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Freedom of Information Act - ICO Appeal

Dear Mr Todd,

Further to our letter dated 9 March 2010, I am now able to provide a response in regards to information held on the Section 44 authorisations database, which holds information retained from manually held files.

As explained within my previous letter, the MPS can confirm the information is no longer exempt by virtue of Section 12 of the Act.

The question subject to the ICO Appeal, is for the following information:

“Please may I have a complete list of:

1. The durations of each request:

2. Whether it is a renewal

3. The time it took for it to be confirmed by the Home Office

Broken down by each year since 2000 when the Act was passed.”

The MPS has now retrieved the information held on the computer database and has considered providing the information held within the scope of your request in accordance with our obligations under Section 1(1)(b) of the Act.

DECISION**Question One and Three - Partial disclosure**

The MPS is able to provide a partial answer for question 1 and 3 in regards in relation to **MPS Section 44 authorisations only between 19 February 2001 and 18 May 2009.**

The MPS is not required to provide the information for this part of your request in relation to **all other forces authorisations** by virtue of Sections 24(1) and 31(1)(a)(b).

Question Two - Full disclosure

The MPS is able to provide details held in regards to whether authorisations for all forces have been listed on the database as a 'renewal' or not, broken down by each year since 2000 when the Terrorism Act was passed.

RESPONSE

Question One - Partial disclosure

The duration of each request (in regards to MPS authorisations ONLY between 19 Feb 2001 and 18 May 2009 (the date of your request))

Your original request was initially dated 18 May 2009. AC John Yates (on behalf of the Commissioner), confirmed within an MPA Committee Review Report (dated 7 May 2009), that at the time of the report, the MPS had in place an area-wide authority for Section 44, signed by ACSO and reviewed every 28 days or close to.¹

Therefore in partial answer to question one, the MPS confirm that our authorisations for the use of Section 44(1)&(2) lasted for the majority of the time from February 19th 2001 up until the date of your request (18 May 2009).

I have attached to this final response a list of the duration of each Section 44 authorisation between 19 Feb 2001 and 18 May 2009.

Since August 2009 however, the MPS has moved from a more standard London-wide use of the authorisation to a patchwork use of Section 44 authorisations within the Metropolitan Police District.

There were no MPS authorisations for the use of Section 44 of the Terrorism Act Act 2000, prior to 19th February 2001.

Question One and Three - Fully exempt

The duration of each request and the time it took for it to be confirmed by the Home Office (if it was confirmed) (in regards to all other police forces authorisations held on the database)

Information pertinent to this request has been carefully considered as exempt by virtue of Sections 24(1) (National Security) and 31(1)(a)(b) (Law Enforcement).

I would first like to take this opportunity to provide some detail in relation to the use and sensitivities surrounding the police services ability to use 'Stop and Search' under the Terrorism Act 2000 as an effective tool to combat terrorism in the UK.

'Stop and search' under the Terrorism Act 2000 remains to be an important tactic and tool in the MPS's counter terrorism strategy and therefore must be as operationally effective as possible. The authorisations are used as a tool to try and prevent, deter and disrupt terrorist activity.

Section 44 under the Terrorism Act 2000 is a stop and search power which can be used by virtue of a person being in a designated area.

¹ <http://www.mpa.gov.uk/committees/sop/2009/090507/10/> Section 44 Terrorism Act 2000 - MPA Committees - tactical use review dated 7 May 2009 by AC John Yates on behalf of the Commissioner

Where an authority is in place, police officers in uniform or PCSOs if accompanied by a police officer can stop and search any person. (PCSO's cannot search the person themselves, only their property.)

Under the Act officers can also seize and retain any article found during the search which the officer reasonably suspects is intended to be used in connection with terrorism.

The MPS appreciate that this request has not specifically asked for location details. However, since your original request was responded to, there has been an agreed change of stance by the Association of Chief Police Officers (ACPO) and the MPS ACSO (Assistant Commissioner Specialist Operations) in regards to the national confirmation of Section 44 authorisations in place at force level.

