
Report To:	Policy and Resources Committee	Date:	15 September 2020
Report By:	Head of Legal and Property Services	Report No:	LP/092/20
Contact Officer:	Andrew Greer	Contact No:	01475 712498
Subject:	Inspection by the Investigatory Powers Commissioner's Office regarding the Regulation of Investigatory Powers (Scotland) Act 2000		

1.0 PURPOSE

- 1.1 The purpose of this report is to update the Committee on surveillance carried out by Inverclyde Council employees under the above Act and advise on the recent inspection by Mr Paul Donaldson, Inspector, Investigatory Powers Commissioner's Office (IPCO), in March 2020.

2.0 SUMMARY

- 2.1 The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) provides a legal framework for the use, deployment, duration and effectiveness of covert surveillance and the use of covert human intelligence sources.
- 2.2 Inverclyde Council employees must comply with the Act and adhere to the authorisation procedures specified in the Council's RIPSA Policy and Procedure.
- 2.3 The IPCO provides independent oversight of the use of the powers contained within RIPSA. This oversight includes inspection visits by inspectors appointed by the IPCO on a 3-yearly basis.
- 2.4 The inspection took place in March 2020 via remote means due to the Covid-19 pandemic and the Inspection Report is provided in **Appendix 1**, which is private and exempt at the IPCO's written request.

3.0 RECOMMENDATIONS

- 3.1 It is recommended the Committee:
- (i) notes the Inspection Report (**Appendix 1**) and the positive outcome;
 - (ii) agrees that reports on the application of and compliance with the Act are submitted on an annual basis to the CMT and to the Committee; and
 - (iii) notes the proposed steps to meet the observations made by the Inspecting Officer.

4.0 BACKGROUND

- 4.1 The use of surveillance to provide information is a valuable resource for the protection of the public and the maintenance of law and order. To ensure that local authorities and law enforcement agencies are able to discharge their responsibilities, use is made of unaided surveillance and surveillance devices.
- 4.2 Where this surveillance is covert i.e. the subject of the surveillance is unaware that it is taking place, then it must be authorised to ensure that it is lawful. CCTV systems in the main will not be subject to this procedure as they are “overt” forms of surveillance. However, where CCTV is used as part of a pre-planned operation of covert surveillance, then authorisation must be obtained.
- 4.3 The use of human beings to provide information (informants) is a valuable resource also for the protection of the public in the maintenance of law and order. These are generally described as ‘Covert Human Intelligence Sources’ (CHIS). It should be noted however that the Council has not so far carried out surveillance in this manner since the introduction of the legislation. There are no immediate plans to make use of this provision.
- 4.4 Under the Council’s authorisation process, applications for directed surveillance or the use or conduct of a source are authorised by a restricted number of authorising officers at a senior level. A central register of authorisations is maintained by the Head of Legal & Property Services who also carries out a gate-keeping role in connection with draft applications. The Council’s approved RIPSAs Policy and Procedure is available on the Council website via the following link - <https://www.inverclyde.gov.uk/law-and-licensing/freedom-of-information>
- 4.5 Currently the following officers have been trained to authorise surveillance under the Act:
- Aubrey Fawcett, Chief Executive
Gerard Malone, Head of Legal & Property Services
Ruth Binks, Corporate Director
Martin McNab, Interim Head of Environmental Protection
- 4.6 The Office of Surveillance Commissioners (OSC) was previously the regulatory body for this area of law; however, this was replaced with the Investigatory Powers Commissioner’s Office (IPCO) in September 2017.
- 4.7 The IPCO provides independent oversight of the use of the powers contained within RIPSAs. This oversight includes inspection visits by inspectors appointed by the IPCO on a 3-yearly basis. The Investigatory Powers Commissioner reports directly to the Prime Minister and the Scottish Ministers.
- 4.8 The inspection took place in March 2020 and was carried out by Inspector Paul Donaldson via remote means due to the current Covid-19 pandemic. He discussed with Mr Andrew Greer, RIPSAs Co-ordinator, the Council’s Policy and Procedure, and considered the previous recommendations from the last inspection on 29 November 2016. He also examined two authorisations in detail.
- 4.9 A copy of the inspection report dated 3 June 2020 from the Investigatory Powers Commissioner, The Rt. Hon. Sir Brian Leveson, is provided in **Appendix 1**. Generally the Commissioner in the conclusion of the report, noted the Inspector’s view that the Council was compliant with the Act and “there are areas of good practice which have been identified”. At the IPCO’s written request, **Appendix 1** is private and exempt.
- 4.10 The three recommendations from the previous inspection report in 2017 were all discharged, specifically, it was noted that:
1. the Head of Legal and Property Services, Gerard Malone, was designated as RIPSAs Senior Responsible Officer and the Head of Education, Ruth Binks and the Acting Head of Safer & Inclusive Communities, Martin McNab were approved as Authorising Officers;

2. the present practice of carrying out juvenile test purchase operations without the protection of RIPSA authorisations is being kept under review by the Council's Trading Standards Officer; and
3. formal reviews of all future authorisations are appropriately conducted at specified intervals, using the standard review form.

4.11 Seven new observations were made by the Inspector and appropriate steps are being taken to ensure that these will be complied with. The observations are outlined as follows, together with the Council's proposed response.

