



Home Office

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Ms Megan Goulding
Liberty
MeganG@libertyhumanrights.org.uk

29 June 2018

Dear Ms Goulding,

Our Refs: ICO: FS50728047; HO: 41663

Your Ref: RB/CCT/11015-1-0/82

Thank you for your letter of 18 May on behalf of your client, Privacy International, regarding the Home Office's response of 16 May to an earlier freedom of information request on CCDC or 'Covert Communications Data Capture' equipment (ref 41663). For convenience, I have included both letters in the Annex to this response.

You have sought clarification on several points related to the handling of your client's request, which I will address in turn.

You asked for further explanation of the statement made in our response of 16 May. As you are aware, Privacy International made a request for records relevant to the use of CCDC equipment by police in the United Kingdom. Whilst the Home Office has revised its position to confirm that we do not hold relevant records, in order to provide a comprehensive response to your client, and given the nature of the request made, regard has been given to the broader question relating to the capability of public authorities to identify communications equipment. As specified in our response, ownership and operation of any relevant devices is an operational matter for public authorities.

You sought clarification on the position regarding relevant legislation governing the use of CCDC equipment. Our response to your client of 17 August 2017 made clear that, whilst legislation in the area is technology neutral (so does not mention specific law enforcement capabilities), the Police Act 1997 (Part 3), the Covert Surveillance and Property Interference Code of Practice (Chapter 7) and the safeguards contained therein, would be of relevance to any investigative activity that may covertly interfere with property or wireless telegraphy. Additionally, Part 5 of the Investigatory Powers Act 2016 (IPA), which provides for equipment interference warrants, will also be of relevance to police force capabilities once these provisions are commenced for law enforcement agencies. The IPA was subject to extensive debates in Parliament and contains numerous safeguards, for

example, making provision for equipment interference warrants to be approved by a Judicial Commissioner under the 'double lock' authorisation model. Part 8 of the IPA ensures that the use of any covert operational techniques deployed by public authorities is subject to robust oversight via the Investigatory Powers Commissioner and Judicial Commissioners. Also of relevance is the revised draft 'Covert Surveillance and Property Interference Code of Practice' currently before Parliament, and the 'Equipment Interference Code of Practice'. Suffice to say, all of the legislation and Codes of Practice referred to above are in the public domain.

Finally, you asked what searches were carried out by the Home Office in order to conclude its (revised) position of 'no information held'. When considering this request, all relevant Home Office policy teams were consulted and each conducted thorough searches for any information held concerning CCDC equipment. As the Acts and Codes of Practice referred to above are technologically neutral, it has been confirmed that there is no information held in relation to the specific technology referred to by your client.

I wish to inform you that we have communicated this position to the ICO.

Yours sincerely

R Taylor
Information Rights Team

Annex



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18 May 2018

Our ref: RB/CCT/11015-1-0/82

Your refs: ICO: FS50728047; HO: 41663

Dear R Taylor,

Re: Freedom of Information Act request – CCDC equipment

I refer to your letter of 16 May 2018 relating to the complaint to the Information Commissioner's Office made by my client, Privacy International, regarding its freedom of information request of 1 November 2016. In your letter you amended your original (neither confirm nor deny) position in response to my client's request and confirmed that you do not hold any information within the scope of the request.

I write to seek clarification of certain aspects of your letter.

As you are aware, Privacy International had requested the following records relevant to the regulation of the use of CCDC equipment by police in the United Kingdom:

"Legislation, codes of practice, policy statements, guides, manuals, memoranda, presentations, training materials or other records governing the use of CCDC equipment in the United Kingdom, 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."

Despite your assertion that the Home Office does not hold any information considered within the scope of the request, the third paragraph of your letter states that where there is an "operational requirement" for public authorities to identify "communications equipment", "a legal mechanism exists within the Investigatory Powers Act 2016 to support use of this capability." The terms you have used are extremely vague and, without further explanation, I cannot understand how these comments relate to my client's request or what meaning they are intended to convey. Please provide an explanation as to what is meant by this paragraph.

Please also confirm whether it is the Home Office's position that there is no legislation, codes of practice, policy statements, guides, manuals, etc, including restrictions and safeguards on the use of CCDC equipment; that there are such safeguards, and they are contained in the Investigatory Powers Act 2016; or that there are other safeguards, but they

are held by other public authorities. Please clarify, in particular, on which sections of the Investigatory Powers Act 2016 the Home Office relies. Finally, please clarify whether the Investigatory Powers Act 2016 is the only record held by the Home Office which comes within the terms of my client's request.

I would find it surprising if the Home Office were to hold no other record falling within the scope of the request. Accordingly, I should be grateful if you could confirm in detail what searches were carried out by the Home Office in order to reach the conclusion that it does not hold any such records.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Megan Goulding', with a long horizontal flourish extending to the right.

Megan Goulding
Lawyer

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Copied to:

Ms C Howes, Information Commissioner's Office
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Ms Rosie Brighthouse
Privacy International
62 Britton Street
London, EC1M 5UY

16 May 2018

Dear Sir/Madam,

Refs: ICO: FS50728047; HO: 41663

I write in reply to your complaint to the Information Commissioner's Office (ICO) regarding the Home Office response to your freedom of information request of 1 November 2016 (please refer to the Annex).

Having reviewed the case and following further consideration of our position, we wish to amend our original (neither confirm nor deny) position, and now wish to confirm that we do not hold any information considered within scope of the request.

More broadly, there may be circumstances under which public authorities have an operational requirement to identify communications equipment, for example when an unknown piece of equipment is in close proximity to a public authority. This is an essential capability which protects vulnerable individuals and allows authorities to investigate, disrupt and dismantle Serious Organised Crime including paedophiles and terrorists, helping to minimise further intrusion. Where there is such an operational requirement, a legal mechanism exists within the Investigatory Powers Act 2016 to support use of this capability.

The Investigatory Powers Act provides strong new safeguards and a world leading oversight regime, with the use of all covert investigatory powers overseen by the independent Investigatory Powers Commissioner. The Act regulates and makes provision about interference with equipment for the purpose of obtaining information, requiring any such activity to be subject to approval by a Judicial Commissioner.

Ownership and operation of any relevant devices by public authorities is an operational matter for them.

I wish to inform you that we have communicated our amended position to the ICO.

Yours sincerely

R Taylor
Information Rights Team