

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 February 2016

Public Authority: Chief Constable of Cambridgeshire Constabulary
Address: Constabulary Headquarters
Hinchingsbrooke Park
Huntingdon
PE29 6NP

Decision (including any steps ordered)

1. The complainant has requested that Cambridgeshire Constabulary (the 'Constabulary') confirm or deny whether it has used RIPA to intercept journalists' communications data. The Constabulary 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 the Constabulary should therefore provide a response.
2. The Commissioner requires the Constabulary to take the following steps to ensure compliance with the legislation:
 - disclose the requested information or issue a fresh refusal notice in compliance with section 17 of FOIA.
3. The Constabulary 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 previous related requests which had been refused on the grounds of cost, on 26 August 2015 the complainant wrote to the Constabulary and requested information in the following terms:

"The first duty of a public body when responding to a request is to either confirm or deny that the information is held.

My request was for details of the use by your force of RIPA to intercept journalists' electronic communications data and the IOCCO investigation.

Before I appeal to the ICO, please can you fulfil your duty and either confirm or deny whether Cambridgeshire Constabulary was one of the 19 forces identified by the IOCCO as having used RIPA to intercept journalists' electronic communications data?"

7. The Constabulary responded on 27 August 2015. It advised:

"... we would consider the question in your final paragraph to be a new request as this was not asked within your original submission. However, I would also advise that it would not fulfil the criteria of a valid question under the Act since it invites a 'yes/no' response. If your question were rephrased to request recorded information then it would be considered in the normal manner and within the normal statutory deadlines".

8. This view was reiterated by the Constabulary when it advised:

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

"Please re-read my comments of earlier today and submit a new request which complies with s8 of the FOI Act and it will be considered in the normal manner".

9. 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.

Scope of the case

10. The complainant contacted the Commissioner on 27 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

11. 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."

12. 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).
13. Section 8(1)(c) is only concerned with the validity of the description, it cannot be used to refuse requests that are unclear.
14. In correspondence with the Commissioner the Constabulary advised that it accepted that it could have dealt with this request in a different manner. It advised that it had treated this request 'in isolation' and therefore considered that it was not valid and offered advice to the complainant by suggesting that he re-worded it, as evidenced above. However, it also accepted that the complainant viewed this as a refined request rather than a new one, and that it could therefore have, in its

view, aggregated it to the previous request which had been refused on cost grounds.

15. 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 the 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.

16. 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 the Constabulary, although he asks for it in the format of a question. The Constabulary will necessarily have responded to the IOCCO 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.
17. The previous correspondence, which was initially 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. Whilst he notes that the Constabulary did invite the complainant to clarify his position the Commissioner does not consider that this was necessary.
18. Based on the history of contact in this case, the Commissioner accepts that the request is valid and the Constabulary is therefore 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

19. 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

20. 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.
21. 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

Jon Manners
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Wycliffe House
Water Lane
Wilmslow
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SK9 5AF