Home Office

Knowledge & Information Management Unit
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London SW1P 4DF

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(switchboard)

www.homeoffice.gov.uk

[redacted]

Email: [redacted]

26 August 2021

Dear [redacted]

Freedom of Information request our ref: 63509 internal review

Thank you for your email of 22 June 2021 in which you asked for an internal review of the response to your Freedom of Information (FOI) request. Your FOI request of 31 March 2021 asked for information in relation to data extraction procedures and policies conducted by the Home Office. Your request can be viewed in full at **Annex A.**

I have now completed the review and have assessed the substance of the response provided to you. I can confirm that I was not involved in the initial handling of your request.

The responding unit confirmed that some of the information you requested was held by the Home Office. They decided that some of the information was exempt from disclosure under section 31(1)(a) and some of the information you requested could neither be confirmed nor denied as being held under section 31(3) of the FOIA. A full copy of the response can be found in **Annex B.**

The review is based on the points you have raised in your internal review request which can be found in full at **Annex C.**

The crux of your argument is that you required further clarification on the legislation being relied upon by Immigration Enforcement and Border Force to use data extraction technology. You have also stated that information on data extraction is publicly available from other agencies and government departments. Therefore, you do not accept, based on the above, that revealing the contents of these policies, guidance, training, data protection impact assessments and statistics has the potential to undermine steps being

INVESTORS IN PEOPLE

taken to tackle organised crime, protect vulnerable individuals, and safeguard national security.

I have carefully considered your original FOI request and consulted with the responding unit. I have considered the 10 parts of your initial request for information. I will therefore address each of the parts of your request in turn:-

1. Can you confirm under what legal basis Immigration Enforcement and Border Force use such tools?

This part of your request was answered in the initial response. However, as part of your IR you have asked for clarification on the legislation used to seize devices and to extract data. The primary legal basis is:

- By informed agreement, Police & Criminal Evidence Act 1984, Immigration Act 2016.

- Devices are generally seized under s8, s18, s19 of the Police and Criminal Evidence Act or s48 of the Immigration Act 2016.

- Data is extracted whilst the data is lawfully retained under s22 of the Police and Criminal Evidence Act or s48 of the Immigration Act 2016.

- Immigration Enforcement have a statutory basis in law placed on investigators by the Criminal Procedure and Investigations Act 1996 (CPIA) and its Code of Practice to:
  "pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances." - subject to paragraph 3.5 of the CPIA Codes of Practice 2020.

2. Can you confirm for what purposes they use such tools?

The lawful purpose for using such tools has been set out in full within the original response. It should be noted that Immigration Enforcement perform both law enforcement roles, which would be processed under Part 3 of the DPA, and also processing by consent, substantial public interest, safeguarding of children and individuals at risk, legal claims and preventing fraud under Part 2 of the DPA (UK GDPR).

At the time of the response, there was no published policy explicitly for the processing of mobile phone data. This policy can now be found at the link below:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000530/digital-device-extraction-policy-v1.0-ext.pdf

3. Please confirm the existence of a policy governing the use of such tools and provide a copy of the relevant current version.

The Immigration Enforcement Digital Device Extraction Policy was published on 7 July 2021 and as noted above, can be found at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000530/digital-device-extraction-policy-v1.0-ext.pdf

4. Are your officers provided with written guidance and policies on the use of such tools? If so, please provide a copy.

The responding unit originally exempted this part of your request from disclosure under section 31(1)(a) of the FOIA. They provided a public interest test at the time which set out the reasoning for their decision not to disclose this information. I have considered the arguments for and against disclosing this information. The disclosure of such information has the potential to undermine steps being taken to tackle organised crime, protect vulnerable individuals, and safeguard national security. It is reasonable that the Home Office should be taking measures to protect the public from such crimes, and it would not be in the public interest if such information were to become freely available. Therefore, I agree that the argument falls in favor of not disclosing this information.

5. How many of your officers are trained in the use of such tools?

The number of officers trained to use such tools is 104.

6. Has there been a privacy or data protection impact assessment undertaken regarding the use of such tools? If so, please provide a copy.

A copy of the DPIA for Immigration Enforcement Criminal and Financial Investigation Kiosk use is attached in a redacted format for release. The redacted sections fall for exemption under section 31(1)(a) (detection or prevention of crime) as per the public interest arguments mentioned at point 4 above, or where applicable section 40(2) (personal information). Personal information has been withheld under section 40(2) of the FOIA because of the condition at section 40(3A)(a) where this concerns the personal data of third parties. The Home Office has obligations under data protection legislation and in law generally to protect personal data. This exempts personal data from release if disclosure would contravene any of the data protection principles in Article 5(1) of the UK GDPR and section 34(1) of the Data Protection Act 2018. The DPIA can be found in **Annex D.**

7. Does either agency track how many devices it has scanned using such tools? If so, please provide data on how many devices have been scanned.