Each police service within the UK will now confirm if they have a Section 44 authorisation in place at that current time, although forces still will not provide details of exactly where for operational reasons. This change in stance was to maintain the openness and transparency of forces within the UK, without identifying tactically where and exactly when these authorisations were put into place. This new stance was also agreed to increase public confidence in forces use of Stop and Search under Section 44 of the Terrorism Act, in conjunction with public reports on police use of Section 44.

At the end of this letter I have provided you with relevant links to information about the use of Section 44 which I hope you will find of interest.

The MPS hold a list containing the data you have requested. The data-set which I believe is captured by your request includes;

- A list of the date and time the Chief of Police signed the authorisation for the relevant force (start time),
- The expiry date of the authorisation and
- The date and time the Home Office confirmed the authorisation.

Prejudice Test for Section 24(1) and Section 31(1)(a)(b)

In taking into consideration the new stance by ACPO and ACSO in confirming which forces currently have a Section 44 authorisation in place, this in effect allows for the public and any would be terrorist to try and use the information to map where they are less likely to be monitored or where they may have been monitored by police within a given force area at a specific point in time.

Whilst it was accepted that this new level of detail disclosed by forces would not necessarily allow a terrorist to try and ascertain whether they are or are not being monitored (as site specific detail has not been disclosed), disclosure of the requested information for this FoIA question would provide detailed intelligence into the public domain which would detrimentally effect national security and law enforcement.

As police forces now nationally confirm if they have a section 44 authorisation in place, it is likely forces will therefore also confirm if they have had one in place in the past. To pinpoint and disclose specific dates and times when all forces authorisations were put in place and approved by the Home Office would provide would-be terrorists and those who may have historically plotted at specific points in time in the past, to gain an in depth understanding of the times their actions may have been monitored . It also allows them to obtain a view of when they may have had a window of opportunity to

go undetected when looking at the patterns of authorisation use. This level of detail would also be useful for use as intelligence for current or future plots against the United Kingdom.

Placing this level of detail into the public domain, considering forces will now confirm if they had or have a Section 44 authorisation in place, would allow those with the time and capacity to start to map which forces had the authorisation in place, and then in turn work out the likelihood of how long that particular force was monitoring their force area down to the very second.

With the absence of a location and/or location type, the time data **alone** appears to be fairly innocuous. However, with the change of stance by ACPO and ACSO, disclosure would make the mapping of location and time that much easier for those with the necessary time and know-how. Therefore in consideration of the information which is now easily accessible by the public, this specific time-led information when considering location must be deemed as sensitive. It may collectively put national security operations and the public at unnecessary risk, by detrimentally effecting forces abilities to prevent and detect crime and making our ability to safeguard national security that more vulnerable.

The MPS is concerned that coupled with geographic information about where in the UK Section 44 authorisations are operating or have operated, terrorists may be able to engage in more detailed 'pattern spotting' to identify peaks and troughs in police operational activities which may relate to national security. We do appreciate this activity is more difficult considering the fact that the date/time data can not **alone** be clearly linked to geographical areas. However over time there is the possibility that numbers of authorisations would be sufficiently low as to allow this type of inference to be made, particular considering forces recent conformation of whether they have an authorisation in place. Additionally, considering many forces have not used Section 44 authorisations 'force wide', such inferences and 'pattern spotting' would be easier to decipher than it appears.

It is vital to note that the original information that leads to a Section 44 authorisation within a force is time specific, and often emanates from intelligence. Disclosure would therefore be most valuable if a would-be terrorist could work out which authorisations were intelligence-led, based on the time they were in place. The requested detail must therefore be withheld as that information is used at specific given times for the purpose of safeguarding national security and law enforcement.

