

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **10 July 2018**

Public Authority: **Police and Crime Commissioner for Avon and Somerset**

Address: **Avon and Somerset Police and Crime Commissioner
Valley Road
Portishead
Bristol
BS20 8JJ**

Complainant: **Rosie Brighouse obo Privacy International**

Address: **rosieb@libertyhumanrights.org.uk**

Decision (including any steps ordered)

1. The complainant has requested information about the purchase and use of Covert Communications Data Capture ("CCDC") from the Avon and Somerset Office of the Police and Crime Commissioner (the "OPCC"). The OPCC 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. The Commissioner's decision is that sections 23(5) and 24(2) were cited correctly so the OPCC was not obliged to confirm or deny whether the requested information is held.

Background

2. 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.

3. 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.

Request and response

4. On 1 November 2016 the complainant wrote to the 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".

5. On 29 November 2016, the OPCC responded. In respect of parts (2) and (4) of the request, it advised that the questions were directed at Avon and Somerset Constabulary rather than itself so it had transferred these to the Constabulary and that the Constabulary would reply in due course. In respect of the remainder of the request it would NCND holding the requested information, citing the exemptions at sections 23(5), 24(2), 30(3) and 31(3) of the FOIA.
6. Following an internal review the OPCC wrote to the complainant on 13 February 2017. It maintained its position. During the Commissioner's investigation, the OPCC removed reliance on section 30(3).

Scope of the case

7. 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.
8. Having received the necessary responses from all of the various public authorities, with the exception of two internal reviews, the complainant wrote to the Commissioner again on 9 February 2018 with her grounds of complaint in this case. She asked the Commissioner to consider the application of the exemptions cited.
9. The Commissioner will consider the OPCC's response to parts (1) and (3) of the request below. The remainder of the request has been transferred to Avon and Somerset Constabulary and is considered under case reference FS50728053.
10. 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.

Reasons for decision

11. 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).
12. For brevity, the Commissioner will not reproduce the content of that decision notice here but she has adopted the same analysis and concluded that the OPCC was entitled to rely on sections 23(5) and 24(2) in response to the complainant's request and that in relation to the latter the public interest favoured maintaining the exemption.
13. Having reached this conclusion on sections 23(5) and 24(2), it has not been necessary for the Commissioner to also consider section 31(3).

Right of appeal

14. 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

15. 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.
16. 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
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SK9 5AF