

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2018

Public Authority: Chief Constable of Kent Police
Address: Kent Police Headquarters
Sutton Road
Maidstone
Kent
ME15 9BZ

Complainant: Rosie Brighthouse obo Privacy International
Address: rosieb@libertyhumanrights.org.uk

Decision (including any steps ordered)

1. The complainant has requested information about the purchase and use of Covert Communications Data Capture ("CCDC") from Kent Police ("KP"). KP would neither confirm nor deny ("NCND") whether it holds the requested information, citing the exemptions at sections 23(5) (information supplied by, or relating to, bodies dealing with security matters), 24(2) (national security) and 31(3) (law enforcement) of the FOIA for the request in its entirety.
2. In respect of parts (1) and (3) of the request the Commissioner's decision is that sections 23(5) and 24(2) were cited correctly so KP was not obliged to confirm or deny whether the requested information is held; this is also her position in respect of some of part (4) of the request.
3. For part (2) of the request and the 'legislation' and 'codes of practice' elements of part (4) of the request, the Commissioner's decision is that the exemptions were applied incorrectly. The KP is required to confirm or deny whether this information is held and either disclose it or issue a fresh response compliant with section 17 of the FOIA.

4. KP must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The Commissioner is considering 9 related cases from this complainant in respect of similar information requests being made to different public authorities. They are dealt with under reference numbers FS50728051 to FS50728059 inclusive.
6. As the different authorities dealt with their requests within different time frames the Commissioner agreed to deal with the substantive complaint about all the requests outside of her usual 3 month deadline for accepting complaints. This agreement was made in advance, in May 2017, when some refusal notices / internal reviews were outstanding for some of the public authorities concerned.
7. The request in this case is similar to the requests for information which the Commissioner has considered under references FS50728051 to FS50728056 and FS50728059, all of which are being issued at the same time. The decision notice FS50728051 is taking the 'lead' in respect of these decisions.

Request and response

8. On 1 November 2016 the complainant wrote to the Office of the Police and Crime Commissioner for Kent ("OPCC") and requested information in the following terms:

"I am writing on behalf of [name removed] to seek records ... relating to the purchase and use of mobile phone surveillance equipment by Kent Police.

I refer, in particular, to the recent article written by the journalist collective The Bristol Cable "Revealed: Bristol's police and mass mobile phone surveillance". The article discusses the purchase of "Covert Communications Data Capture" (CCDC) equipment by different police forces around the United Kingdom. In particular, it makes reference to the minutes of an Alliance Governance Group meeting in May 2016 between Warwickshire and West Mercia Police in which the topic of CCDC equipment was discussed.

Specifically, the minutes record: "Within the West Midlands region both West Midlands and Staffordshire Police have recently purchased and operated 4G compatible CCDC equipment. Both have purchased the same equipment from the company referred to as option 3." The Minutes then indicate that the following decision was made: "Both PCCs [West Mercia and Warwickshire Police and Crime Commissioners] agreed to Replacing the existing [CCDC] equipment with a new supplier."

After searching Kent Police's publicly available records, I discovered reference to "Covert Communications Data Capture" equipment in the document "Group Accounts for the Police and Crime Commissioner for Kent and the Chief Constable for Kent Police". Specifically, at page 50 under "Note 11 – Intangible Assets", CCDC equipment is indicated as an intangible asset with a "useful life" of "7-10 years".

[Name removed] requests the following records:

- 1. Records relating to the purchase of CCDC equipment by Kent Police, including purchase orders, invoices, contracts, loan agreements, solicitation letters, correspondence with companies and other similar records.*
- 2. Marketing or promotional materials received by Kent Police relating to CCDC equipment.*
- 3. All requests by any corporation or any government agency to Kent Police to keep confidential any aspect of Kent Police's possession and use of CCDC equipment, including non-disclosure agreements between Kent Police and any corporation or government agency, regarding Kent Police's possession and use of CCDC equipment.*
- 4. Legislation, codes of practice, policy statements, guides, manuals, memoranda, presentations, training presentations or other records governing the possession and use of CCDC equipment by Kent 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.*

[Name removed] seeks records regardless of how CCDC equipment is identified. In this respect, [name removed] notes that CCDC equipment can be referred to using a range of other terms,

including "IMSI Catchers", "IMSI Grabbers", "Cell site simulators" and "Stingrays".

Please include copies of material that you hold either in the form of paper or electronic records, including emails. If possible, please provide all requested records in electronic format.

Upon locating the requested records, please contact us and advise us of any costs of providing copies, so that we may decide whether it is necessary to narrow our request".

9. The OPCC wrote to the complainant on 29 November 2016 and advised that it considered the request to relate to KP rather than itself and it had therefore transferred it to KP for a response.
10. KP responded on 9 December 2016. It would NCND holding the requested information, citing the exemptions at sections 23(5), 24(2), 30(3) and 31(3) of the FOIA.
11. Following an internal review KP wrote to the complainant on 21 February 2017. It maintained its position.
12. During the Commissioner's investigation, KP removed reliance on section 30(3).

Scope of the case

13. The complainant initially contacted the Commissioner on 17 May 2017. She advised of her intention to file a number of related complaints against different public authorities and requested a pause in the time limit for bringing such complaints.
14. Having received the necessary responses from all of the various public authorities, with the exception of two internal reviews, the complainant wrote to the Commissioner again on 9 February 2018 with her grounds of complaint in this case. She asked the Commissioner to consider the application of the exemptions cited.
15. The Commissioner will consider KP's application of exemptions to the request which was transferred to it by the OPCC.

Reasons for decision

16. The request in this case is similar to a request for information which the Commissioner has considered alongside this case, reference

FS50728051. The decision notice in that case is also being issued at the same time as this case.

17. Having considered all the factors applicable to this case, the Commissioner is satisfied that the similarity between the information request in this case and the request in case reference FS50728051 is such that she is able to reach the same decision about the citing of sections 23(5) and 24(2) in this case and the lack of necessity to consider section 31(3).
18. For brevity, the Commissioner will not reproduce the content of that decision notice here but she has adopted the same analysis and concluded that KP was entitled to rely on sections 23(5) and 24(2) in respect of parts (1) and (3) of the request as well as some of part (4) and that in relation to the latter exemption the public interest favoured maintaining the exemption.
19. However, in respect of part (2) of the request and the 'legislation' and 'codes of practice' elements of part (4), the Commissioner finds that none of the exemptions cited are appropriate and KP must confirm or deny whether any information is held. If information is held, it should either be disclosed or KP should issue a fresh response compliant with section 17 of the FOIA.

Right of appeal

20. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed 

Carolyn Howes
Senior Case Officer
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Wycliffe House
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Wilmslow
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