In regards to terrorist related activity, timing is of the essence and precision of timing is invaluable to those who wish to cause harm. The power is in place to create a hostile environment for terrorists to operate in. it is public knowledge that 'dry runs' are often used by terrorists when planning attacks. To provide specific details in regards to when the police are and have been able to use this valuable tool would provide precious intelligence to would be plotters. By requesting from forces when they have had an authorisation in place in the past, together with this level of detail for this request, would enable them to map whether they may have been subject to detection in the past. This is valuable knowledge to plan dry runs and attacks for the future, by working out where forces are likely to issue an authorisation and for how long. This action would affect the ability of the forces to protect national security as well as damage our ability to prevent, detect crime and thus apprehend or prosecute offenders.

This threat and risk is particularly relevant as each renewal is distinct and differs depending on the threat or received intelligence. Smaller provincial forces (which may usually have no reason to invoke an authorisation) in particular would not wish to confirm the exact time and date an authorisation was in place or due to expire. This authorisation may have been based on received intelligence which is time specific. Disclosure of this level of detail would therefore detrimentally affect national security and the ability to enforce the law, by providing such an advantage to those who may use it to circumvent the law.

There is also the possibility that would-be terrorists could exploit access to this data in future to engage in more effective hostile reconnaissance. Hostile reconnaissance includes activity by terrorists, for example to check for security vulnerabilities in policing tools and vulnerable targets and locations. If a particular target, for example a transport hub, was selected, those individuals carrying out reconnaissance missions of the site could potentially make use of this type of data to start to ascertain whether their unusual behaviour had been identified by use of a 're-applied' authorisation or not, to also work out whether their activity may be monitored in that location in the future by the very second, using the specific time data you have requested. This type of operational 'testing' of the security systems in place around potential targets could, over time, assist terrorists in selecting vulnerable targets for attack. This would have a damaging impact on national security about our ability to detect, prevent crime and prosecute offenders.

While the operational deployment of Section 44 is undertaken by uniformed officer and is therefore overt the basis of Section 44 authorisations are underpinned by intelligence, either because there is believed to be a heightened terrorist threat in a particular area at a given time, and/or because efforts are being made to protect a valuable target or symbolic location at any given point time. It would not be in the interests of national security or law enforcement to provide a list detailing back to 2000 of exactly when to the very second an authorisation had been deployed. It would detail how many times the authorisation has been deployed and provide a pattern of how many authorisations are deployed and for how long. This is particularly harmful in terms of 'one off' authorisations where was not previous in place, as this may indicate it was intelligence-led in regards to suspicious activity. It may also indicate a vulnerable target needed to be protected at a given time, which also allows would-be terrorists to plan how long in advance they need to partake in criminal activity in a given area before an authorisation is likely to be to begin. Disclosure of such patterns leading back to 2000, would have a damaging impact on national security about our ability to detect, prevent crime and prosecute offenders.

Requesting an authorisation is a tactic the police may chose to deploy when in the receipt of specific threat intelligence and therefore authorisations in a particular area against a particular 'target' may vary according to the circumstances at the time. Therefore disclosure of the specific dates and times together with whether the authorisation is classed as a 'renewal', coupled with now public confirmation of whether or not a Section 44 authorisation was in operation within a specific force area at a given point in time, allows terrorists to ascertain with a greater degree of certainty whether their activities (either in general or vis-à-vis a particular target) have come to the attention of the authorities. This greatly assists those attempting to damage national security and evade detection on possible future plots.

As previously explained, to be able to look back at dates the Section 44 authorisations began, expired, was confirmed by the Home Office and to additionally be able to consider whether this authorisation was a renewal or not, allows would-be terrorists to

test for windows of opportunity in the future, or to test the system if those with the necessary intent are able to ascertain only one or two forces had an authorisation in place at any given time. Should it appear that the particular authorisations were not renewals, but instead were one off authorisations based on intelligence regarding activity at a specific point in time, this would provide valuable intelligence to such persons to be able to understand whether a particular force was likely to be aware of their activity.

