

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 2024

Public Authority: Chief Constable of Kent Police
Address: Sutton Road
Maidstone
Kent
ME15 9BZ

Decision (including any steps ordered)

1. The complainant requested information about a specified facial recognition tool. Kent Police would neither confirm nor deny holding the requested information, citing sections 24(2) (national security) and 31(3) (law enforcement) of FOIA.
2. The Commissioner's decision is that Kent Police was entitled to rely on section 24(2) of FOIA. As he has found section 24(2) of FOIA to be engaged, the Commissioner has not deemed it necessary to consider Kent Police's reliance on section 31(3) of FOIA.
3. No steps are required as a result of this notice.

Request and response

4. On 11 June 2024, the complainant wrote to Kent Police and requested information in the following terms:

"1 - Please provide details of any and all contract(s) with Amazon for its Recognition [sic] facial recognition technology, including the start date of any such contract(s)

2 - Please can you also let me know whether the force has used the technology - including whether it is currently using the technology - and if so when (dates, eg start and end dates, or start date and continuous use up to present day)

3 - Please can you also let me know whether contract(s) with Amazon for the use of its Rekognition technology have been altered, or new contract(s) for the technology have been signed, since 10th June 2020

4 - Please also include the financial details of any such contract(s) - the cost (£) of procuring the technology

5 - Please also let me know how the technology has been used, if it has been used (a broad overview of the use case(s) will suffice)

Please limit the above searches to the period 2016 to the present day."

5. Kent Police responded on 2 July 2024 and refused to confirm or deny that the requested information was held, citing the following FOIA exemptions:
 - Section 24(2) – national security
 - Section 31(3) – law enforcement
6. Following an internal review, Kent Police wrote to the complainant on 15 July 2024. It maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 16 July 2024 to complain about the way her request for information had been handled; specifically she argued that:

"I wish to challenge the use of exemptions and lack of attempt to provide partial disclosure. The request was not asking for sensitive data such as the name or location of where technology is being used and efforts could be made to provide some information in a way which would not compromise security concerns.

It is in the public interest to understand whether certain technology is being used or has been used. There are significant civil liberties and privacy concerns related to the use of facial recognition technology.

The existence of contract(s) can also be a matter of public record and again are supported by transparency concerns. Some police departments in the UK have disclosed the use/non-use e.g. via press offices and not flagged any concerns."

8. The Commissioner relayed the above grounds of complaint to Kent Police to consider when responding to his investigation.
9. The Commissioner has determined whether Kent Police was entitled to neither confirm nor deny whether the requested information was held.

Reasons for decision

Neither confirm nor deny – 'NCND'

10. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
11. The decision to use an NCND response will not be affected by whether a public authority does, or does not, in fact, hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
12. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
13. Kent Police has taken the position of neither confirming nor denying whether it holds the requested information, citing sections 24(2) and 31(3) of FOIA. The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether or not Kent Police is entitled to NCND whether it holds any information of the type requested by the complainant.
14. Put simply, in this case the Commissioner must consider whether or not Kent Police is entitled to NCND whether it holds any information about its use of the specified facial recognition technology. He has first considered its reliance on section 24(2) of FOIA.

Section 24 – national security

15. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security. Consideration of this exemption is a two-stage process. First, the exemption must be engaged due to the requirement of national security. Secondly, this exemption is qualified by the public interest, which means that the confirmation or denial must be provided if the public interest in

the maintenance of the exemption does not outweigh the public interest in disclosure.

16. In its responses, Kent Police explained that:

“Any disclosure under FOIA is a release to the public at large. Under the Act, requests are considered motive blind with the understanding the vast majority of requests are legitimate and without ulterior motives. Whilst not questioning the motives behind this specific request, confirming or denying that information is held regarding business with Amazon Rekognition, or any other likeminded third-party provider, would cause operational harm and affect the police’s ability to fulfil its core function of law enforcement in the future.

