

**Covert Surveillance  
Report by Executive Director, Place**

**Report for Noting**

**1 Recommendations**

Council is invited to note the terms of this report.

**2 Purpose of Report/Executive Summary**

The purpose of this report is to advise the Council of covert surveillance actions in terms of the Regulation of Investigatory Powers (Scotland) Act 2000 ("RIPSA") by the Council from 2018//19 to date.

**Date: 1 March 2021**

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### **3 Background**

- 3.1** In some circumstances, it is necessary for Midlothian Council employees, in the course of their duties, to make observations of a person or persons in a covert manner, i.e. without that person's knowledge, or to instruct third parties to do so on the Council's behalf. By their nature, actions of this sort are potentially intrusive (in the ordinary sense of the word) and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights and the Human Rights Act 1998 ("the right to respect for private and family life").

The Regulation of Investigatory Powers (Scotland) Act 2000 ("RIPSA") provides a legal framework for covert surveillance by public authorities such as Midlothian Council. Any covert surveillance by officers must be carried out in terms of the Council's Covert Surveillance Policy. The objective of this policy is to ensure that all covert surveillance by Midlothian Council employees is carried out effectively, while remaining in accordance with the law.

- 3.2** It must be stressed that Midlothian Council does not engage in surveillance activities which are legally classed as "intrusive" eg phone tapping or mail interception. The Council's covert surveillance has simply involved test purchasing, noise monitoring or CCTV of anti-social behaviour.
- 3.3** The Council's covert surveillance policy requires that, if an investigating officer considers it necessary, any surveillance must be approved by one of the five Authorised Officers within the Council (the Chief Executive, Executive Director, Place, Executive Director, Children, Young People and Partnerships, Head of Customer and Housing Services and the Legal Services Manager). These authorisations and consequent reviews and cancellations are then stored within legal services in line with the Council's data retention policies.
- 3.4** In the last three years, the Council has carried out very few surveillance activities. There were no such activities during 2020/21 (to date) due to the COVID Pandemic but in any event there has been a general downwards trend in recent years. The number of surveillance activities are as follows:

2018/19 – 8  
2019/20 – 5  
2020/21 – 0

It must be noted that none of these activities disclosed sensitive or personal data.

The Council has not authorised any Covert Human Intelligence Sources within the last three years.

- 3.5** The Council not only has the Covert Surveillance Policy referred to above but also has Covert Human Intelligence Sources and Social Media policies which are all reviewed on a three yearly basis. The current versions of these policies are appended to this Report and members are requested to note the terms of the Policies.

#### **4 Report Implications (Resource, Digital and Risk)**

##### **4.1 Resource**

None

##### **4.2 Digital**

None

##### **4.3 Risk**

There are no risks inherent in this Report, however, if the procedures outlined in the Covert Surveillance Policy are not followed, any evidence acquired may have been acquired unlawfully. It may therefore not be admissible in court, and the Procurator Fiscal is unlikely to take proceedings on the basis of such evidence. Midlothian Council may also be exposed to legal action.

##### **4.4 Ensuring Equalities (if required a separate IIA must be completed)**

This report does not recommend any change to policy or practice and therefore does not require an Equalities Impact Assessment.

##### **4.4 Additional Report Implications**

See Appendix A

#### **Appendices**

**Appendix A – Additional Report Implications**

**Appendix B – Covert Surveillance Policies**

## APPENDIX A – Report Implications

### A.1 Key Priorities within the Single Midlothian Plan

Not applicable

### A.2 Key Drivers for Change

Key drivers addressed in this report:

- ☐ Holistic Working
- ☐ Hub and Spoke
- ☐ Modern
- ☐ Sustainable
- ☐ Transformational
- ☐ Preventative
- ☐ Asset-based
- ☐ Continuous Improvement
- ☐ One size fits one
- ☒ None of the above

### A.3 Key Delivery Streams

Key delivery streams addressed in this report:

- ☐ One Council Working with you, for you
- ☐ Preventative and Sustainable
- ☐ Efficient and Modern
- ☐ Innovative and Ambitious
- ☒ None of the above

### A.4 Delivering Best Value

The report does not directly impact on Delivering Best Value

### A.5 Involving Communities and Other Stakeholders

The report does not directly relate to involving communities

### A.6 Impact on Performance and Outcomes

The report does not directly impact on Midlothian Council's performance and outcomes

### A.7 Adopting a Preventative Approach

Not applicable

### A.8 Supporting Sustainable Development

Not applicable

## APPENDIX B

### Background Papers/Resource Links (if applicable)

[Covert Surveillance Policy and Guidance.doc](#)

[Covert Human Intelligence Sources Policy and Guidance.doc](#)

[Social Media Policy.doc](#)