

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 January 2021

Public Authority: Chief Constable of Surrey Police
Address: PO Box 101
Guildford
Surrey
GU1 9PE

Decision (including any steps ordered)

1. The complainant requested information relating to mobile phone extraction technology. Surrey Police ultimately refused to confirm or deny holding the requested information.
2. The Commissioner's decision is that Surrey Police failed to issue, within 20 working days, a refusal notice specifying the exemptions on which it eventually came to rely. She therefore finds that Surrey Police breached section 17 of the FOIA in responding to the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 29 January 2020, the complainant wrote to Surrey Police and requested information in the following terms:

"I am aware that companies are selling technologies to law enforcement that allow them to take vast quantities of personal data from cloud-based apps and accounts. You can read more here

[<https://privacyinternational.org/long-re...>]

I make the following request for documents/information under the Freedom of Information Act:

1. *Do you use mobile phone extraction technology that includes cloud analytics / cloud extraction capabilities e.g. Cellebrite UFED*

Cloud Analyser, Magnet Axiom Cloud or Oxygen Forensics Cloud Extractor

2. *Do you have other technologies that allow you to access cloudbased accounts and extract this data.*
 3. *Please provide a copy of the relevant Data Protection Impact Assessment.*
 4. *Please provide a copy of the relevant local and/or national guidance/standard operating procedure/policy.*
 5. *Please confirm the legal basis you rely on to conduct cloud analytics/extraction”.*
5. The request was made using '*whatdotheyknow*'.
 6. Surrey Police responded on 6 February 2020, citing section 8(1)(b) (request for information) of the FOIA and requesting proof of the applicant's identity.
 7. Following further correspondence, Surrey Police wrote to the complainant on 26 February 2020. It refused to provide the requested information, citing the following exemption as its basis for doing so:
 - section 14(1) (vexatious request).
 8. Following an internal review Surrey Police wrote to the complainant on 16 June 2020 maintaining its original position.

Scope of the case

9. Following earlier correspondence, the complainant contacted the Commissioner on 16 June 2020 to complain about the way his request for information had been handled. He disputed that his request was vexatious, describing it as '*a genuine and serious attempt to obtain information from a public authority*'.
10. He was also dissatisfied with the time taken to carry out the internal review.
11. During the course of the Commissioner's investigation, Surrey Police revisited its handling of the request and issued a revised response. It refused to confirm or deny holding the requested information, citing sections 24(2) (national security) and 31(3) (law enforcement) of the FOIA as its basis for doing so.

12. While he did not dispute the revised response, the complainant was dissatisfied with Surrey Police's handling of the request. He told the Commissioner he considered that it would be appropriate "*for its breaches to be recorded*".

Reasons for decision

Section 17 refusal of request

13. Section 17(1) specifies that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
14. In this case Surrey Police did not seek to apply sections 24(2) and 31(3) within the time for compliance, and therefore breached section 17(1).

Other matters

15. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which she has stated that in her view internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.
16. In this case, Surrey Police failed to complete an internal review in a timely manner.
17. The Commissioner expects Surrey Police to ensure that the internal reviews it handles in the future adhere to the timescales she has set out in her guidance.

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@justice.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

**Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**