

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 15 August 2011

**Public Authority:** The Chief Constable of Cumbria Constabulary  
**Address:** Police Headquarters  
Carleton Hall  
Penrith  
Cumbria  
CA10 2AU

### Summary

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The complainant asked Cumbria Constabulary (the "public authority") to provide information relating to European Arrest Warrants. The public authority refused to disclose this using the exemptions in sections 23(1) (information supplied by, or relating to, bodies dealing with security matters) and 30(1) (investigations and proceedings conducted by public authorities) of the Freedom of Information Act 2000 (the "Act"). It later varied this stating that, in respect of three parts of the request, that no information was held.

The Commissioner's decision is that, where cited, no information is held. He further finds that the exemption in section 23 is engaged in relation to the remaining parts of the request. He has therefore not considered the applicability of section 30. The complaint is not upheld.

The public authority's handling of the request resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

### The Commissioner's role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## Background

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2. According to the Serious Organised Crime Agency ("SOCA")<sup>1</sup>:

*"The European Arrest Warrant ["EAW"] is the mechanism by which wanted individuals are extradited from one EU member state to another. This can be to face prosecution or to serve a term of imprisonment following an earlier conviction."*

*"SOCA is one of two Central Authorities in the UK (the other being the Crown Office in Scotland) which manage the receipt of European Arrest Warrants, acting effectively as a gateway between requesting and arresting authorities."*

*"When SOCA receives an EAW request it will assess its legal validity against the relevant criteria before passing it for action to the appropriate arresting authority – in the UK this is usually the police force in the region where the subject is believed to be."*

*"When an individual wanted by another member state is believed to be in the UK, an EAW will be submitted to SOCA for it to start the extradition process. SOCA will issue a certificate validating the warrant... A copy of the warrant, the certificate and any intelligence concerning the person's location is forwarded to the appropriate organisation, usually a police force, in order that an arrest can be made."*

3. The following links provide some useful background information about European Arrest Warrants:

<http://www.justice.org.uk/images/pdfs/eurschmidt.pdf>

<http://www.publications.parliament.uk/pa/ld200506/ldselect/ldcom/156/156.pdf>

4. The complainant made the same information request to all regional police forces and received no information from any of them. He subsequently complained to the Commissioner about three of the responses received and the Commissioner has written a Decision Notice for each of these complaints. The Commissioner has issued a Decision Notice for each of these complaints, the other two Notices having the reference numbers FS50367376 and FS50367380.

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<sup>1</sup> [http://www.soca.gov.uk/search?q=eaw&option=com\\_googlemini](http://www.soca.gov.uk/search?q=eaw&option=com_googlemini)

5. A joint response from the relevant public authorities to all three investigations has been co-ordinated by the Association of Chief Police Officers ("ACPO"). ACPO has liaised with SOCA and SOCA has provided its view on the request. This view was subsequently passed from ACPO to the three police forces involved for their information.

## The request

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6. On 28 July 2010 the complainant made the following information request:

***"RE: Questions under the Freedom of Information Act 2000 (FOIA) regarding the European Arrest Warrant***

*I am writing on behalf of Fair Trials International a charity registered at the address above.*

*I would like to make a request to your police force for the following information under the Freedom of Information Act 2000.*

- 1. How many arrests under European Arrest Warrants have been made by police officers from your Force since April 2009?*
- 2. What data does your Force collect and retain in relation to EAWs received from other EU Member States, for example, concerning the issuing Member State, the alleged offence (in case of accusation Warrants) or length of sentence to be served (in the case of conviction Warrants), the nationality of the defendant?*
- 3. If held, please provide figures for the numbers of EAWs processed by your Force in the period since April 2009, broken down by issuing Member State, using the following table if it assists:*

<b>Issuing Member State</b>	<b>Number of EAWs processed since April 2009</b>
Austria	
Belgium	
Bulgaria	
Cyprus	
Czech Republic	

Denmark	
Estonia	
Finland	
France	
Germany	
Greece	
Hungary	
Ireland	
Italy	
Latvia	
Lithuania	
Luxembourg	
Malta	
Netherlands	
Poland	
Portugal	
Romania	
Slovakia	
Slovenia	
Spain	
Sweden	

4. *How many of the EAWs processed by your Force since April 2009 were in respect of serious organized crime or terrorism offences? Alternatively, please provide figures for the number of EAWs processed, under each category offence in the following list:*

