDIX 1

Quarterly Bulletin to Members of Business Services Committee regarding use of Regulation of Investigatory Powers (Scotland) Act 2000.

Between (specify date) and (specify date) Aberdeenshire Council granted [.....] authorisation/s for the use of directed surveillance under the 2000 Act. The authorisation/s granted related to e.g. a trading standards investigation into illegal sale of tobacco.

Between (same dates as above) Aberdeenshire Council granted [.....] authorisation/s for the use of a covert human intelligence source. The authorisation/s granted related to e.g. a council operative setting up a Facebook page under an assumed name to place an order for goods as part of an investigation into trading in counterfeit goods.

There have been reported cases on the operation of RIPSAs. There have been the following legislative changes:- (or there have been no legislative changes).

There is a need to review the Council's policy on surveillance due to the following:-

A report will be submitted to the Business Services Committee in due course.

Or

There is no need to review the Council's policy on surveillance at the present time.