The number of extractions which took place between 01/01/20 – 01/01/21 (as specified in your IR) is 4925.

8. Do you use data extraction technology that includes cloud analytics and/or cloud extraction capabilities e.g. Cellebrite UFED Cloud Analyser, Magnet Axiom Cloud or Oxygen Forensics Cloud Extractor?

See my response to part 10 below.

9. Do you have other technologies that allow you to access cloud-based accounts and extract this data?

See my response to part 10 below.

10. Please confirm the legal basis you rely on to conduct cloud analytics/extraction.

The responding unit originally exempted this part of your request under section 31(3) of the FOIA and would neither confirm nor deny that they held this information. They provided a public interest test at the time which set out the reasoning for their decision. I have considered their arguments for and against confirming whether this information is held.

The Home Office has a responsibility to protect the public and to prevent organized immigration crime. To either confirm or deny the existence of this information would seriously jeapordise their ability to do this and would enable organised crime groups to understand what measures may or may not be in place to tackle such crimes. I therefore agree that confirming or denying whether information is held in relation to investigative procedures, activity and technology has the potential to prejudice the prevention and detection of crime and prejudice national security.

In conclusion, I am satisfied that the original response to your initial FOI request was partially correct and additional information has now been provided to you in this response. I hope the explanation above has helped explain the reason for the response in this case.

This completes the internal review by the Home Office.

Yours sincerely,

Information Rights Team

Annex A – Original request dated 31 March 2021

PI FOIA Request Data Extraction.pdf

Annex B – Original response dated June 2021

Immigration Enforcement
Secretariat
Sandford House
41 Homer Road
Solihull
B91 3QJ

www.gov.uk/home-office

21 April 2021

Dear [redacted]

Re: Freedom of Information request – 63509

Thank you for your email of 31 March, in which you ask for information in relation to data extraction procedures and policies conducted by the Home Office. Your request, which is set out in Annex A, has been handled as a request for information under the Freedom of Information Act 2000 (FOIA).

Immigration Enforcement is a law enforcement command within the Home Office responsible for the prevention of immigration abuse and pursuance of offenders to increase compliance with the immigration rules. The identification and protection of vulnerable people is a priority to Immigration Enforcement, and to this end, we are responsible for investigating suspected immigration offences. In line with such investigations, there may be a need to seize mobile devices of those who are suspected of being involved in criminality where it is suspected material relevant to an investigation is contained on the device.

I am able to disclose some of the information that you have requested. For ease, these have been laid out using the number sequence contained within your request.

1. The use of tools (hardware and software) is not in itself governed by legislation, however digital devices will only be subject to data extraction when they are lawfully in the possession of Immigration Enforcement.

2. The primary purpose for processing data is set out in Section 31 of the Data Protection Act 2018 ('The Law Enforcement Purposes') – the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.
   Data may also be processed in accordance with Section 8 of the DPA 2018, in relation to the performance of a task carried out in the public interest where it is necessary for:
   (a) the administration of justice

(c) the exercise of a function conferred on a person by an enactment or rule of law
(d) the exercise of a function of the Crown, a Minister of the Crown, or a government department.
In some circumstances data will be processed for a public task or vital interest where there is no intention to pursue a criminal investigation, but it is nevertheless necessary to process such data to allow an effective enquiry.

I can also confirm that the Home Office holds the information that you have requested in questions numbered 3 - 7. However, after careful consideration we have decided that this information is exempt from disclosure under section 31(1)(a) of the FOIA. This provides that information can be withheld where disclosure would or would likely to prejudice the prevention or detection of crime, and the public interest falls in favor of maintaining the exemption.

Arguments for and against disclosure in terms of the public interest, with the reasons for our conclusion, are set out in Annex B.

We neither confirm nor deny whether we hold the information that you have requested in questions 8 - 10. Section 31(3) of the FOIA absolves us from the requirement to say whether or not we hold information, if compliance with Section 1(1)(a) would, or would likely to, prejudice any of the matters mentioned in Section 31(1) and the public interest falls in favor of neither confirming nor denying.

An explanation of the public interest test is set out in the attached Annex B.

This response should not be taken as conclusive evidence that the information you have requested is or is not held by the Home Office.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to foirequests@homeoffice.gov.uk, quoting reference 63509. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request would be reassessed by staff who were not involved in providing you with this response. If you were to remain dissatisfied after an internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the FOIA.

