

## FREEDOM OF INFORMATION REQUEST – FOI 639

### Question:

Please supply details of any equipment or services, purchased or rented, to be used for overt communications data capture, or for the mass collection of mobile phone details also known as IMSI-catchers, operating in the force area.

### Response:

Avon and Somerset Police and Crime Commissioner (PCC) can neither confirm nor deny that the PCC's office holds any information relevant to your request as the duty in s1(1)(a) of the Freedom of Information Act 2000 does not apply, by virtue of the following exemptions:

#### ***Exemptions Applied:***

Section 23(5) – Information relating to the Security bodies

Section 24(2) – National security

Section 30(3) – Investigations

Section 31(3) – Law enforcement

Section 23 is an absolute class-based exemption and there is no requirement to consider the public interest test.

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.

Section 30 is a qualified class-based exemption and there is a requirement to conduct a public interest test.

#### **Overall harm for NCND**

By confirming or denying that the Avon and Somerset Police and Crime Commissioner (PCC) holds any information regarding these techniques would in itself disclose exempt information. Stating information is held would confirm usage and the opposite if there is no such information.

Any disclosure under the Freedom of Information Act (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 were held by the PCC, confirmation of this fact would reveal that the PCC or Police has access to sophisticated communications analysis techniques.

This would be damaging to Avon and Somerset PCC and also to Avon and Somerset Police as it would:

- i. limit operational capabilities as criminals/terrorists would gain a greater understanding of the police's 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 PCC and a denial were 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 technical capability by Police forces would substantially prejudice the ability of forces to police their areas which would lead to a greater risk to the public.

This detrimental effect is increased if the request is made to several different law enforcement bodies and also PCCs. 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.

#### **Public Interest Test**

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 ongoing 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

By confirming or denying the use of specialist techniques, 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

By confirming or denying whether such techniques were used would compromise law enforcement tactics and undermine the partnership approach which would hinder the prevention or detection of crime. 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 neither the PCC nor the Police service will 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.

There is also no requirement to satisfy any public concern over the legality of police operations and the tactics the police may or may not use. Police forces are 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. Police accountability is therefore not enhanced by confirming or denying whether any information is held. The PCC is also held to account by bodies such as the Police and Crime Panel and the Independent Police Complaints Commission. PCC accountability is therefore not enhanced by confirming or denying whether any information is held.

Therefore, it is considered that for these issues the balancing test for confirming or denying whether any information is held regarding these techniques is not made out.

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