Considering this point, terrorists can map the information to try and ascertain whether the particular force was routinely protecting a location (such as a critical national infrastructure), or whether the authorisation was not a renewal, but instead based on one off intelligence which may again indicate the force was monitoring terrorist activity they may have partaken in.

Should terrorists use these patterns to seek to modify their operational behaviour in response to any such suspicion, this would have an adverse effect on ongoing counter terrorism operations. For example they may find the data is likely to indicate a Section 44 authorisation was used for a particular event. They will then be able to define how long the MPS viewed the need for the authorisation to be in place to monitor subversive activity. The authorisations do not necessarily last the full 28 days, they are time dependant and duration is based on the risk of how long a threat may be in place. This would enable those with criminal intent to map their activity around such intelligence, and understand where they may be able to obtain a window of opportunity to the very second, on specific days.

The MPS appreciate the difficulty on face-value in withholding the data, considering forces will now confirm if they have a Section 44 authorisation in place. However, it is imperative the MPS consider in detail, the risk of releasing such additional information into the public domain and the value that disclosure of this time and date specific data could be for would-be terrorists. It is paramount the MPS consider disclosure would contribute to the 'jigsaw effect' in disclosure, where information over time can be mapped to the operational disadvantage of the police services in the UK.

Home Office Decision Notice (FS50198733)²

I have reviewed the recent decision notice regarding Section 44 authorisations, and find many points within this decision notice are relevant to this request.

Whilst the MPS appreciates this case was mainly based on the release of information relating to the location of the authorisations, the Information Commissioner did acknowledge that "the regularity and extent of Authorisations could readily be used by terrorists to ascertain the likelihood of their activities coming to the attention of the police or anti-terrorists agencies" (see paragraph 58).

The running argument of the Home Office was that to release authorisation details would enable individual groups to identify whether or not their activities had come to the notice of the authorities. This would have the potential to jeopardise ongoing investigations.

Like the Home Office request which is subject this decision notice, your question also requests all authorisations, since the Terrorism Act 2000 came into force, broken

² http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50198733%20.pdf - ICO Decision Notice 08/02/2010 for the Home Office.

down by year, rather than just a sample from a set time period, or for a particular geographical area (see paragraph 55).

The Information Commissioner accepted the argument that providing details of when and where authorisations are and have been active could effect the public's behaviour, and that this knowledge may also assist the terrorist to at least the same extent. The Information Commissioner believed that such a wide ranging disclosure of information would give a historic picture of events. It was his view that, were a terrorist to be aware of the fact that an area was covered by an authorisation, or even very likely to be, based on historical data, then the terrorist too could be more vigilant and take the same steps that the complainant suggests the law-abiding public could take (to possibly be more vigilant in relation to their actions in areas where Section 44 authorisations are or were in place). The Information Commissioner believed that having knowledge of the times and dates (as well as maps of active areas in the case of the Home Office), would be of considerable benefit to a terrorist or group of terrorists who wished their activities to evade detection. The Information Commissioner understood such activists would be more likely to move elsewhere and any potential gain which the public would have had by knowing about the authorisation would then be lost, as too would any advantage that the police had (see paragraph 57).

The decision notice stated that whilst the complainant may not accept that dates, times and geographic locations are actually 'background intelligence' or 'tactical operational Police plans', the Information Commissioner did not agree. The decision notice continues to state that the regularity and extent of authorisations could readily be used by terrorists to ascertain the likelihood of their activities coming to the attention of the police or anti-terrorist agencies. The Decision Notice demonstrates that if an authorisation is granted in one area which has not been covered by one before (in effect a 'non-renewal'), then a terrorist acting within that area is likely to become suspicious that he is under surveillance and is likely to take appropriate action to avoid detection (see paragraph 58). Finally, the decision notice also states that The Information Commissioner believes that the information could be used by terrorists to support and influence their activity (see paragraph 59).

