

11/03/2015

Our Ref: IM-FOI-2015-0276



Sir Stephen House QPM
Chief Constable

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FREEDOM OF INFORMATION (SCOTLAND) ACT 2002
SUBJECT: Response to IOCCO Inquiry

I refer to your email dated 05/02/2015 regarding the above which has been handled in accordance with the Freedom of Information (Scotland) Act 2002 (FOISA). Please accept my sincere apologies for the delay in responding.

QUESTION

Please can I have a copy of the Police Scotland response to the IOCCO inquiry into the use of Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act (RIPA) to identify journalistic sources.

RESPONSE

The use of RIPA is a contentious area and it is for that reason that the use of the legislation is very carefully monitored and subject to independent scrutiny. Although a critical law enforcement tool, it is contrary to the public's expected levels of privacy and as a result has to be carefully managed. It is not

unreasonable to therefore expect focus on the subject, when there is a belief that the rules have in some way been breached. The importance of the public being made aware of the issues regarding the use of this legislation, so that proper informed debate could take place, is therefore acknowledged.

However there will always need to be, in such circumstances, a strong desire to protect police activity so that investigations are not disrupted, nor is anything placed in the public domain which renders police tactics less effective. The harm this would cause should not be underestimated.

It should equally be acknowledged that the public interest has now changed. The Interception of Communications Commissioner (IOCCO) has now published the report into the subject and the police have not been found substantially wanting in terms of the use of the legislation as being claimed by several journalists.

The report, which can be read in full at;

[Interception of Communications Commissioner's Office –](#)

<http://www.iocco-uk.info/docs/Press%20Release%20IOCCO%20Journalist%20Inquiry.pdf>

provides a detailed and balanced explanation of RIPA powers and the police investigations, including statistical information which demonstrates that the majority of investigations conducted over the three year period were internal Professional Standards investigations. Furthermore, one investigation (a Metropolitan Police investigation) accounted for 80% of the total of applications which sought communications data. When this exceptional operation was removed from the overall statistics, this activity represented less than one application per police service, per year.

The Commissioner clearly states that “police forces are not randomly trawling communications data relating to journalists in order to identify sources”, but also acknowledged there was “potential to give rise to violations of Article 10 of the Convention”.

It is acknowledged that journalists have a need to keep the identities of sources of information confidential and as stated above, the report highlighted some shortcomings in the quality of applications by the police service, but not wilful or improper misuse of the legislation.

Your request has been considered carefully, and I consider that the purpose of this request is not within the spirit of the Act. The Act is a tool designed to provide public access to information on the activities and decisions taken by public authorities, in order that public authorities can be held to account.

Please accept this letter as a notice under section 14(1) of FOISA which aims to protect the credibility and effectiveness of freedom of information laws in terms of the guidance issued by the Scottish Information Commissioner.

Police Scotland believes the findings of the IOCCO report have severely reduced the strength of that public interest in disclosure. The Act was not designed to enable applicants to continue a campaign or determined pursuit of information when there are concerns over public authority activities, if these activities have been adjudged to be correct and appropriate.

The Office of the Scottish Information Commissioner (OSIC) outlines that while there is no single formula or specific criteria to determine whether a request qualifies under Section 14, some factors are considered relevant. These include:

- the request is disproportionate
- the requests, although not all received from a single individual, could reasonably be described as conducting an extended campaign which is not well founded.

Journalists frequently submit requests for information in relation to the use of RIPA legislation and particularly the recent IOCCO enquiry and as a result there is a wealth of open source data on the approach to disclosures of RIPA data under FOI which is easily accessible. Police Scotland believes that the volume of identical or very similar requests submitted in relation to this subject is disproportionate and contrary to the spirit of the Act. Please note that under Section 14(1) the exemption always relates to the subject of the request and not the individual making the request.

The application of Section 14(1) is not subject to a public interest test.

However, the examination of whether there is any real value in a request is pertinent, and uniquely in this case, does relate to the public interest which is clearly articulated above.

I trust that the information available is of assistance and should you require any further assistance concerning this matter please contact me on 01463 720555 quoting the reference number given.

If you are not satisfied with the way in which your request has been dealt with, you are entitled in the first instance and within 40 working days of receiving this letter to request a review of the decision made by the Service. Should you wish to do so, contact details are; Police Scotland, FOI Central Processing Unit, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH. (Or email foi@scotland.pnn.police.uk).

Once informed of the review decision, if you are still not satisfied, then you are entitled to apply to the Scottish Information Commissioner within six months for a decision. The contact details are: Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS, telephone 01334 464610. Should you wish to appeal against the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.

Yours sincerely

Donna Quick
Information Management
Freedom of Information