

**Force Disclosure Unit**

Wiltshire Police HQ

London Road

Devizes

Wiltshire

SN10 2DN

Tel 101 ext 62005

www.wiltshire.police.ukdisclosure@wiltshire.pnn.police.uk

Date: 31 March 2021

Your ref: FOI

Our ref: FOI 2021/224

Reply contact name is: Ellie James

Dear ****,

I write in connection with your request for information dated 12 March 2021 concerning RIPA powers.

I am required by the Freedom of Information Act 2000 to handle all requests in a manner that is blind as to the identity and motives of the requestor. Any information released as a response to a request is regarded as being published and therefore in the public domain without caveat.

Your request for information has now been considered and I am now able to respond as follows.

You wrote:

Please can you break down the below information for the following calendar years: 2018, 2019 and 2020. Can you also please provide me the information for the period between 1 January 2021 and 28 February 2021.

Q1) Over the stated period(s), on how many occasions did your police force use the Regulation of Investigatory Powers Act to obtain information/communications from the telephone records of journalists, news organisations or any other news organisation employees?

Such investigations would have likely used Part 1 Chapter 2 RIPA powers to acquire communications data to identify journalistic sources.

Please list all such cases, including: the date such information was obtained, the name of the person (and their position) /organisation concerned, what the purpose of obtaining the information was (i.e. what was the police force looking for) and whether the police force succeeded in obtaining the information.

Q2) Could you please tell me on how many occasions, over the stated period(s), your police force applied to a judge in order to be granted the proper authorisation to access such communications as stated above?



INVESTOR IN PEOPLE

Our response:

Q1) Over the stated period(s), on how many occasions did your police force use the Regulation of Investigatory Powers Act to obtain information/communications from the telephone records of journalists, news organisations or any other news organisation employees?

At Wiltshire Police RIPA Part 1 Chapter 2 was superseded by the Investigatory Powers Act 2016 in June 2019 therefore between June 2019 and 28 February 2021 there is **No Information Held** for this question.

For the requested time period of 2018 – July 2019 inclusive Wiltshire Police can neither confirm nor deny that it holds information pertinent to this request as the duty in Section 1(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 40 and 23 are absolute exemptions which means that the legislators have identified that harm would be caused by any release. In addition there is no requirement to consider the public interest test.

With regard to Section 40(5) forces should articulate the Data Protection Principle which would be breached by confirming whether information is or isn't held. In this case, it would be the first principle that is breached inasmuch as personal information must be fairly and lawfully processed.

Section 30 is a class based qualified exemption which means the public interest must be considered.

With Sections 24(2) and 31(3) being prejudiced based qualified exemptions, there is a requirement for us to evidence harm in confirming or denying information is held and also consider the public interest.

Harm in Confirming or Denying Information is Held

Every effort should be made to release information under Freedom of Information. However, to confirm or deny many of the policing actions around RIPA would undermine ongoing investigations, reveal policing techniques, contravene legislation, risk the identification of individuals, the possibility of revealing involvement of any exempt bodies and the risk in undermining National Security.

Irrespective of whether information is or isn't held, to confirm or deny whether Wiltshire Police have acquisitioned Communications Data in relation to journalistic sources would compromise ongoing operations and investigations, and undermine the effective delivery of operational law enforcement by revealing tactical capability of the force.

The Police Service would never divulge information regarding whether or not specific tactical options are or are not used against defined areas of interest, such as journalistic sources. To do so would undermine both tactical and investigative processes; these processes should be protected to the utmost degree, in line with relevant legislation.

By merely citing an exemption (confirming information is held relative to this request) or stating 'no information held' would reveal whether or not these tactics have or have not been used and would be inappropriate as it would reveal police 'intelligence' about the activity of ongoing police investigations.

The prevention and detection of crime is the foundation upon which policing is built. The Police Service has a clear responsibility to prevent crime and arrest those responsible for crime or those that plan to commit crime. By confirming whether or not any information is held relevant to this request could directly influence the effective delivery of operational law enforcement.

