

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2016

Public Authority: Chief Constable of Devon & Cornwall Police
Address: Police Headquarters
Middlemoor
Exeter
Devon
EX2 7HQ

Decision (including any steps ordered)

1. The complainant has requested that Devon & Cornwall Police ('D&CP') confirm or deny whether it has used RIPA to intercept journalists' communications data. D&CP refused to deal with the request stating that it was a question rather than a request for recorded information. The Commissioner's decision is that it is a valid request and that D&CP should therefore provide a response.
2. The Commissioner requires D&CP to take the following steps to ensure compliance with the legislation:
 - disclose the requested information or issue a refusal notice in compliance with section 17 of FOIA.
3. D&CP 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

4. This request relates to a Report published by the IOCCO which can be found online¹.
5. The requester is a journalist.

Request and response

6. Following earlier correspondence, on 19 August 2015 the complainant wrote to the Constabulary and requested information in the following terms:

"Please either confirm or deny whether Devon and Cornwall Police was one of the 19 forces identified by the IOCCO as having intercepted journalists' electronic communications data."

7. D&CP responded on 21 August 2015 saying:

"I regret to inform you that your request is not valid under Section 8 of the Freedom of Information Act 2000 (FOIA). This is because you are not asking for the disclosure of recorded information which is held by Devon and Cornwall Police but asking a question requiring a 'yes' or 'no' answer.

Under the FOIA you can request any recorded information that is held by a public authority but as previously advised if this request was re-worded to ask for the information provided to IOCCO this would be exempt under section 31 (law enforcement) of the FOIA."

8. An internal review was not offered – and would not be necessary if the request is not valid - so the complaint is being considered in its absence.

¹ <http://www.iocco-uk.info/docs/IOCCO%20Communications%20Data%20Journalist%20Inquiry%20Report%204Feb15.pdf>

Scope of the case

9. The complainant contacted the Commissioner on 21 August 2015 to complain about the way his request for information had been handled. He asked the Commissioner to consider whether or not it is a valid information request; this will be considered below.

Reasons for decision

Section 8 – request for information

10. Section 8 of the FOIA provides a definition for what constitutes a request for information within the parameters of the Act:

“(1) In this Act any reference to a “request for information” is a reference to such a request which –

(a) is in writing

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.”

11. As the requests were in writing and provided both the complainant's name and an address for correspondence, the Commissioner considers that sections 8(1)(a) and (b) are both met. Instead, the Commissioner will focus on whether the complainant's request meets section 8(1)(c).
12. Section 8(1)(c) is only concerned with the validity of the description, it cannot be used to refuse requests that are unclear.
13. D&CP has also advised the Commissioner that, in its opinion, the request is:
- “...not asking for recorded information ... but is phrased as a question requiring a yes/no answer”.*
14. The Commissioner's view is that the request is legible and clear in intent, the question is whether it describes the information requested. The complainant's request is phrased as a question designed to obtain a 'yes' or 'no' response from the Constabulary and is clearly written with aim of being answered with reference to recorded information. It is also relevant to note the entitlement under section 1(1)(a) of the FOIA:

(1) 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,

15. However, it is apparent from the IOCCO's Report that there are 19 forces which have used RIPA to intercept journalists' communications data, and it is clear that this is what the complainant wants, with specific reference to D&CP, although he asks for it in the format of a question. D&CP will necessarily have responded to the IOCCO in its submission for the Report referred to above and its response will necessarily contain the information which would allow it to respond to the complainant.
16. The previous correspondence, which was refused on the grounds of cost and not on its validity, makes it clear – in the Commissioner's view - what information the complainant is seeking.
17. The Commissioner accepts that the request is valid and D&CP is required to comply with it either by disclosing the requested information or issuing valid refusal notice in line with section 17 of the FOIA.

Right of appeal

18. 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

19. 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.
20. 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

Steve Wood
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SK9 5AF