<b>Offence category</b>	<b>Number of EAWs</b>
Participation in a criminal organisation	
Terrorism	
Trafficking in human beings	
Sexual exploitation of children and child pornography	
Illicit trafficking in narcotic drugs and psychotropic substances	
Illicit trafficking in weapons, munitions and explosives	
Corruption	
Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of	

the European Communities' financial interests	
Laundering of the proceeds of crime	
Counterfeiting currency, including of the euro	
Computer-related crime	
Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties	
Facilitation of unauthorised entry and residence	
Murder, grievous bodily injury	
Illicit trade in human organs and tissue	
Kidnapping, illegal restraint and hostage-taking	
Racism and xenophobia	
Organised or armed robbery	
Illicit trafficking in cultural goods, including antiques and works of art	
Swindling	
Racketeering and extortion	
Counterfeiting and piracy of products	
Forgery of administrative documents and trafficking therein	
Forgery of means of payment	
Illicit trafficking in hormonal substances and other growth promoters	
Illicit trafficking in nuclear or radioactive materials	
Trafficking in stolen vehicles	
Rape	
Arson	
Crimes within the jurisdiction of the International Criminal Court	
Unlawful seizure of aircraft/ships	
Sabotage	

5. *For how many EAWs processed by your Force has the length of time between the alleged offence and the EAW issue date been longer than (i) 5 years? (ii) 10 years? (iii) 20 years?*
  6. *What has been the total recorded cost to your Force of operating under the EAW regime since April 2009? What is the breakdown of these costs?*
  7. *Please provide any available records of the additional police time and resources required to operate the EAW scheme since April 2009.*
  8. *Please provide any available information you hold about the projected increase in the number of EAWs handled by your Force in the years 2010-2015".*
7. On 2 September 2010 the public authority sent its response. It advised that it did hold information about European Arrest Warrants but that this was exempt by virtue of sections 23(1) and 30(1)(a), (b) and (c).
  8. On 6 September 2010 the complainant requested an internal review.
  9. On 18 October 2010 the public authority provided its internal review. It upheld that sections 23(1) and 30(1) had been properly applied in respect of parts 1 to 5 of the request but stated that no information was held in respect of parts 6 to 8.

## **The investigation**

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### **Scope of the case**

10. On 17 December 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

### **Chronology**

11. On 20 January 2011 the Commissioner commenced his investigation. He wrote to the complainant who confirmed he wished to have each of his three complaints investigated.
12. On 24 January 2011 the Commissioner commenced his enquiries with the public authority.

13. The public authority provided the Commissioner with its response on 23 February 2011 and clarified that it was maintaining the position it had adopted at internal review. It also provided the Commissioner with a copy of the letter which had been written by SOCA as evidence of the application of section 23.
14. The Commissioner raised further queries on 23 February 2011 which were answered on 4 March 2011.

## Analysis

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### Substantive procedural matters

#### Section 1 – general right to access to information

15. This provision has been relied on in respect of parts 6, 7 and 8 of the request only. These relate to the costs of operating the EAW regime, any additional resources required and any projected increase in the number of EAWs to be handled.
16. Section 1 provides that any person making a request for information to a public authority is entitled (a) to be informed in writing by the public authority whether it holds information of the description specified in the request and (b) if that is the case to have that information communicated to him. The public authority has said it holds no relevant information in respect of parts 6, 7 and 8 of the request.

#### *Is relevant recorded information held?*

17. In the Commissioner's view, the normal standard of proof to apply in determining whether a public authority holds any requested information is the civil standard of the balance of probabilities. This is in line with the approach taken by the Information Tribunal in the case of *Bromley & others v the Environment Agency* [EA/2006/0072], in which it stated:

*"...we must consider whether the Information Commissioner's decision that the Environment Agency did not hold any information covered by the original request, beyond that already provided, was correct. In the process, we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities...";*

because

*"...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records".*

18. In deciding where the balance lies, the Commissioner will usually consider, among other things, any reasons offered by the public authority to explain why the information is not held.

*Explanations provided by the public authority*

19. In correspondence with the Commissioner the public authority has confirmed the following:

- The force does not have a specific budget or account code under which work associated with European Arrest Warrants is recorded.
- There are no staff specifically dedicated to providing an EAW function.
- No records are held which identify the amount of time and resources required to operate the EAW scheme (e.g. the time and resources spent on executing warrants) as there is no requirement for this work to be distinguished from other policing functions.

20. Also, with specific reference to part 8 of the request, the public authority advised the Commissioner that:

*"During the course of the Internal Review, the Head of the unit which manages the EAW process was asked to identify whether any information relevant to this question was held. It was subsequently confirmed that no such information was held and that no projections had been made about possible increases in the number of EAW's, which the Constabulary may be required to handle, over the period concerned".*

*The Commissioner's position*

21. The Commissioner considers that the explanations provided as to the public authority's position are reasonable. It does not have a dedicated budget, nor does it have dedicated staff who deal only with EAWs. He also accepts that the public authority has no requirement to distinguish work undertaken on EAWs from other work being performed by the same staff. Therefore, on the balance of probabilities, he accepts the public authority's position that it holds no information and he does not require any further search to be undertaken. The Commissioner has therefore determined that the public authority has complied with



section 1(1)(a) in correctly stating that it holds no recorded information in respect of these parts of the request.

