



7th February 2020

Freedom of Information Request Reference N°: FOI 004448/19

I write in connection with your request for information received by the Norfolk and Suffolk Constabularies on the 10th December 2019 in which you sought access to the following information:

I write to request information and records under the FOIA, regarding both Norfolk and Suffolk Police's rape investigations respectively, and the policy and practices around the examination of mobile phones and digital devices.

- 1A Based on the first 20 rape investigations of the financial year 2018/2019, please provide numbers for how many of those rape investigations involved requests to examine complainants' i) digital devices; ii) social media accounts or iii) cloud storage.
- 1B Of those requests, how many were made to complainants who were i) women, ii) men, iii) children under the age of 18.
- 1C Of those requests to examine i) digital devices; ii) social media accounts or iii) cloud storage, how many did complainants agree to?
- 1D Of those complainants' digital device extractions, how many mobile phone or digital device extractions have been Level 1 "logical extraction", Level 2 "logical" or "physical" extraction, or Level 3 extractions?
- 1E Of those requests to examine i) digital devices; ii) social media accounts or iii) cloud storage how many did complainants not agree to?
- 1F Of those investigations in which complainants of rape did not agree to examination of i) digital devices; ii) social media accounts or iii) cloud storage, (i.e. a phone search was requested but did not happen due to refused consent) how many investigations remain open, were closed by police with no further action, or were closed after complainant withdrawal?
- 2 Are you able to provide any Equality Impact Assessment with regards to the general practice of digital information collection from a) complainants and specifically b) complainants of rape and serious sexual offences?
- 3A Using the same 20 cases, please provide: The wait times for the complainants' digital devices to be subject to technical examination (e.g. for selected data to be extracted from a phone), with a breakdown sorted by level of extraction (Level 1, Level 2 or Level 3)
- 3B the wait times in the same 20 cases for data from i) digital devices; ii) social media accounts or iii) cloud storage to be fully analysed by the investigating officer.

Response to your Request

The response provided below is correct as of 4th February 2020.

Norfolk and Suffolk Constabularies have considered your request and our response is below.

Research has been undertaken of the first 20 recorded offences of rape. Of these, there were 6 crimes which referred to extracting data from devices belonging to the complainant. Please see further details below.

Q1A The complainants agreed to the following:-
Social media in 2 cases
Mobile devices in 3 cases
Social media & texts in 1 of the cases

Q1B Of the 6 crimes, 5 were female victims and one child under 18.

Q1C All 6 agreed to devices being examined.

Q1D Exempt – section 31

Q1E All agreed.

Q1F Not applicable.

Q2 Not held.

Q3A/B This information has not been provided as it would reveal the tactical capabilities of the Constabularies.

The exemption at section 31(1)(a)(b) is engaged.

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 you, the applicant, with a notice ban, which:-

- (a) States that fact
- (b) Specifies the exemptions in question, and
- (c) States (if that would not otherwise be apparent) why the exemption 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 I am therefore obliged to articulate the harm that would be caused in disclosure of the information, as well as carrying out a public interest test.

Section 31

Harm in Disclosure

The Constabularies ability to examine devices is continually evolving as technologies develop and investigations are being carried out where digital media holds evidential information.

It is well established that Police forces will use all available technologies in order to counteract criminal activity. Where a disclosure is made that will provide information concerning the way in which the Constabularies carry out investigations, there is a clear risk that harm may be caused by disclosing the capabilities and strengths/weaknesses of the Constabularies with regards 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 forces conduct investigations, which would be prejudicial to law enforcement. This would consequently impact on future capabilities and effectiveness in crime detection and prevention.

In this case, the information relates to the extraction of data from complainant's (victims) devices and not offenders. Revealing the tactical details, including the level devices are examined, in these cases would undermine the process of preventing and detecting crime and the apprehension and prosecution of offenders. Although the information could be considered as historical, there is also the potential that it relates to ongoing investigations.

Factors favouring Disclosure

Disclosure of relevant information would show an openness and transparency with of the Constabularies capabilities with regard to obtaining evidence from digital devices. This would show that the forces are using all available options in order to tackle criminal activity and detect offenders.

Increased public awareness of such technologies could result in more information being provided to the police which would assist during the investigative process and help to secure prosecutions.

There is a public interest in the use of public funds and the spend on technologies in order to obtain best evidence.

Factors favouring Non-Disclosure

Whilst members of the public would have an increased of awareness of the Constabularies capabilities with regard to extracting information from devices, this would also be beneficial to individuals involved in criminal activity. This could lead to them destroying evidence and taking steps to avoid detection.

Considerable public funds are used to ensure that the Constabularies keep up to date with emerging technologies. This will include employing specialists in this area and investing in training. If the Constabularies were to disclose the details of their capabilities, this would be detrimental to current and future investigations and operations. This would not be a good use of public money and additional funds would be required.

Balance Test

There is a public interest in the way in which the Police use public funds. Providing this information would also reassure the public that the Police are doing all they can to ensure evidence is appropriately examined. Public awareness leading to more accurate public debate is a strong factor when considering a disclosure.

Law Enforcement is reliant on community engagement, intelligence and evidence gathering and when it is appropriate, information is given to the public. What has been established in this case is the fact that disclosure of the levels used when extracting data would have an adverse effect on the investigative process and on the public prevention or detection of crime and the apprehension or prosecution of offenders.

This places the victims of such offending at a greater risk towards their health and wellbeing and is not an action the Police Service would be willing to take. These negatives outweigh any tangible community benefit and therefore the balance does not favour disclosure at this time.

The Constabularies would not disclose information if it could impact on any current or future operations. Therefore, at this moment in time, it is our opinion that, for these reasons, the balance test for disclosure is not made out.

This response will be published on the Constabularies web-site under the Freedom of Information pages:-

<https://www.norfolk.police.uk/about-us/our-data/disclosure-log>

<https://www.suffolk.police.uk/services/freedom-information/disclosure-logs>

Should you have any further queries concerning this request, please contact Amanda Gibson, 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 40 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
Norfolk Constabulary
Operations and Communications Centre
Jubilee House
Falconers Chase
Wymondham
Norfolk NR18 0WW
OR
Email: freedomofinformation@norfolk.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 20 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