



Freedom of Information Request Reference N^o: FOI 001025-19

I write in connection with your request for information received by Suffolk and Norfolk Constabularies on 14 March 2019 which you sought access to the following information:

“Does your force ever request or take mobile phones or digital devices from individuals during a stop and search under any police power and does your force ever access mobile phones or digital devices requested or taken from individuals during stop and searches? If yes, please provide:

1. The legal basis under which you are doing this
2. Copies of any policy or guidance in relation to this practice
3. How you access phones taken during stop and searches which are locked with a password
4. The technical equipment, if any, that your force is using when accessing devices during stop and searches”

Response to your Request

The response provided below is correct as of 19 March 2019

Suffolk and Norfolk Constabularies have considered your request for information and the response is below.

1. The Constabularies Digital Forensic Unit does access mobile devices.

Nothing prevents officers from making legitimate enquiries into circumstances to prove that a crime has or hasn't happened. The only time constabularies would take a phone is when there is a power to do so under section 19 PACE, section 32 PACE or under the authority of a warrant. If a person is arrested following a stop and search and the phone is evidence of an offence or contains evidence, it can then be seized and the phone interrogated. A police force could examine a person's phone for evidence by consent

2. Section 17 of the Freedom of Information Act 2000 requires that Norfolk and Suffolk Constabularies, when refusing to provide such information (because the information is exempt) is to provide you the applicant with a notice which:

- (a) States that fact
- (b) Specifies the exemption(s) in question and

(c) States (if that would not otherwise be apparent) why the exemption(s) applies.

The information is exempt from disclosure by virtue of the following exemption;

Section 21(1) - Information reasonably accessible by other means

Information concerning the legal basis and the police/guidance used by the Constabularies is published on the .gov website and is therefore reasonably accessible by other means as per Section 21 of the Freedom of Information Act 2000.

The following links will take you to the appropriate web page:

<https://www.gov.uk/government/publications/pace-code-a-2015>

3. Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at section 1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at section 1(1)(b) is to disclose information that has been confirmed as being held.

Section 17 of the Freedom of Information Act 2000 requires that Norfolk and Suffolk Constabularies, when refusing to provide such information (because the information is exempt) is to provide such information (because the information is exempt) are to provide you, the applicant, with a notice which:-

- (a) States that fact
- (b) Specifies the exemption(s) in question, and
- (c) States (if that would not otherwise be apparent) why the exemptions(s) applies.

The information is exempt from disclosure by virtue of the following exemption:-

Section 31(1)(a)(b) – Law Enforcement

Section 31 is a qualified prejudice based exemption and therefore we are obliged to provide evidence of harm and a public interest test.

Evidence of Harm

Disclosure of information under the Freedom of Information Act 2000 is considered to be a release to the world, as once the information has been published on the Disclosure Log pages of the Constabularies external websites, the Constabularies have no control over access to that information. Whilst not questioning an applicant's motive for requesting information, it could be of use to persons who are involved in criminal activity.

Although there is a call for openness and transparency, this needs to be balanced against the harm in disclosure of the requested information. The Police Service has a clear responsibility to prevent and detect crime and disorder and to protect the communities we serve.

Where a disclosure is made that would provide information and details as to the way in which the Constabularies carry out investigations and the capabilities we have with regards to accessing mobile phone data, there is a clear risk that harm may be caused by disclosing the capabilities and strengths/weaknesses of the Constabularies with regards to Law Enforcement.

It is the Constabularies aim to apprehend offenders and therefore we would not wish to provide any information that may assist an offender, in establishing how the Constabularies conduct investigations, including the techniques that are used. Such a disclosure would impact on the future capabilities and effectiveness of the Constabularies in the prevention and detection of crime.

Public Interest Test

Factors favouring disclosure

Providing the requested information would increase openness and transparency of the techniques used by the Constabularies in order to investigate crimes and identify offenders. There is a public interest in the way in which the Constabularies allocate resources. Increased public awareness could result in more information being provided by individuals to assist with investigations. Increased knowledge would result in more accurate public debate in this area.

Factors favouring non-disclosure

The current and future law enforcement role of the Constabulary would be compromised by the release of the information concerning operational capabilities of such sensitive information. Disclosure of the information may unwittingly provide useful intelligence to those involved in criminal activity and this would reduce the Constabulary's operational effectiveness.

Disclosure could allow individuals to identify how the Constabulary accesses digital devices, enabling criminals to utilise the information in order to establish a means to avoid detection and destroy any evidence. This would impact on any ongoing investigations and would lead to an increased cost to the public purse if additional resources are required in this area of policing.

Balance Test

It is recognised that there is a high public interest in the police service being open and transparent and ensuring we are effectively and appropriately carrying out law enforcement.

However, whilst there is a public interest in the transparency of policing, and how resources and public funds are allocated, there is a very strong public interest in safeguarding the intricacies and tactical capabilities surrounding investigations.

The public entrust the Police Service to make appropriate decisions and would expect us to be cautious with any information that is released.

It is therefore our belief that the balance test lies in favour of not disclosing the information. In accordance with Section 17 of the Freedom of Information Act (2000), this letter serves as a Refusal Notice for this part of your request.

4. No information held

Should you have any further queries concerning this request, please contact Clair Pack, FOI Decision Maker, quoting the reference number shown above.

A full copy of the Freedom of Information Act (2000) can be viewed on the 'Office of Public Sector Information' web-site;
<http://www.opsi.gov.uk/>

Norfolk and Suffolk Constabularies are not responsible for the content, or the reliability, of the website referenced. The Constabulary cannot guarantee that this link will work all of the time, and we have no control over the availability of the linked pages.

Your Right to Request a Review of Decisions Made Under the Terms of the
Freedom of Information Act (2000).

If you are unhappy with how your request has been handled, or if you think the decision is incorrect, you have the right to ask the Norfolk and Suffolk Constabulary to review their decision.

Ask Norfolk and Suffolk Constabularies to look at the decision again.

If you are dissatisfied with the decision made by Norfolk and Suffolk Constabularies under the Freedom of Information Act (2000), regarding access to information, you must notify the Norfolk and Suffolk Constabulary that you are requesting a review within 20 days of the date of its response to your Freedom of Information request. Requests for a review should be made in writing and addressed to:

*Freedom of Information Decision Maker
Information Management Department
Suffolk Constabulary
Police Headquarters
Martlesham Heath
Ipswich
Suffolk
IP5 3QS
OR
Email: information@suffolk.pnn.police.uk*

In all possible circumstances Norfolk and Suffolk Constabulary will aim to respond to your request for us to look at our decision again within 40 working days of receipt of your request for an internal review.

The Information Commissioner.

After lodging a request for a review with Norfolk and Suffolk Constabulary, if you are still dissatisfied with the decision, you can apply to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at www.ico.org.uk or contact them at the address shown below:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Telephone: 01625 545 700