

# Internal review of response to request under the Freedom of Information (Fol) Act 2000 by **Mr. Pete John** (CR14403)

**Responding Unit: Office for Security and Counter Terrorism (OSCT)**

## Chronology

- Original Fol request: 18<sup>th</sup> March 2010
- Deadline: 19<sup>th</sup> April 2010
- OSCT response: 14<sup>th</sup> April 2010
- Request for internal review: 15<sup>th</sup> April 2010

## Subject of request

1. Mr. John submitted a request under the Freedom of Information Act (the Act) to the Home Office on the 18<sup>th</sup> March 2010 concerning details about people cautioned for RIPA Part I offences in 2008. A full copy of the request is attached at Annex A to this report, but in summary, Mr John requested:

*Please could you disclose to me;*

- *The Police force which issued those cautions*
  - *Any Police report to the Home Office associated with those cautions*
  - *Details of conditions (if any) associated with those cautions*
  - *The circumstances of the offence (for example which communication service provider(s) were affected, the duration of the offending behaviour, the technology used to effect that interception)*
  - *The name and address of the four people cautioned for the interception offences in 2008, in order that civil proceedings may commence*
2. The Regulation of Investigatory Powers Act 2000 (RIPA) regulates the manner in which certain public bodies may conduct surveillance and access a person's electronic communications – for example, allowing certain public bodies to monitor individuals' internet activities.
  3. In his request to the Home Office, Mr John makes reference to information released by the Ministry of Justice (MoJ) earlier this year. The MoJ confirmed that four people were cautioned in 2008 for offences under Part 1 of RIPA – the unlawful intercepting of a postal, public or private telecommunications.  
[http://www.whatdotheyknow.com/request/ripa\\_part\\_i\\_offences\\_statistics\\_2#incomin-g-74338](http://www.whatdotheyknow.com/request/ripa_part_i_offences_statistics_2#incomin-g-74338)
  4. This request from Mr. John asks for the release of more detailed information regarding the four cautions issued.

## **Procedural Issues**

5. The request from Mr. John was received by the Home Office on 18<sup>th</sup> March 2010. The case was allocated to the Office for Security and Counter Terrorism (OSCT) to handle on behalf of the department.
6. The substantive response from OFCU was sent on 14<sup>th</sup> April 2010, the eighteenth working day following the date of receipt. This was within the twenty working day deadline specified in s.10(1) of the Act and the department has therefore met its duty under s.10(1) of the Act.

## **The response by OSCT**

7. The substantive response sent by the OSCT on 14<sup>th</sup> April 2010 was compliant with s.17(1) & (7) and met with the Home Office's duty under section 1(1)(a) of the Act.
8. The letter confirmed that Home Office does not hold the information that Mr. John had requested in his correspondence of the 18<sup>th</sup> March 2010.

## **Mr. John's request for an Internal Review**

9. Mr. John requested an Internal Review of the OSCT response by email on 15<sup>th</sup> April 2010. In this email, Mr. John refers back to comments made by the MoJ in their response to his request, as discussed in paragraph 3 of this report:

*In the data received from the MoJ I was told that cautions data held by the Ministry of Justice does not include the name of the person cautioned. "Such information will be held by the individual police forces in England and Wales. As the police forces in England and Wales come within the remit of the Home Office you may wish to contact the Home Office..."*

*I understand that the Home Office have access to the Police National Computer. From that source I would expect you could tell me, by force region, how many cautions for RIPA offences were issued in 2008.*

*You have access to the offenders' names and address data (which is held on the PNC). I would be grateful if you would also disclose that too (per s35 of the Data Protection Act, Disclosures required by law or made in connection with legal proceedings etc) to allow legal proceedings to commence*

10. This review has, therefore, focused on confirming whether or not the Home Office holds any information within scope of Mr. John's request, particularly in regards to the information that is held on the Police National Computer.

## **Internal Review Considerations**

11. I have spoken with representatives in OSCT and the Crime and Policing Group of the Home Office and have managed to confirm that the department does not require police forces to send us the information requested by Mr. John. As this is not a business requirement, it is apparent that the Home Office would not be likely to hold the specific information requested.

12. Further to this, I have conducted my own independent searches of the departments filing systems and I am satisfied that the department does not hold the specific information that has been requested.
13. As Mr. John asserts in his email of the 15<sup>th</sup> April 2010, the Criminal Records Bureau (CRB) – an Executive Agency of the Home Office – does have access to the Police National Computer (PNC). PNC holds details of people, vehicles, crimes and property that can be electronically accessed by the police and other criminal justice agencies. It is a national information system maintained and delivered by the National Policing Improvement Agency (NPIA). The information on PNC is owned and held by each appropriate police force.
14. The CRB does not hold a copy of the Police National Computer (PNC) record of convictions. The system held by the CRB is known as a PNC Extract. The extract contains basic identifying details such as name and date of birth of persons included on the PNC. The extract does not contain any conviction information.
15. In other words, the CRB has access to certain aspects of PNC through PNC Extract but neither the CRB nor the Home Office as a whole hold the data held on PNC.
16. Further to the provisions of section 1(4) of the Fol Act, a valid Fol request concerns information that is held by a public authority in a permanent recorded format at the time the requested is received. As the Home Office does not hold the data on PNC, it is not held for the purposes of the Freedom of Information Act.
17. In this letter requesting this Internal Review, Mr. John also makes reference to the provisions of section 35 of the Data Protection Act (DPA). Section 35(2)(a) of the DPA provides an exemption from the non-disclosure provisions of that Act where disclosure is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.
18. As the provisions of DPA s.35(2)(a) do not apply in this instance – the Home Office does not hold the information requested by Mr. John, nor would it be likely to – I am not going to address the technicalities of section 35 of the DPA here.

## **Conclusions**

19. The department met its procedural obligations under the Act, including its duty under s10(1) of the Act in relation to the timeliness of the response.
20. The department has complied with section 1(1)(a) of the Act by confirming that the requested information is not held by the Home Office.
21. The original decision stating that the information requested by Mr. John was not held is upheld. The Home Office does not hold the information requested by Mr. John. The requirement to provide Mr. John with notice of this fact (section 17) was met.

**Ian Lister**  
**Information Access Team**  
**Home Office**

## **Annex A – Original FoIA request (18<sup>th</sup> March 2010)**

Dear Home Office,

I received information from the MoJ recently, concerning the number of people cautioned for RIPA Part I offences in 2008.

I understand from the data provided that 4 people were cautioned by Police in 2008 for "Unlawful intercepting of a postal, public or private telecommunications scheme - S.1(1), (2) & (7)".

Concerning the consequences of a caution, your web site states that "if a crime victim requests your name and address for civil proceedings, the police are legally obliged to give this information out, so you may still be sued for damages".

Further I understand that a Police caution will be recorded on the police national database.

Please could you disclose to me;

- The Police force which issued those cautions
- Any Police report to the Home Office associated with those cautions
- Details of conditions (if any) associated with those cautions
- The circumstances of the offence (for example which communication service provider(s) were affected, the duration of the offending behaviour, the technology used to effect that interception)
- The name and address of the four people cautioned for the interception offences in 2008, in order that civil proceedings may commence.

Yours faithfully,  
P John