Yours sincerely

Immigration Enforcement Secretariat
ImmigrationEnforcementFOIPQ@HomeOffice.gov.uk

[See Annex A and B below]

Annex A

Request for Information

We hereby request access to the following information:
1. Can you confirm under what legal basis Immigration Enforcement and Border Force use such tools?
2. Can you confirm for what purposes they use such tools?
3. Please confirm the existence of a policy governing the use of such tools and provide a copy of the relevant current version.
4. Are your officers provided with written guidance and policies on the use of such tools? If so, please provide a copy.
5. How many of your officers are trained in the use of such tools?
6. Has there been a privacy or data protection impact assessment undertaken regarding the use of such tools? If so, please provide a copy.
7. Does either agency track how many devices it has scanned using such tools? If so, please provide data on how many devices have been scanned.
8. Do you use data extraction technology that includes cloud analytics and/or cloud extraction capabilities e.g. Cellebrite UFED Cloud Analyser, Magnet Axiom Cloud or Oxygen
Forensics Cloud Extractor?
9. Do you have other technologies that allow you to access cloud-based accounts and extract this data?
10. Please confirm the legal basis you rely on to conduct cloud analytics/extraction.

Annex B

Freedom of Information request from Edin Omanovic (reference 63509)

Information requested

See Annex A.

Response

Questions 3-7 fall for exemption under Section 31(1)(a). Questions 8 -10 under Section 31(3).

Public interest test in relation to section 31(1)(a)

Some of the exemptions in the FOI Act, referred to as ‘qualified’ exemptions, are subject to a public interest test (PIT). This test is used to balance the public interest in disclosure against the public interest in favour of withholding the information, or the considerations for and against the requirement to say whether the information requested is held or not. We must carry out a PIT where we are considering using any of the qualified exemptions in response to a request for information.

The ‘public interest’ is not necessarily the same as what interests the public. In carrying out a PIT we consider the greater good or benefit to the community as a whole if the information is released or not. Transparency and the ‘right to know’ must be balanced against the need to enable effective government and to serve the best interests of the public.

The FOIA is 'applicant blind'. This means that we cannot, and do not, ask about the motives of anyone who asks for information. In providing a response to one person, we are expressing a willingness to provide the same response to anyone, including those who might represent a threat to the UK.

Section 31(1)(a)

Considerations in favour of disclosing the information

There is a general public interest in openness and transparency in government, which will serve to increase public trust. There is also an interest in access to information about Home Office / Immigration Enforcement procedures relating to investigative activity and prosecutions regarding groups involved in organised immigration crime.

Considerations in favour of maintaining the exemption

Against this there is a very strong public interest in safeguarding the investigative procedures related to the prosecution of those responsible for criminal offences. It is important that the sensitive nature of such procedures and activities are protected, as disclosure of information under FOIA would potentially allow those involved in criminal activity to ascertain the handling and investigatory procedures related to tackling organised immigration crime. This includes information relating to staff capability, data relating to extraction, and technology used for such purposes. Disclosure of such information has the potential to undermine steps being taken to tackle organised crime, protect vulnerable individuals, and safeguard national security.

Conclusion

We conclude that the balance of the public interest lies in maintaining the exemption and withholding the information.

Section 31(3)

Considerations in favour of confirming whether or not we hold the information

There is a general public interest in openness and transparency in government, which will serve to increase public trust. To confirm or deny if any information is held in relation to investigative activities, procedures and policy would support openness and transparency within government. Confirming or denying whether certain technology is used in the process of investigations would serve to inform and educate the public about an issue related to immigration crime and national security.

Considerations in favour of neither confirming nor denying whether we hold the information

To confirm that information is held would suggest that the Home Office / Immigration Enforcement use cloud analytics and/or cloud extraction. Conversely, to confirm that information is not held would suggest that the Home Office / Immigration Enforcement do not utilise such technology. Any response the Home Office might provide on this issue - be it a confirmation or denial - would be of significant value to those involved in immigration crime and would allow organised crime groups to build a picture of

investigative measures and practices that may or may not be in place for protecting vulnerable individuals and tackling criminality. There is also a strong public interest in maintaining the security of the country by prosecuting those involved in immigration crime, and confirming or denying whether information is held in relation to investigative procedures, activity and technology has the potential to prejudice the prevention and detection of crime and negatively impact on national security.

Conclusion

We conclude that the balance of the public interest lies in neither confirming nor denying whether we hold the information. This response should not be taken as confirmation that the information you have requested is or is not held by the Home Office.

Annex C – Internal review request dated 22 June 2021

2021.06.22 - Privacy International FOI Requ

Annex D - DPIA for Immigration Enforcement Criminal and Financial Investigation Kiosk use

DPIA68 IE CFI Kiosk FINAL FOR RELEASE.p

Annex E – Complaints Procedure

If you remain dissatisfied with the response to your FoI request, you have the right of complaint to the Information Commissioner at the following address:
The Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
https://ico.org.uk/make-a-complaint/