The threat from terrorism cannot be ignored. It is generally recognised that the international security landscape is increasingly complex and unpredictable. The current UK threat level from international terrorism, based on intelligence, is Substantial, which means that a terrorist attack is likely, see below link:

<https://www.mi5.gov.uk/threat-levels>

In order to counter criminal and terrorist behaviour it is vital that the police have the ability to work together, where necessary covertly, to obtain intelligence within current legislative frameworks to assist in the investigative process to ensure the successful arrest and prosecution of offenders who commit or plan to commit acts of terrorism. Ordinarily, it may be seen as one of the functions of the Security Service to protect national security, and in particular the protection against threats of terrorism except where the conduct is to be undertaken by a Special Branch, by the Metropolitan Police Counter Terrorism Command, or where the Security Service has agreed that another public authority can acquire communications data in relation to an operation or investigation.

Therefore, to confirm or deny whether Wiltshire Police hold information relevant to this case would be useful to those involved in criminal activities and also terrorists as it would enable them to identify which specific police forces have utilised tactical options in respect of obtaining information and intelligence concerning communications data about specific sources in pursuit of protecting national security.

In addition, any disclosure, no matter how generic, which may assist a criminal, terrorist or terrorist organisation will adversely affect public safety.

Public Interest Considerations

Section 24(2) National Security

Factors favouring complying with Section 1(1)(a) confirming that information is held

The public are entitled to know how public funds are spent and resources distributed within an area of policing. To confirm whether information exists relating to a specific type of tactical option would enable the general public to hold the **Wiltshire Police** to account where these tactics are utilised.

Factors against complying with Section 1(1)(a) confirming or denying that any information is held

As evidenced within the harm to confirm detail of specific tactics that may or may not have taken place would highlight to campaigners, terrorists and individuals intent on carrying out criminal behaviour, policing tactical activity. This would ultimately increase the risk of harm to the general public and significantly undermine any ongoing or future operations to protect the security or infrastructure of the United Kingdom.

Taking into account the current security climate within the United Kingdom, no information (such as the citing of an exemption which confirms information pertinent to this request is held, or conversely, stating 'no information is held') which may aid a terrorist should be disclosed. To what extent this information may aid a terrorist is unknown, but it is clear that it will have an impact on a force's ability to monitor terrorist activity.

Irrespective of what information is or isn't held, the public entrust the Police Service to make appropriate decisions with regard to their safety and protection and the only way of reducing risk is to be cautious with what is placed into the public domain.

The cumulative effect of terrorists gathering information from various sources would be even more impactful when linked to other information gathered from various sources about terrorism. The more information disclosed over time will give a more detailed account of the tactical infrastructure of not only a force but also a country as a whole.

Any incident that results from such a disclosure would by default affect National Security.

By confirming or denying any policing arrangements of this nature would render national security measures less effective. This would 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.

Section 30(3) Investigations

Factors favouring complying with Section 1(1)(a) confirming that information is held

Confirming or denying whether information exists relevant to this request would lead to a better informed general public identifying that the Wiltshire Police robustly investigate offences which may encourage individuals to provide intelligence in order to assist with investigations and reduce crime. This would further promote public trust in providing transparency and demonstrating openness and accountability into where the police are currently focusing their investigations. The public are entitled to know how public funds are spent, particularly in the current economic climate.

The issue of privacy is a highly emotive subject area often attracting high profile media. Confirming or denying that information exists could provide reassurance to the general public.

Factors against complying with Section 1(1)(a) neither confirming nor denying that information exists

Modern-day policing is intelligence led and Wiltshire Police share information with other law enforcement agencies as part of their investigative processes. To confirm or not whether specific tactical options have or have not been used could hinder the prevention and detection of crime as well as undermine the partnership approach to investigations and law enforcement.

Should offenders take evasive action to avoid detection police resources may well be diverted from frontline duties and other areas of policing to locate and apprehend these individuals. In addition, the safety of individuals and victims would be compromised.