Confirming or denying if a particular policing tool of this type (in this case Amazon Rekognition) is used, or has been trialled by Kent Police is different from confirming if, in principle, commercial tools generally are used within the scope of facial recognition technology. It is well established that police forces use publicly available data to counteract criminal or terrorist behaviour. It has been previously documented in the media that many terrorist incidents are thwarted due to intelligence gained by these means. However, given the sensitive areas in which tools may be used, including within the sphere of counter-terrorism investigations, to disclose if any specific products or tools are trialled, or subsequently used would allow criminals and other adversaries to focus on evaluating the particular capabilities of such. With this knowledge it would allow criminals and other adversaries to take steps to counteract them, be it simply by adjusting how they interact and present themselves to take advantage of any weaknesses or gaps in capability they identify. At a simple level, if a policing tool does not do something, such as search a particular social media site or was unable to identify a particular format of images, and criminals can establish this, they will exploit this knowledge. More sophisticated adversaries may be able to go further and take more proactive measures to undermine the tool and/or its provider, and a specific confirmation allows efforts to be focused accordingly.

This detrimental effect is increased if the request is made to several different law enforcement bodies. In addition to the local criminal fraternity now being better informed, those intent on disrupting policing functions throughout the UK will be able to ‘map’ where the use of certain tools, ergo tactics, may or may not be deployed. This can be useful information to those committing (or those intent on committing or planning) crime.

Any information identifying the focus of policing activity could be used to the advantage of terrorists or criminal organisations. Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both National Security and Law Enforcement.”

17. Based on the rationale provided, the Commissioner accepts that disclosure of information, in this case a confirmation or denial as to whether it is held, that touches on the work of Kent Police would consequentially undermine national security. For that reason, section 24(2) of FOIA is engaged, as exemption from the duty to confirm or deny is required for the purposes of national security. He will now consider the associated public interest test.

Public interest arguments in favour of confirming or denying

18. The complainant made the following submissions to Kent Police in favour of confirming or denying that the requested information was held (some of which overlap or are similar to those set out in the 'Scope' section above):

“The request is not asking for data such as the name or location of where technology is being used. It is in the public interest, as previously outlined, to understand whether certain technology is being used or has been used. There are significant civil liberties and privacy concerns related to the use of facial recognition technology. The existence of contract(s) can also be a matter of public record and again are supported by transparency concerns.

Some police departments in the UK have disclosed the use/non-use e.g. via press offices and not flagged any concerns.”

19. Kent Police recognised that:

“The public are entitled to know what public funds are spent on and what measures are in place. By confirming or denying if business is conducted with Amazon Rekognition, or any other likeminded third-party provider, would lead to a better-informed public.”

Public interest arguments in favour of maintaining the NCND exemption

20. Kent Police told the complainant and the Commissioner that:

“By confirming or denying whether any information is held would render policing and security measures less effective. This would lead to the compromise of ongoing or future operations to

protect the security or infra-structure of the UK and increase the risk of harm to the public.”

Balance of the public interest

21. Kent Police said:

“The security of the country is of paramount importance, and Kent Police will not divulge whether any information is or is not held regarding business with any company, if to do so would place the safety of an individual at risk, undermine National Security or compromise law enforcement.

As much as there is public interest in knowing that policing activity is appropriate and balanced this will only be overridden in exceptional circumstances. The use of technology can be a sensitive issue that would reveal police tactics and therefore it is our opinion that for these issues the balancing test for confirming or denying whether any information is held regarding the police, Amazon Rekognition, or any other likeminded third-party provider, is not made out.

No inference can be made from this response that any information relevant to this request is or is not held.”

22. Turning to the balance of the public interest, the question here is whether the public interest in safeguarding national security is outweighed by the public interest in confirmation or denial as to whether the requested information exists. Clearly, the public interest in safeguarding national security carries very great weight. In order for the public interest to favour provision of the confirmation or denial, it will be necessary for there to be public interest factors in favour of this of at least equally significant weight.
23. The view of the Commissioner is that there is some valid public interest in confirmation or denial in response to this request. It would increase public awareness of the types of facial recognition technologies that Kent Police may use. It would also further debate on what remains an emotive subject matter given the associated privacy issues.
24. However, the Commissioner considers it to be clearly the case that this public interest does not match the weight of the public interest in safeguarding national security. This means that his conclusion is that the public interest in the maintenance of the exemption provided by section 24(2) of FOIA outweighs the public interest in providing a confirmation or denial.
25. In view of this finding, the Commissioner has not considered Kent Police’s reliance on section 31(3) of FOIA.

Reference: IC-320081-J7L0



26. It follows that Kent Police was not required to confirm or deny whether it held the information requested by the complainant.

Right of appeal

27. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carol Scott
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF