

EAST RENFREWSHIRE COUNCILCABINET14 December 2023Report by the Chief Officer – Legal and ProcurementREGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000
COVERT SURVEILLANCE ACTIVITY 2022-23**PURPOSE OF REPORT**

1. To notify the Cabinet of surveillance activity undertaken and authorised by the Council during 2022/23
2. To advise Cabinet of the results of the Inspection of the Council's Surveillance practices undertaken by the Investigatory Powers Commissioner's Office during that period.

RECOMMENDATION

3. Cabinet are asked to
 - i) note the use of directed surveillance and Covert Human Intelligence Sources during the period 2022/23
 - ii) Note the results of the inspection carried out in November 2022 by the Investigatory Powers Commissioner's Office

BACKGROUND

4. The Regulation of Investigatory Powers (Scotland) Act 2000 (referred to as RIPSA) came into effect on 2 October 2000. Under the legislation, each authority is required to designate a "Senior Responsible Officer" with responsibility for overseeing appropriate practice under the Act. The Chief Officer Legal and Procurement holds this role within East Renfrewshire Council.
5. The purpose of RIPSA is to ensure that public authorities make only lawful use of covert surveillance and covert human intelligence sources (which together are referred to as covert surveillance in this Report). The Act regulates these activities by requiring that surveillance operations be justified and authorised by a senior officer of the Authority. Surveillance can be lawfully used if it is necessary to prevent or detect crime or prevent disorder, in the interests of public safety or for the purpose of protecting public health.
6. The Investigatory Powers Commissioner's Office oversees the regulatory framework. The Commissioner carries out regular inspections (every 3 years) of all public bodies who carry out covert surveillance in terms of the Act and makes various recommendations in relation to the procedures adopted by these bodies. East Renfrewshire Council's most recent inspection took place in October 2022 and considered surveillance practice during the period 2019-2022,

7. The inspection concluded that the Council's practice was generally of a high standard and commended the quality of training and authorisations. It noted that all previous recommendations had been fulfilled. No further recommendations were made. The formal inspection report is attached as Appendix 1 to this report.

USE OF RIPSА DURING 2022/23

8. During the period 1 April 2022 to 31 March 2023 the Council authorised directed surveillance of 4 separate targets under one overarching authorisation. The authorisations related to online investigations and were granted as being necessary for the prevention and detection of crime. All addressed sale of counterfeit goods and copyright/trademark infringement. In these cases, surveillance was undertaken by officers of Trading Standards Scotland acting as part of national initiatives. In addition, a further application for surveillance of online fora containing complaints regarding rogue traders was refused by the authorising officer as disproportionate in the circumstances.
9. No use was made of Covert Human Intelligence Sources.
10. These figures reflect a drop in the use of covert surveillance from 2021/22 during which period 7 targets were investigated under 2 authorisations.
11. No applications were made by Council services during the year in question, again reflecting the general approach to addressing concerns by open communication with those suspected of any inappropriate behaviour and explicitly advising of any intention to monitor their situation. This transparency takes any subsequent surveillance outwith the definition of covert surveillance and makes an authorisation unnecessary.

TRAINING

12. A training session was commissioned by the Senior Responsible Officer in June 2022 and was attended by officers from services across the Council. This presentation was recorded and provided to services to cascade to any relevant members of staff who could not attend. In addition, the Senior Responsible Officer also provided training to a new authorising officer in November 2022 prior to him undertaking any duties under the Act.

FINANCIAL IMPLICATIONS

13. There are no direct financial implications arising from this report.

RECOMMENDATION

14. Cabinet are asked to

- i) Note the use of directed surveillance and Covert Human Intelligence Sources during the period 2022/23
- ii) Note the results of the inspection carried out in November 2022 by the Investigatory Powers Commissioner's Office

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7 October 2022

Dear Ms. McMillan,

IPCO Surveillance and CHIS Inspection of East Renfrewshire Council

East Renfrewshire Council was recently the subject of a remote inspection by one of my Inspectors, Mr. John Coull, who looked at your use of powers and procedures in relation to directed surveillance and CHIS. This was facilitated through Mr. Gerry Mahon (Senior Responsible Officer, Chief Officer Legal and Procurement) who provided documentation and further information in relation to the Council's current usage of the powers under RIP(S)A, the response to the previous inspection in 2019, and my letter of July 2020 regarding Data Assurance.

