

Our Ref: 1092/09

Your Ref:

Date: 13 February 2009



**Leicestershire
Constabulary**

Professional Standards Department
Data Protection & Information Security
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Dear Mr Clements,

FREEDOM OF INFORMATION REQUEST REFERENCE NO: 1092/08

I write in connection with your request for information dated 21 July 2008 received by the Freedom of Information Unit at Leicestershire Constabulary.

I note you seek access to the following information:

How many applications has Leicestershire police made under the Regulation of Investigatory Powers Act (2000) on behalf of the Portuguese Judicial Police from May 4th 2007 until July 21 2008 ?

Please state the date on which the applications were made, whether they were granted, and under which section of RIPA they were made ?

Please describe the nature of the surveillance/investigatory power used.

Please accept this letter as an acknowledgement of receipt of your request which has been considered under the Freedom of Information Act 2000 (FOIA).

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at s1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at s1(1)(b) is to disclose information that has been confirmed as being held. Where exemptions are relied upon Section 17 of FOIA requires that we provide the applicant with a notice which: a) states that fact b) specifies the exemption(s) in question and c) states (if that would not otherwise be apparent) why the exemption applies.

The Leicestershire Constabulary can neither confirm nor deny that it holds the information you requested as the duty in s1(1)(a) of the Freedom of Information Act 2000 does not apply, by virtue of the following exemptions:

- Section 23(5) Information relating to the Security bodies;
- Section 24(2) National Security;
- Section 30(3) Investigations;
- Section 31(3) Law enforcement;

Section 40(5) Personal information.

This should not be taken as conclusive evidence that any information that would meet your request exists or does not exist.

Sections 23 and 40 are absolute exemptions but sections 24(5), 30(3), and 31(3) are qualified and require us to carry out a public interest balancing test before they can be relied upon. In respect of all four qualified exemptions we have determined that in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether we hold the information.

Disclosure Considerations

To confirm or deny any Police actions in this specialist tactical area would undermine ongoing investigations, reveal policing techniques, risk the identification of individuals, the possibility of revealing involvement of any exempt bodies and the risk undermining National Security.

The Police Service is committed to demonstrating proportionality and accountability regarding surveillance techniques to the appropriate authorities. However, if the Police Service were to either confirm or deny these questions, other covert surveillance tactics will either be compromised or significantly weakened. If the Police Service denies a tactic is used in one request but then exempts for another, requesters can determine the 'exempt' answer is in fact a technique used in policing. The impact could undermine national security, any on-going investigations and any future investigations, as it would enable targeted individuals/groups to become surveillance aware. This would help subjects avoid detection, and inhibit the prevention and detection of crime.

Factors Favouring Compliance with Section 1(1)a (To confirm or deny)

Confirming or denying that these powers have been used would increase public scrutiny of police actions and in turn hold the police service to account. It is appreciated that members of the public will naturally be interested in techniques employed for surveillance. Likewise, we also understand some people believe surveillance (in any form) is used too widely, and therefore an unnecessary intrusion into their privacy. Confirmation or denial of the use of this operational tactic will enable better informed public debate.

Factors Favouring the need to NCND

To confirm or deny if this information does or does not exist will render policing tactics ineffective as previously outlined. There already exist a legislative scrutiny frameworks for RIPA activity: A full report is submitted to the Prime Minister and Scottish Ministers.

The annual report of the Interception of Communications Commissioner is available at: <http://www.official-documents.gov.uk/document/hc0708/hc02/0252/0252.pdf>

The Police Service will not disclose whether or not it has used any specific covert law enforcement technique in relation to the interception of communications. To do so would disclose tactical information to the detriment of those actual techniques. In any case due to the legal constraints under Chapter 1 of part 1 of the RIPA legislation it may actually be a criminal offence to do so.

It may also hinder criminal and national security intelligence led operations. Any release of information that would harm the ability of the Police Service to conduct investigations and protect the public is clearly not in the public interest. Existing scrutiny frameworks exist which report to the highest levels of government to ensure appropriate use of the legislation and provide high level surveillance data.

It is our decision that the Leicestershire Constabulary must maintain a position of neither confirming nor denying that any relevant information is held and that this response which neither confirms nor denies that information is held should not be taken as conclusive evidence that the information you have requested exists or does not exist.

I would like to take this opportunity to thank you for your interest in Leicestershire Constabulary.

Yours sincerely,



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C. J. Moore
Superintendent
Head of Professional Standards