

ANGUS COUNCIL

POLICY AND RESOURCES COMMITTEE – 25 OCTOBER 2022

REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 – ANNUAL REPORT

REPORT BY DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

ABSTRACT

The purpose of this report is to ask the Committee to note that Officers have reviewed the Policy and Guidelines on the Use of Covert Surveillance and Covert Human Intelligence Sources and Surveillance Through Social Media Policy and to determine that no amendments are required to the said Policy and Guidelines.

1. RECOMMENDATIONS

The Committee is asked to:-

- (i) Determine that no amendments are required to:-
 - a) the Policy and Guidelines on the Use of Covert Surveillance and Covert Human Intelligence Sources annexed as Appendix 1 to this report; and
 - b) the Surveillance through Social Media Policy annexed as Appendix 2 to this report;
- (ii) agree to delegate authority to the Director of Legal and Democratic Services to make minor amendments to the Policies referred to at (i) and (ii) above in light of future legislative changes, best practice, Scottish Government Codes of Practice and Guidance from the Investigatory Powers Commissioner's Office:
- (iii) note that the Policies referred to at (i) and (ii) above will be presented to this Committee annually for approval.

2. BACKGROUND

- 2.1 Angus Council is a public authority for the purpose of the Regulation of Investigatory Powers (Scotland) Act 2000 ("RIP(S)A") and has the power to authorise directed covert surveillance and the use of covert human intelligence sources. Covert activities covered by RIP(S)A will be lawful if the activities are authorised and if they are conducted in accordance with the authorisation.
- 2.2 In some circumstances it is necessary for Council employees, in the course of their duties, to make observations of a person in a covert manner (without that person's knowledge) or to instruct third parties to make such observations on the Council's behalf. These actions are, by their very nature, potentially intrusive and may be challenged as breaching Human Rights (including the right to a fair trial, the right to respect for family and private life and the right to respect for property). RIP(S)A provides a legal framework for the carrying out of covert surveillance by public authorities.
- 2.3 RIP(S)A covers two main types of surveillance that local authorities are involved in. The first is "directed surveillance". Directed surveillance is defined as surveillance undertaken for the purpose of a specific investigation or operation which is likely to result in obtaining private information about a person. The second is the use of a Covert Human Intelligence Source ("CHIS"). A CHIS is someone who establishes or maintains a relationship with another person with the intention of covertly obtaining information from that person.
- 2.4 Surveillance may require to be undertaken by various Council officers. For example:

- Community Housing Team officers investigating complaints of anti-social behaviour, such as noise emanating from neighbouring properties.
- Counter-fraud officers investigating fraudulent Housing Benefit or Council Tax Benefit claims.
- Consumer Protection officers covertly filming the activities of suspected dealers in counterfeit goods.

- 2.5 Committee is specifically asked to note that the Council is not authorised to conduct intrusive surveillance under any circumstances whatsoever. Intrusive surveillance is surveillance in relation to anything taking place in any private vehicle or on any residential premises but not on common areas such as common stairs and closes. Surveillance is not intrusive if it is directed into a home or private vehicle from outside of that home or vehicle unless the information provided from the surveillance is consistently of the same quality as would be provided by having a device actually present in the home or vehicle. Therefore, activities such as filming goods being sold from the back of a car or monitoring the level of noise generated by an antisocial tenant (but not the actual words spoken by the tenant) are unlikely to be classed as intrusive.
- 2.6 Committee is also asked to note that reports are submitted quarterly to the Council's Scrutiny and Audit Committee advising of the use of surveillance powers by the Council in terms of RIP(S)A. This is in line with guidance from the Investigatory Powers Commissioner's Office, that reports on the use of surveillance are submitted to the Scrutiny and Audit Committee quarterly.

3. REPORT

- 3.1 This Committee, at its meeting on 4 December 2001, considered a report by the Director of Law and Administration in respect of RIP(S)A (Report 1418/01 refers). Having considered the terms of that report, the Committee agreed: -
- i) to note the duties placed upon the Council by RIP(S)A;
 - ii) to approve the RIP(S)A Policy attached as Appendix A to the Report No 1418/01; and
 - iii) to approve the appointment of "Authorising Officers" under the Act by the Chief Executive.
- 3.2 The Policy approved by this Committee at the above meeting has been revised and updated to take into account legislative changes, best practice, Scottish Government Codes of Practice and Guidance from the Office of the Surveillance Commissioners (the body that oversaw the conduct of covert surveillance and covert human intelligence sources by public authorities and whose role has been taken over by the Investigatory Powers Commissioner's Office). A copy of the revised and updated Policy is attached as Appendix 1 to this report.
- 3.3 In addition, the Office of the Surveillance Commissioners have highlighted that the internet may be used as a surveillance tool, and where online research or investigation is conducted covertly for the purpose of a specific investigation or operation and is likely to result in the obtaining of private information about a person or group, an authorisation for directed surveillance should be considered. Public use of the internet has expanded rapidly so that far more activity and interaction now occurs online than ever before. There may be a reduced expectation of privacy for material accessible on the internet, but privacy considerations may still apply, for example to information posted on social networking sites where the information may include or constitute private information. This is regardless of whether or not the account holder has applied any privacy settings to the account. Simple reconnaissance of such sites (i.e. preliminary examination with a view to establishing whether the site or its contents are of interest) is unlikely to interfere with a person's reasonably held expectation of privacy and therefore is not likely to require a directed surveillance authorisation. But where a public authority is systematically collecting and storing information about a particular person or group, a directed surveillance authorisation should be considered.
- 3.4 Given the above, a policy had been developed regarding internet surveillance using social media. This is attached as Appendix 2 to this report.

- 3.5 This Committee at its meeting on 27 October 2020 approved a report (report 235/20 refers) which contained the attached Appendices 1 & 2. A Council Officer has reviewed the policy documents, attached Appendices 1 & 2, for the year 2022/2023 and is recommending to Committee that no amendments are required to be made to those documents.
- 3.6 Lastly, approval is sought to delegate authority to the Director of Legal and Democratic Services to make minor amendments to these policies in light of legislative changes, best practice, Scottish Government Codes of Practice and Guidance from the Investigatory Powers Commissioner's Office. Proposed changes of any significance will always be brought to committee for consideration. It is intended that these Policies will be presented to this Committee for approval annually.

4. CONCLUSIONS

- 4.1 The Council are under a number of legal duties in respect of authorising directed covert surveillance and the use of covert human intelligence sources. The policies referred to in this report will assist in ensuring that those legal duties are met.

5. FINANCIAL IMPLICATIONS

- 5.1 There are no financial implications arising directly from this report.

6. Equality Impact Assessment

- 6.1 An equality impact assessment (EIA) is not required as protected groups will not be disproportionately, adversely affected nor disadvantaged, by the implementation of the recommendations contained within this report.

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information), were relied on to any material extent in preparing this report.

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List of Appendices:-

- Appendix 1: Policy and Guidelines on the use of Covert Surveillance and Covert Human Intelligence Sources
- Appendix 2: Surveillance through Social Media Policy