Observation 1

4.12 The Policy and Procedures for Authorisation of Covert Surveillance and Covert Human Intelligence Sources should be amended to reflect that Elected Members will review the Council's use of RIP(S)A to at least once a year.

Proposed Response to 1

4.13 The Council's RIP(S)A Policy will be amended to reflect this and there will be immediate steps taken to ensure oversight and scrutiny by the relevant Committee of the Council, the Policy and Resources Committee, on an annual basis commencing at the first available meeting on 15 September 2020, which forms the basis of this report. Thereafter, there will be at least an annual report to the Council.

Observation 2

4.14 The Council, when carrying out test purchase operations, should direct officers to paragraph 2.15 of the Scottish Government Code of Practice on Covert Human Intelligence Sources, as part of the consideration process. The section of the Council's RIP(S)A Policy would also benefit from signposting being given to staff to paragraph 4.10 of the Scottish Government Code of Practice on Covert Human Intelligence Sources.

Proposed Response to 2

4.15 The Council will highlight this in training and amend the Council's RIP(S)A Policy to reflect this.

Observation 3

4.16 More comprehensive guidance is given to Council staff regarding the use of the internet, social media and open source research in the course of investigations using directed surveillance and CHIS. Staff should be signposted to paragraphs 3.11 to 3.16 of the Scottish Government Code of Practice on Covert Surveillance and Property Interference and 4.7 to 4.14 of the Scottish Government Code of Practice on Covert Human Intelligence Sources.

Proposed Response to 3

4.17 The Council will highlight this in training which will be delivered to all relevant Services, including, but not limited to Human Resources, and Revenue and Benefits. The Council's RIP(S)A Policy will also be amended to reflect this.

Observation 4

4.18 An auditable process is developed in circumstances where online research is considered necessary in the interests of child protection.

Proposed Response to 4

4.19 The relevant Council Services have advised that they do not use online research under RIP(S)A for child protection purposes. However, it is accepted that it will still be beneficial to have a process in place to ensure compliance in the event that this position changes.

Therefore, this will be explored further and the Council's RIP(S)A Policy will be amended to reflect this.

Observation 5

- 4.20 Staff should be aware of the dangers aligned to the use of their own social media accounts for business purposes, especially those of a covert nature, and they are cognisant of their own personal online security and of the vulnerabilities attached to using any insecure or personal online platform.

Proposed Response to 5

- 4.21 The Council has a policy in place, specifically, the Acceptable Use of Information Systems Policy, which states that staff should not use personal devices/platforms for work related matters. It is proposed that this will be linked to the Council's RIP(S)A Policy to ensure full awareness.

Observation 6

- 4.22 It is appropriate that more regular training and awareness sessions are provided to relevant staff within the Council.

Proposed Response to 6

- 4.23 It is proposed that training to relevant officer will take place at least once per year and we will respond to any request or topical issue pertinent to training. Further online training will be explored.

Observation 7

- 4.24 In respect of data assurance, it is suggested that the relevant sections of Chapter 8 within each of the Scottish Government Codes of Practice on Covert Surveillance and Property Interference and Covert Human Intelligence Sources are incorporate into the relevant Council Policies to ensure practitioners are fully cognisant of their responsibilities.

Proposed Response to 7

- 4.25 The relevant Council Policies will be amended to reflect this.

Observations of Directed Surveillance Applications

- 4.26 The Inspector reviewed two authorisations in detail and made observations.
- 4.27 In relation to the first Application, the feedback was positive and the Application "was presented in a fair and balanced way by the applicant with the key requirements of necessity, proportionality and collateral intrusion explained well".
- 4.28 In terms of the second Application, the Inspector noted that the Authorising Officer signed the Application two days before the surveillance commenced. This had an impact on expiry date, which should have ceased two days earlier. The commencement date begins from when the Application is signed as opposed to when the surveillance commences.
- 4.29 The Applicants and Authorising Officers will be fully debriefed regarding the observations made.

Authorisations since previous inspection

- 4.30 Since 2017, there have been 8 Directed Surveillance Authorisations which were assessed as entirely appropriate, and well-articulated by both the Applicant and the Authorising Officer.

5.0 CONCLUSION

5.1 The Council continues to use its powers under RIP(S)A appropriately, and only where necessary and proportionate. The Observations will be addressed and their progress will be reported to the Committee in 2021.

6.0 IMPLICATIONS

6.1 Finance

Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments
N/A					

Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
N/A					

6.2 Legal

The steps identified in this report will ensure that the Council remains compliant with RIP(S)A.

6.3 Human Resources

N/A

6.4 Equalities

Equalities

(a) Has an Equality Impact Assessment been carried out?

<input type="checkbox"/>	YES
<input checked="" type="checkbox"/>	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required

(b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

Has there been active consideration of how this report's recommendations reduce inequalities of outcome?

<input type="checkbox"/>	YES – A written statement showing how this report's recommendations reduce inequalities of outcome caused by socio-economic disadvantage has been completed.
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X	NO
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(c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
X	NO

6.5 Repopulation

N/A

7.0 CONSULTATIONS

7.1 N/A

8.0 BACKGROUND PAPERS

8.1 Report to Policy and Resource Committee dated 21 March 2017
<https://www.inverclyde.gov.uk/meetings/meeting/1950>