The MPS find that considering forces now disclose if they have a Section 44 in place, placing the additional information you have requested into the public domain would cause the same harm and prejudice as identified in the decision notice.

Once again, the MPS do appreciate that forces as of late 2009 now confirm whether they have an authorisation currently in place. However, the provision of specific dates and times in a compiled list would still give activists that advantage over the MPS, in regards to the explicit extent of police services use of this valuable tool to protect national security and enforce the law. For the reasons described in this prejudice test, the MPS exempts disclosure of the duration of authorisations and the time it was confirmed by the Home Office, to protect national security and law enforcement nationwide.

Public Interest Test for Section 24(1) - Question One and Three

Considerations favouring disclosure

Disclosure of how long Section 44 authorisations are in place would further transparency and accountability of police forces. The public are interested in understanding how long it takes for the Home Office to confirm an authorisation.

The use of Section 44 authorisations is of public interest at this time. There is concern that forces have applied in the past a blanket approach to the use of this power, and disclosure would go some way to showing the public how long these authorisations tend to be in place.

Considerations favouring non-disclosure

For the reasons provided within the prejudice test. Disclosure would technically be providing sensitive operational information into the public domain, which may enable those with the time, capacity and inclination to look to map strategies used by the all forces within the UK to protect national security.

There are some who are concerned that the information should be disclosed as personnel within particular authorities may be incorrectly claiming they have the power to act under the authority of the Terrorism Act 2000, either deliberately or unknowingly. We are aware there is the opinion that disclosure

Disclosure would lead to greater public awareness as to when authorisations were in place, so any possible misuse/abuse of the power could be prevented. The Information Commissioner's Office considered this opinion in regards to the Home Office request, and the Decision Notice confirmed that this argument does not carry much weight. The appropriate powers of authority are laid down within the Terrorism Act 2000 itself and the Information Commissioner was not convinced that disclosure (although we appreciate this Home Office request also included maps and further location details) would prevent such alleged actions. The Commissioner believed that if there is an abuse of power then this may indicate a training need that the police or the public authority need to deal with (see paragraph 54 of the ICO Decision Notice for the Home Office).

Taking this into account, and considering the data within the request remains sensitive in the interests of national security, there is no intrinsic benefit in disclosure which outweighs the stronger need to ensure the information remains exempt due to the harm which may be caused by its release.

Based on this understanding, the MPS find it 'reasonably necessary' to apply the exemption. The risk to national security and thus to the public would be further increased, due to those with the capacity to map the data and use their new understanding of police tactics on the use of Section 44 authorisations for criminal benefit.

Considering this matter, the exemption must apply to ensure future operations are not disadvantaged in any way, in relation to protecting the security or infrastructure of the UK which is likely to be compromised with the release of the data. To disclose information which would render security measures and tools in place as less effective would not be in the public interest.

Public Interest Test for Section 31(1) - Question One and Three

Considerations favouring disclosure

A better awareness of how often and for how long Section 44 authorisations are put into place may reduce crime by showing the MPS are using the tool proportionately, as and when required to safeguard national security.

The public may also be interested in knowing how long within the designated 48 hours the Home Office took to confirm on each authorisation that the authorisation was approved.

Considerations favouring non-disclosure

Disclosure of the data would compromise law enforcement strategies and tactics, as to enable would-be terrorists to gain an in depth understand of how often authorisations are used and exactly when. This would allow them to try and take steps to avoid detection in future plots, based on historical police action and methods.

Such an outcome would place individuals at increased risk and make it more difficult to apprehend and prosecute offenders if the data is used to circumvent the law.

To hinder the prevention and detection of crime in such a way, would impact on already stretched police resources. Action would need to be undertaken if terrorists tried to map when for example, an authorisation is likely to begin and end, which in turns provides them with a window of opportunity to partake in 'dry runs' and attack sites and locations earlier than the police would usually have envisaged.

