

19 January 2017

FOI Request

You contacted this office in November 2016 to request information using the Freedom of Information Act. You specifically asked for:

1. **“Records relating to the purchase of CCDC equipment, referred to in the Alliance Government Group minutes referenced above, including purchase orders, invoices, contracts, loan agreements, solicitation letters, correspondence with companies and other similar records.”**

and

2. **“Legislation, codes of practice, policy statements, guides, manuals, memoranda, presentations, training materials or other records governing the use of CCDC equipment by West Midlands Police, including restrictions on when, where, how and against whom it may be used, limitations on retention and use of collected data, guidance on when a warrant or other legal process must be obtained, and rules governing when the existence and use of CCDC equipment may be revealed to the public, criminal defendants, or judges.”**

In response, I advised you that our data is not organised in a way to easily search for all of the information you requested and therefore your request exceeded the appropriate limit (FOIA, s12(1)). However, in an attempt to assist you I offered to arrange for a search, within the cost limit, of the following records:

- The Police and Crime Commissioner & West Midlands Police procurement system for 2015-16
- The Finance folder held on Sharepoint
- The Procurement folder held on Sharepoint
- Minutes of the Strategic Policing and Crime Board monthly meetings 2015-16

using the key words “CCDC”, “IMSI Catchers”, “IMSI Grabbers”, “Cell site simulators” and “Stingrays”.

I also pointed out that **any located information might be subject to the application of exemptions under the Act; and that nothing in my response should be taken as confirming that any information relevant to your request is or is not held.**

You responded with a letter dated 15 December 2016 in which you agreed with the searches as suggested but asked for the key words/phrases to include: (1) "Covert Communications Data Capture", (2) "CCDC", (3) "IMSI Catchers", (4) "IMSI Grabbers" and (5) "IMSI Covert Communications".

Additionally, you asked for clarification of whether your request for "legislation, codes of practice, policy statements, guides, manuals, memoranda, presentations, training materials or other records governing the use of CCDC equipment by West Midlands", fell within the limitation identified. You stated that you felt, "these records do not constitute "data" that requires extensive searches as they relate to the legal framework governing the West Midlands Police's exercise of its powers."

I must refer you to the sentence highlighted above and advise you that your request attracts four exemptions found within Freedom of Information Act legislation. In detail those exemptions are:

- **Section 23(5) – Information supplied by, or concerning, certain security bodies**
- **Section 24(2) – National security**
- **Section 30(3) – Investigations and proceedings conducted by public authorities**
- **Section 31(3) – Law enforcement**

Section 23 is a class based absolute exemption and there is no requirement to consider the public interest test in this area.

Section 30 is a class based qualified exemption and consideration must be given as to whether there is a public interest in neither confirming nor denying the information exists is the appropriate response.

Sections 24 and 31 are prejudice based qualified exemptions and there is a requirement to articulate the harm that would be caused in confirming or nor that the information is held as well as carrying out a public interest test.

The overall harm for the NCND is as follows:

Any disclosure under FOIA is a disclosure to the world at large, and confirming or denying the use of specialist techniques which may or may not exist, and which (should they exist) the police service may or may not deploy in specific circumstances would prejudice law enforcement. If the requested information was held by the force, confirmation of this fact would reveal that the police have access to sophisticated communications analysis techniques. This would be damaging as it would (i) limit operational capabilities as criminals/terrorists would gain a greater understanding of police methods and techniques, enabling them to take steps to counter them; and (ii) provide an indication to any individual who may be undertaking criminal/terrorist activities that the police service may be aware of their presence and taking counter terrorist measures.

Conversely, if information was not held by the force, and a denial was issued, this would reveal to those same individuals that their activities are unlikely to have been detected by the police. It may also suggest (whether correctly or not) the limitations of police capabilities in this area, which may further encourage criminal/terrorist activity by exposing a potential vulnerability.

Disclosure of the information could confirm to those involved in criminality or terrorism that they are or have been the subject of such activity, allowing them to gauge the frequency of its use and to take measures to circumvent its use. Any compromise of, or reduction in such techniques by forces would substantially prejudice the ability of forces to police such events.

This detrimental effect is increased if the request is made to several different law enforcement bodies. In addition to the local criminal fraternity now being better informed, those intent on organised crime throughout the UK will be able to 'map' where the use of certain tactics are or are not deployed.

This can be useful information to those committing crimes of drugs and terrorist activities. For example, to state that no information is held in one area and then exempt information held in another, would itself provide acknowledgement that the technique has been used at that second location. This could have the likelihood of identifying location-specific operations, enabling individuals to become aware of whether their activities have been detected. This in turn could lead to them moving their operations, destroying evidence, or avoiding those areas, ultimately compromising police tactics, operations and future prosecutions.

Any information identifying the focus of policing activity could be used to the advantage of terrorists or criminal organisations. Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both national security and law enforcement.

Factors favouring confirming or denying whether any other information is held for Section 24

The public is entitled to know where their public funds are being spent and a better informed public can take steps to protect themselves.

Factors against confirming or denying whether any other information is held for Section 24

By confirming or denying the use of specialist techniques could render security measures less effective. This could lead to the compromise of on-going or future operations to protect the security or infra-structure of the UK and increase the risk of harm to the public.

Factors favouring confirming or denying whether any other information is held for Section 30

The public are entitled to know what their public funds are spent on. Investigations may be closed and any proceedings may have been completed, and the investigations may have been high profile and had national implications.

Factors against confirming or denying whether any other information is held for Section 30

The force's future law enforcement capabilities would be affected and this would hinder the prevention and detection of crime.

Factors favouring confirming or denying whether any other information is held for Section 31

Better awareness may reduce crime or lead to more information from the public, and the public would be able to take steps to protect themselves. Some information is already in the public domain.

Factors against confirming or denying whether any other information is held for Section 31

Law enforcement tactics would be compromised which would hinder the prevention or detection of crime if the level of use of such tactics were openly discussed. This would impact on police resources, more crime would then be committed and individuals placed at risk.

Balance test

The security of the country is of paramount importance and the Police service will not divulge whether information is or is not held if to do so could undermine National Security or compromise law enforcement. Whilst there is a public interest in the transparency of policing operations and in this case providing assurance that the police service is appropriately and effectively engaging with the threat posed by the criminal fraternity, there is a very strong public interest in safeguarding both national security and the integrity of police investigations and operations in this area.

As much as there is public interest in knowing that policing activity is appropriate and balanced in matters of national security this will only be overridden in exceptional circumstances. Therefore it is our opinion that for these issues the balancing test for confirming or denying whether any other information is held regarding this technique is not made out. This argument is obviously transferable to all police tactics.

There is also no requirement to satisfy any public concern over the legality of police operations and the tactics that may or may not be used. The force is already held to account by statute, for example the Police and Criminal Evidence Act and the Regulation of Investigatory Powers Act and independent bodies such as Her Majesty's Inspectorate of Constabulary, the Independent Police Complaints Commission and the Office of the Surveillance Commissioner. Our accountability is therefore not enhanced by confirming or denying that any information is held.

None of the above can be viewed as an inference that the information you seek does or does not exist.

Yours sincerely

Jonathan Jardine
Chief Executive