

Covert Surveillance Annual Report

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 during 2023.

Date: 21 February 2024

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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" e.g. phone tapping or mail interception. The Council's covert surveillance has simply involved test purchasing, social media, 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, Chief Officer, Place and the Legal and Governance 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** Whilst the Council has never made prolific use of covert surveillance (peak usage being 42 cases in 2012/13 and 22 cases in 2014/15), there has been a downward trend in the Council's surveillance activities in recent years although numbers are starting to rise slowly following the pandemic. The Council only carried out 4 covert surveillance activities in 2023.

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

The Council has not authorised any Covert Human Intelligence Sources during this period.

- 3.5** The Council not only has the Covert Surveillance Policy referred to above but also has [Covert Human Intelligence Sources](#) and [Surveillance through Social Media](#) policies. These Policies were all reviewed during 2022, the updated versions were approved by the Corporate Management Team and the final versions were reported to Council on 21 March 2023. The current versions of these policies are hyperlinked within this report and available on the Council's website. Members are reminded of 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 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