Final Balance Test

On weighing up the competing interests, I find the strongest interest favouring disclosure is accountability. I find the strongest consideration favouring non-disclosure is the risk of the data being used and manipulated by would-be terrorists as intelligence (in conjunction with information which can now be publicly obtained through forces), to further understand and evade operational tactics and strategy. This may in turn threaten national security and the general public.

I do appreciate this may not be the full response you would have liked. However, I base this decision on the understanding that the public interest is not what interests the public, but is what would be of greater good for the community as a whole if the information was disclosed.

Question Two - Full disclosure

Whether it is a renewal (in regards to all forces authorisations logged on the database)

It is important to note that although the National Joint Unit (NJU) has identified whether an authorisation should be listed as a 'renewal' or not (on the computer database), each authorisation would have been treated on its own merits and not as an ongoing power or blanket authority. This is because each authorisation is distinct and treated as a fresh application. Each of them, therefore, may have been different dependent on threat and intelligence.

It is also important to note, that information within the database is not exhaustive. As you have requested information only held within the database, I have therefore answered this part of your question based on information entered into the database only, and not by using the further information contained within the manual files.

The category below marked 'unknown' is where the entry in the database was not completed and so was blank. The accurate detail would be held within the manual files, and is so not pertinent to this request as you have requested information held within the database.

Authorisations classed as 'renewals' on the Section 44 authorisation database

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Renewal	1	19	102	41	111	104	131	97	166	63
Non-Renewal	0	63	91	67	27	91	28	139	24	17
Unknown	5	194	2	97	38	2	1	1	4	0

In regards to MPS-only authorisations for the data-set you have requested, each MPS authorisation between 19 February 2001 and 18 May 2009 (date of your request) may be classed on the system as a 'renewal'. However, each authorisation would have been treated on its own merits and not as an ongoing power or blanket authority as each renewal is distinct, and still may have been different dependent on threat and intelligence.

Question 3

The time it took for it to be confirmed by the Home Office (if it was confirmed) (In regards to MPS only authorisations between 19 February 2001 and 18 May 2009) - Full disclosure

I am happy to be able to provide you with a list of the time it took for each authorisation to be confirmed by the Home Office for the MPS authorisations between 19 February 2001 and 18 May 2009.

I have therefore attached to this final response a list of the time it took for each authorisation to be confirmed by the Home Office for authorisations between 19 Feb 2001 and 18 May 2009 (date of your request).

Since August 2009, the MPS has moved from a London-wide use, to a patchwork use, of Section 44 authorisations within the Metropolitan Police District.

Kind regards,

S. Strong
A/ Higher Information Access Manager

Internet Links on the use of Section 44 Stop and Search

MPA Section 44 - Terrorism Act 2000 - Tactical Use Review

<http://www.mpa.gov.uk/committees/sop/2009/090507/10/>

Ministry of Justice Statistics Bulletin - Arrests for recorded crime (Notifiable Offences) and the Operation of Certain Police Powers under PACE England and Wales 2006/07

<http://www.justice.gov.uk/docs/arrests-recorded-crime-engl-wales-2006-07-b.pdf>

Statistics on Race and the Criminal Justice System - 2006/07

<http://www.justice.gov.uk/docs/stats-race-criminal-justice.pdf>

Police Powers and Procedures England and Wales 2007/08 - dated 30 April 2009

<http://www.homeoffice.gov.uk/rds/pdfs09/hosb0709.pdf>

February 2010 Statistical Bulletin (Operation of police powers under the Terrorism Act 2000 and subsequent legislation - Quarterly update to September 2009)

<http://rds.homeoffice.gov.uk/rds/pdfs10/hosb0410.pdf>

Home Office Statistical Bulletin (Police Powers and Procedures 2008/09) published 15 April 2010

<http://rds.homeoffice.gov.uk/rds/pdfs10/hosb0610.pdf>