

Freedom of Information request

You specifically requested the following –

“ . . . information about the oversight arrangements that are in place for the Police and Crime Commissioner to monitor and control the use of "covert communications data capture", "CCDC", "cell site simulators", "virtual base transceiver stations", "mobile phone jammers", "stingrays" or similar mobile phone surveillance and tracking devices by West Midlands Police. This includes all guidelines, presentations, policy statements, legal opinions, memoranda, briefs, training manuals, emails and any other documents.

“As per Section 4a of Part 1 of the Freedom of Information Act I would like the information in question held at the time when my request is received (draft or otherwise), except that account may be taken of any amendment or deletion made between now and the latest time by which the information is to be communicated to me, being an amendment or deletion that would have been made regardless of the receipt of my request.”

I must 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 not that the information is held, as well as carrying out a public interest test.

The overall harm for the NCND is as follows:

If these kinds of specialist techniques were being used by a police force, it would be reasonable to assume that the Police and Crime Commissioner would have oversight arrangements in place for monitoring and control purposes. However, any disclosure under FOIA is a disclosure to the world at large, and confirming or denying the use and resulting oversight of specialist techniques which may or may not exist, 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 this office, 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 this office, 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 oversight of 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