The information provided has demonstrated a level of compliance that removes, for the present, the requirement for a physical inspection.

Two recommendations were made in my last inspection letter to you. These related to oversight of overarching authorisations to ensure that operatives remain within the boundaries of the activity authorised, and, ensuring that Authorising Officers provide direction on the management of material obtained through covert activity. I am pleased to note that both recommendations and all other observations made by my previous Inspector have been accepted and implemented.

Mr. Coull reviewed the Council Procedure on Covert Surveillance, Internet Research and Investigations Policy and Procedure, RIP(S)A training for Authorising Officers and the recorded RIP(S)A training event delivered by external solicitors. All of these are of a high standard and reflect well on the efforts of the Council to upskill staff and ensure compliance. Appropriate signposting to the revised Scottish Government Codes of Practice has been enacted since the last inspection.

A total of five authorisations (four granted and one refusal) since 2019 were examined. The approved authorisations related to three Trading Standards Scotland investigations into the sale of counterfeit goods through social media platforms, and one Council Environment Department application for the sale of cosmetic treatment via a website. Subjects of investigation were identified through an overarching thematic surveillance authorisation, providing the intelligence case for subsequent applications.



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The applications by Trading Standards Scotland were very similar in crime type and met an acceptable standard. My Inspector noted some use of generic phrases, rather than specific description of criminality and associated public harm caused by the sale of counterfeit and unsafe goods. As offending was predominantly online, minimal consideration was given to other, less intrusive tactics that could meet the investigation objectives. Applicants recognised the difference between business and personal social media accounts in terms of potential collateral intrusion, but did not describe fully the lesser impact from accounts that clearly advertise as selling counterfeit goods.

Authorisations were of a very high standard with appropriate consideration of the key principles and a clear statement of the covert surveillance to be conducted. Authorising Officers at times provided the contextual information lacking within the initial application. Authorising Officers should return applications for rework rather than supplement information. This will maintain standards and ensure that applicants adhere to guidance and requirements of the RIP(S)A Covert Surveillance and Property Interference Code of Practice. Reviews were timely and completed to a high standard, with clear evidence of active oversight in adding subjects and removing elements of the authorisation. At the cancellation of authorisations there were clear instructions on the management of product, separating Trading Standards Scotland Policy and Procedures from local retention and destruction timescales for the Environment Department applications.

The monitoring of social media and the internet offers investigative opportunities to assist with your enforcement or other responsibilities. Your current draft policy contains suitable guidance to staff with regards to how this should be used. Mr. Mahon is aware of the challenge for the Council to raise awareness across all relevant departments. It is noted the procurement of private internet investigation training underwritten by the University of Warwick which, if successful, will be rolled out to appropriate Council staff.

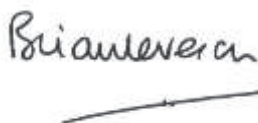
With regards to handling of material acquired by covert activity, your Council has an extensive information management and data protection regime. The six action points from the letter I sent to you in July 2020 appear to have been addressed. Material acquired by means of covert activity is clearly incorporated in the policies that exist in relation to the secure retention, review and destruction systems that you have in place.

In conclusion, whilst your Council has exercised its RIP(S)A powers on a fairly regular basis, it is vital that the relevant staff remain appropriately trained for when the need to authorise covert activity arises, so it was good to learn of the clear investment in this by East Renfrewshire. It is also important that officers engaged in investigatory areas where RIP(S)A considerations are not so immediately apparent, maintain their levels of knowledge and know whom to approach for guidance. Mr. Mahon has given reassurance to the Inspector that the integrity of your Council's processes and governance procedures will be maintained.

I hope that this inspection has proved to be a worthwhile exercise. My Office is available to you should you have any queries following the recent inspection, or at any point in the future. Contact details are provided at the foot of this letter.

I shall be grateful if you would acknowledge the contents of this letter within two months of receipt.

Yours sincerely,



The Rt. Hon. Sir Brian Leveson
The Investigatory Powers Commissioner

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