Section 31(3) Law Enforcement

Factors favouring complying with Section 1(1)(a) to confirm or deny that information is held

There is a vast amount of information within the public domain relating to communications data and journalistic sources, and that in itself is considered to be a factor for disclosure.

Factors against complying with Section 1(1)(a) neither confirming nor denying that information exists

Confirming whether or not information is held in this case would compromise the basic purpose and reasoning of employing tactics in this matter. Public safety is of paramount importance and if offenders are provided with confirmation by Wiltshire Police that they are actively pursuing communications data from specific sources, the net result would be to encourage offenders to take measures intended to undermine law enforcement and thereby compromising public safety.

Balancing Test

The points above highlight the merits of confirming or denying whether information pertinent to this request exists. The security of the country is of paramount importance and the Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. As part of that policing purpose, various policing tactics, covert or otherwise, may or may not be used. The Police Service will not divulge whether any other information is or is not held if to do so would place the safety of an individual at risk or undermine National Security. Whilst there is a public interest in the transparency of policing operations and investigations, providing assurance that the Police Service is appropriately and effectively engaging with the threat from criminals, there is a very strong public interest in safeguarding both National Security and the integrity of policing tactics. 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.

In addition any disclosure by Wiltshire Police that places the security of the country at risk, no matter how generic, would undermine any trust or confidence individuals have in us. Therefore, at this moment in time, it is our opinion that for these issues the balance test favours neither confirming nor denying that information exists.

No inference can be drawn from this refusal that information is or isn't held.

Section 17 of the Freedom of Information Act 2000 requires the Wiltshire 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 exemption applicable to the information requested is:

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

In accordance with section 17 of the Act, this letter represents a Refusal Notice for question 1 of your request.

Q2) Could you please tell me on how many occasions, over the stated period(s), your police force applied to a judge in order to be granted the proper authorisation to access such communications as stated above?

No Information Held

I am satisfied that all the relevant information has been passed to me and been considered in the light of your request within the time constraints applicable under the legislation.

Wiltshire Police would like to thank you for the interest that you have shown in the Force.

Yours sincerely,

Ellie James
Disclosure Decision Maker

Wiltshire Police offers a re-examination of your case under its review procedure, details can be found on the following page.



Force Disclosure Unit

Wiltshire Police HQ, London Road, Devizes, Wiltshire SN10 2DN
Telephone 101 ext 62005

Freedom of Information Request Appeals Procedure

1. Who Can Ask for a Review

Any person who has requested information from Wiltshire Police, which has been dealt with under the Freedom of Information Act, is entitled to complain and request an internal review, if they are dissatisfied with the response they received.

2. How to Request a Review

Requests for review of a Freedom of Information request must be made in writing to the:
Force Disclosure Unit
Wiltshire Police Headquarters,
London Road, Devizes,
Wiltshire,
SN10 2DN

Email at disclosure@wiltshire.pnn.police.uk.

The reference number, date of the request and details of why the review is being requested must be included. Requests for review should be brought to the attention of the Force Disclosure Unit within 20 working days of the Force's response to the original FoI request.

3. Review Procedure

Receipt of a request for review will be acknowledged in writing to include confirmation of the reasons for the review. The review will be conducted by another Decision Maker, who is independent from the original Decision Maker. The Force Disclosure Unit will set a target date for a response. The response will be made as soon as is practicable with the intention to complete the review within twenty working days. In more complex cases the review may take up to 40 working days.

The Independent Decision Maker will conduct a review of the handling of the request for information and of decisions taken, including decisions taken about where the public interest lies in respect of exempt information where applicable. The review enables a re-evaluation of the case, taking into account the matters raised by the complaint.

4. Conclusion of the Appeal

On completion of the review the Independent Decision Maker will reply to the complainant with the result of the review. If the complainant is still dissatisfied following the review they should contact the Information Commissioner to make an appeal. The Information Commissioner can be contacted via the following details:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: 01625 545 700
Fax: 01625 524 510
Email: mail@ico.gsi.gov.uk