

Covert Surveillance

Report by Kevin Anderson, 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 the requirement of the Investigatory Powers Commissioner's Office (IPCO) to advise the Council of covert surveillance actions in terms of the Regulation of Investigatory Powers (Scotland) Act 2000 ("RIPSA") by the Council during 2021 and 2022.

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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").
- 3.2** 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 (Appendix B). 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.
- 3.3** 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.
- 3.4** 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:
- Chief Executive;
 - Executive Director, Place;
 - Executive Director, Children, Young People and Partnerships;
 - Chief Officer, Place; and
 - 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.

- 3.5** 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 number of surveillance activities in 2021 and 2022 are 2 and 6 respectively. 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.

- 3.6** The Council has a Covert Surveillance Policy referred to in 3.2 and its Covert Human Intelligence Sources Policy (Appendix C) and the Social Media Policy (Appendix D). These policies were all reviewed during 2022 and the updated versions were approved by the Corporate Management Team on 18 January 2023. 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, the evidence acquired may have been acquired unlawfully. Therefore it may 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.

- 4.5 Additional Report Implications**
See Appendix A

Appendices

Appendix A – Additional Report Implications

Appendix B – Covert Surveillance Policy and Guidance

Appendix C – Covert Human Intelligence Sources Policy and Guidance

Appendix D – Social Media Policy

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