
NORTH AYRSHIRE COUNCIL

24 September 2019

Cabinet

Title: Regulation of Investigatory Powers (Scotland) Act 2000

Purpose: To provide an update to Cabinet on the Council's use of the Regulation of Investigatory Powers (Scotland) Act 2000. (RIPSA)

Recommendation: That Cabinet notes the measures in place to secure compliance with RIPSA and the use the Council has made of the Act in the last year.

1. Executive Summary

- 1.1 In the course of carrying out its regulatory duties, the Council may require to carry out surveillance. The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) sets up a framework under which surveillance can be authorised and the evidence obtained used in subsequent court actions without challenge under Human Rights legislation. If the legislation is not complied with, it could lead to the Council breaching an individual's right to privacy or for any information gathered being inadmissible as evidence in court.
- 1.2 The present report is to update Cabinet on any use made of the Act over the year and also advises of changes in the Council's Authorising Officers following staff changes.

2. Background

- 2.1 The European Convention on Human Rights provides for a right to privacy. This cannot be interfered with by public authorities, except for certain defined purposes. Such interference must also be proportionate. As surveillance of persons without their knowledge (covert surveillance) would be an interference with a person's right to privacy, RIPSA creates a framework, which if followed, allows for surveillance by public authorities. Key issues to be addressed in considering surveillance are whether it is: -
- Necessary (whether there is any other way to achieve the same aim without covert surveillance, e.g. can you stop the problem by letting people know they are being watched (overt surveillance) etc.);
 - Proportionate (whether the proposed surveillance is excessive having regard to its objective); and
 - Collateral intrusion (whether the surveillance would record details of other individuals, thus breaching their right to privacy).

- 2.2 The two types of surveillance currently available to the Council are directed surveillance (observing people without their knowledge) and covert human intelligence sources (asking a third party to establish or maintain a relationship to obtain information in secret).
- 2.3 The Council is audited on its RIPSAs procedures by the Office of the Surveillance Commissioner (OSC) every three years. The last such inspection took place in April 2017. The OSC's functions have now been taken over by the Investigatory Powers Commissioner's Office (IPCO) and the next inspection could take place any time after April 2020. A report issued by IPCO in January 2019 particularly commended the Council's regular training regime.
- 2.4 The core aspects of governance which ensures the Council's compliance with RIPA are:-
- A Senior Responsible Officer, the Head of Democratic Services who has responsibility for the Central Register which records all cases of covert surveillance;
 - Authorising Officers who consider and approve applications for covert surveillance;
 - Council procedures are set out in two Protocols on Directed Surveillance and Covert Human Intelligence Sources;
 - The Council's CCTV policy and procedures;
 - Training. A half-day RIPA training course is now a fixture of the Council's Learning and Development Directory and is delivered annually by Legal Services with the next course due to take place in March 2020. Over and above the half-day course, from time to time teams seek a briefing on RIPA and surveillance procedures from Legal Services to ensure that staff have a broad overview of the terms of the Act.
 - A refresher briefing is given annually to the Council's Extended Leadership Team on the requirements of RIPA, to ensure that senior staff are aware of the provisions of the Act and that any key employees receive the necessary training. The Chief Executive and Directors are all asked to sign an annual undertaking in this regard.
- 2.5 The Authorising Officers are presently Andrew Moynihan, Team Manager (Trading Standards), Stephen Humphries, Chief Revenue and Benefits Officer and the Chief Executive. In terms of the Scheme of Delegation to Officers approved by Council in June 2018, the Chief Executive is appointed as Authorising Officer for all types of authorisation, including the authorisation of a person under age 18 to act as a covert human intelligence source. The Chief Executive is also authorised to appoint other Officers to act as Authorising Officers for all such functions except the authorisation of a person under age 18 to act as a covert human intelligence source. To take account of changes in staff and to ensure that there are sufficient Authorising Officers the Chief Executive appointed Paul Doak, Senior Manager (Internal Audit, Risk and Fraud) and Scott McKenzie, Senior Manager Protective Services as Authorising Officers. A briefing session was held in May to ensure that all Authorising Officers are aware of their responsibilities under the Act and both new appointed Authorising Officer has also been trained.
- 2.6 Since the Act came into force in 2000, the Council's use of surveillance has gradually reduced. A number of reasons are responsible for this reduction. These include:-

- Covert surveillance is a resource intensive activity;
- Other less intrusive means are being found to investigate cases, such as data sharing;
- Overt action to disrupt unlawful activity is considered more effective (by making it known that a person or area is under surveillance);
- The transfer of most benefit fraud investigations to the DWP greatly reduced the type of investigation for which covert surveillance was appropriate;
- Within Trading Standards, rather than focussing on enforcement action, a more effective use of resources is to educate retailers to self-police rather than to pursue surveillance.

2.7 Prior to 2018, the Council had used surveillance on only one occasion in the past five years, in February 2014. Since the last report to Cabinet in October 2018, however, four authorisations have been sought of which three have been granted. These have all been based on the prevention and detection of crime and covered allegations of theft which led to criminal charges and convictions. Further surveillance operations have covered the test purchasing of age-restricted tobacco products and allegations that premises are operating as an unlicensed house of multiple occupancy. The instance on which surveillance powers were refused related to investigation of noise nuisance.

3. Proposals

3.1 That Cabinet notes the measures in place to secure compliance with RIPSA and notes the use made of the Act.

4. Implications/Socio-economic Duty

Financial

4.1 There are no Financial implications arising from this report.

Human Resources

4.2 There are no Human Resources implications arising from this report.

Legal

4.3 There are no Legal implications arising from this report. This report outlines the measures in place to ensure that the Council complies with its legal obligations.

Equality/Socio-economic

4.4 There are no Equality implications arising from this report. There are likewise no Socio-economic implications arising from this report.

Environmental and Sustainability

4.5 There are no Environmental implications arising from this report.

Key Priorities

- 4.6 Compliance with the regime to authorise surveillance set out in RIPSAs ensures that any investigations carried out by the Council are lawful which contributes to the Council's priorities of developing Aspiring Communities in North Ayrshire where residents are safe.

Community Wealth Building

- 4.7 There are no Community Wealth Building benefits arising from this report.

5. Consultation

- 5.1 None.

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For further information please contact, **Andrew Fraser, Head of Democratic Services**, on 01294 424125.

Background Papers

None