

19 February 2019

**Freedom of Information Request - Reference No: 20190272**

**REQUEST**

Please can you tell me:

- if the police force is using mobile phone extraction technology
- if so, what is the name of the technology used and what information does it extract
- how many times this technology has been used over the past five years (i.e. how many individuals' phones have been targeted)
- how many times this technology has been used on the owner of a mobile phone who has been vetted by MI5

**RESPONSE**

Section 17 of the Freedom of Information Act 2000 requires South Yorkshire Police, when refusing to provide such information (because the information is exempt), to provide you the applicant with 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).

The exemptions applicable to your request fall under the following sections:

**Section 23(5) – Information supplied by, or concerning, certain security bodies**

**Section 24(2) – National security**

**Section 31(3) – Law enforcement**

Section 23 is a class based absolute exemption and there is no requirement to consider the public interest test in this area.

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 nor that the information is held as well as carrying out a public interest test.

**Overall harm in Neither Confirming Nor Denying that information is held**

By confirming or denying that South Yorkshire Police 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.

Although the techniques are in the public domain, it is how and when they might be used, that are the sensitive issues for the police service. These techniques could be deployed for more high profile sensitive operations, albeit not necessarily in our force area.

Any disclosure under 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 force, confirmation of this fact would reveal that the police has access to sophisticated communications analysis techniques. This would be damaging 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 were not held by the force, 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 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. 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.

#### Factors favouring confirming or denying whether any other information is held for Section 24

The public is entitled to know where its 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 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 the police service will not 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 we may or may not use. 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. Our accountability is therefore not enhanced by confirming or denying whether any information is held.

Therefore it is our opinion that for these issues the balancing test for confirming or denying whether any information is held regarding these techniques is not made out. This argument is obviously transferable to all police tactics.

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