## Exemptions

### Section 23 - information supplied by, or relating to, security bodies

22. This exemption states that:

*"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)".*

23. This exemption is not subject to the public interest, meaning that if the information in question conforms to the class specified in this exemption, it is exempt from disclosure.

24. The full list of the bodies included in section 23(3) is included in the legal annex attached to this notice. The relevant body in this case is SOCA, the successor to NCIS, which falls under the remit of section 23(3). SOCA itself has provided the following assurance in relation to the requested information:

*"I understand that you require confirmation that information relating to European Arrest Warrants is legitimately covered by s23 Freedom of Information Act 2000 (FOIA), in respect of a request that is currently with the Information Commissioner's Office. With regard to this matter I can confirm the following: SOCA is one of two Central Authorities in the UK (the other being the Crown Office in Scotland) which manage the receipt of European Arrest Warrants. SOCA is the authorising authority, conduit of judicial requests and arrangers of handover of subjects as well as providing a liaison between issuing and arresting authorities.*

*In practice, SOCA receives an EAW request, assesses its validity in accordance with the Extradition Act 2003, than [sic] tasks the arrest of the subject to the appropriate arresting authority – in the UK this is normally the police force in the region where the subject is believed to be.*

*Under Section 23 1(1) Information held by a public authority is exempt if it was directly, or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).*

*SOCA is listed in section 23(3)(k) of FOIA and the information held by public authorities (in this case Police Forces) in relation to EAW's is clearly supplied directly by, and/or relates to SOCA.*

*I can confirm that SOCA has seen [the complainant's] full request and is satisfied that all questions relate to SOCA. The questions could not be asked if EAW data had not been directly supplied by SOCA in the first instance.*

*It should be noted that there is currently a proposal to publish some headline statistical data on the SOCA external website relating for example to the number of warrants wanted by and issued to the UK, by month and country. Some of this data has already been provided to some media".*

25. The Commissioner has produced a specialist guide regarding this exemption<sup>2</sup>. Within this guidance he states that the exemption applies to any information which:
- was directly supplied to the public authority by one of the specified security bodies;
  - was indirectly supplied by one of the specified security bodies; or,
  - relates to one of the specified security bodies.
26. The Commissioner here notes that the EAW function is 'owned' by SOCA. He therefore accepts that any information concerning EAWs that the public authority holds is only as a result of it undertaking work on behalf of SOCA. The Commissioner therefore accepts that this exemption is engaged and, accordingly, that the requested information is exempt from disclosure.

## **Procedural requirements**

### **Section 10(1) - Time for compliance**

27. Section 10(1) provides that:
- "Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*
28. Section 1(1) provides that:

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<sup>2</sup>[http://www.ico.gov.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/S23\\_SECURITY\\_BODIES\\_V1\\_FOP097.ashx](http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/S23_SECURITY_BODIES_V1_FOP097.ashx)

*"Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

29. The Commissioner finds that the Constabulary breached section 10(1) by failing to inform the complainant within 20 working days of the request whether or not it held the requested information.

### **Section 17(1) - Refusal of request**

30. Section 17(1) of the Act provides that:

*"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -*

*(a) states that fact,*

*(b) specifies the exemption in question, and*

*(c) states (if that would not otherwise be apparent) why the exemption applies."*

31. In failing to provide a valid refusal notice within the statutory time limit, the Constabulary breached section 17(1).

### **The Decision**

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32. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- it correctly concluded that it held no information in respect of parts 6, 7 and 8 of the request;
- it correctly cited section 23(1) in respect of the remainder of the request.

33. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- in failing to respond within 20 working days it breached sections 10(1) and 17(1) of the Act.

## Steps required

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34. The Commissioner requires no steps to be taken.

## Other matters

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35. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

### *Internal review*

36. Part VI of the section 45 Code of Practice makes it 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. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided 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 be reasonable to take longer but in no case should the time taken exceed 40 working days.
37. The Commissioner does not consider this case to be 'exceptional' and he is therefore concerned that it took over 20 working days for an internal review to be completed.

## Right of Appeal

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38. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

**Dated the 15<sup>th</sup> day of August 2011**

**Signed .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal annex

### Section 23 - information supplied by or relating to, bodies dealing with security matters

#### (1) provides that –

*“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”*

#### (3) provides that –

*“The bodies referred to in subsections (1) and (2) are-*

- (a) the Security Service,*
- (b) the Secret Intelligence Service,*
- (c) the Government Communications Headquarters,*
- (d) the special forces,*
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,*
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,*
- (g) the Tribunal established under section 5 of the Security Service Act 1989,*
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,*
- (i) the Security Vetting Appeals Panel,*
- (j) the Security Commission,*
- (k) the National Criminal Intelligence Service, and*
- (l) the Service Authority for the National Criminal Intelligence Service.”*