

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2018

Public Authority: Chief Constable of Avon and Somerset Constabulary

Address: Force Headquarters
PO Box 37
Valley Road
Portishead
Bristol
BS20 8QJ

Decision (including any steps ordered)

1. The complainant has requested information about the purchase and use of Covert Communications Data Capture ("CCDC") from Avon and Somerset Constabulary ("A&S"). A&S 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 A&S 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. A&S 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. A&S 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 Avon and Somerset ("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 Avon and Somerset 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 makes reference to the purchase of equipment from the company CellXion by Avon and Somerset Police under the item "CCDC equipment" for a cost of £169,575. This purchase was documented in records made publicly available on the Avon and Somerset Police and Crime Commissioner website.

The article also explains that the acronym "CCDC equipment" appears to refer to "Covert Communications Data Capture" as spelled out in the minutes of an Alliance Governance Group meeting in May 2016 between Warwickshire and West Mercia Police. Specifically, the minutes state: "Within the West Midlands region both West Midlands and Staffordshire have recently purchased and operated 4G compatible CCDC equipment."

[Name removed] requests the following records:

1. *Purchase orders, invoices, contracts, loan agreements, solicitation letters, correspondence with companies and other similar records regarding Avon and Somerset Police's acquisition of CCDC equipment held by the Police and Crime Commissioner. Please include records of all purchase orders, invoices, contracts, agreements, and communications with CellXion.*
2. *Marketing or promotional materials received by Avon and Somerset Police relating to CCDC equipment.*
3. *All requests by CellXion or any other corporation, or any government agencies, to Avon and Somerset Police, or to the Police and Crime Commissioner to keep confidential any aspect of Avon and Somerset's possession and use of CCDC equipment, including any non-disclosure agreements between Avon and Somerset Police and CellXion or any other corporation, or government agency, regarding Avon and Somerset Police's possession and use of CCDC equipment.*
4. *Legislation, codes of practice, policy statements, guides, manuals, memoranda, presentations, training materials or other records governing the possession and use of CCDC equipment by Avon and Somerset 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 advised the complainant that parts (2) and (4) of the request were directed at A&S and it would transfer these parts to the Constabulary for it to respond directly.
10. On 24 November 2016 A&S responded. It advised that it had considered the request in full, rather than parts (2) and (4) only, and would NCND holding the requested information, citing the exemptions at sections 23(5), 24(2), 30(3) and 31(3) of the FOIA.
11. An internal review was requested on 30 January 2017. This was chased by email on the following dates: 1 March 2017, 19 May 2017, 8 June 2017, 19 July 2017, 21 August 2017 and 7 September 2017. No response has been provided. In view of the considerable delay, the Commissioner has exercised her discretion and will investigate the complaint without an internal review.
12. During the Commissioner's investigation, A&S 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 the internal review in this case and one other, the complainant wrote to the Commissioner again on 6 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 the application of exemptions to the transferred request below. The parts of the request which were considered by the original recipient, the OPCC, have been considered under case reference FS50728052.

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 A&S 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).
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 A&S must confirm or deny whether any information is held. If information is held, it should either be disclosed or A&S should issue a fresh response compliant with section 17 of the FOIA.

Other matters

20. Although it does not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal review

21. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
22. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
23. Although she notes that there are sensitivities around this case because of the subject matter and the exemptions relied on, she is nevertheless concerned that A&S failed to complete an internal review.

24. The Commissioner would like to remind A&S that she routinely monitors the performance of public authorities and their compliance with the legislation. Records of procedural breaches are retained to assist the Commissioner with this process and further remedial work may be required in the future should any patterns of non-compliance emerge.

Right of appeal

25. 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

26. 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.
27. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF