

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 November 2024

**Public Authority:** Chief Constable of Nottinghamshire Police  
**Address:** Nottinghamshire Police Headquarters  
Sherwood Lodge  
Arnold  
Nottingham  
NG5 8PP

#### **Decision (including any steps ordered)**

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1. The complainant requested information about a specified facial recognition tool. Nottinghamshire 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 Nottinghamshire 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 Nottinghamshire Police's reliance on section 31(3) of FOIA.
3. No steps are required as a result of this notice.

#### **Request and response**

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4. On 11 June 2024, the complainant wrote to Nottinghamshire 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. Nottinghamshire Police responded on 5 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, Nottinghamshire Police wrote to the complainant on 11 July 2024. It maintained its original position.

## **Scope of the case**

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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:

"It is in the public interest to understand whether certain specific technologies - which have different capabilities and rules around their use - are being used or have been used by the force. There are significant civil liberties and privacy concerns related to the use of specific facial recognition technologies.

It is also worth noting that other UK police forces have voluntarily disclosed their use of specific facial recognition technologies, either via their press officers or via their FOI teams. This implies that they have determined that the disclosure of that information would not jeopardise policing or the safety of the public.

There is an array of publicly available information outlining how Amazon's Rekognition technology works, including via Amazon's own promotional materials. Criminals are aware of the general use by law enforcement of facial recognition technologies and could already take steps to avoid or counteract the use of Rekognition and other tools using the existing public information about them and how they work.

It is hard to understand how the simple disclosure of the use of a technology by a police department could allow criminals (or lack of use of it) could inform criminals about how to avoid policing to any material degree. The disclosure that a force does or does not use a technology does not tell criminals or others how and where specifically they are being used. It seems unreasonable to suggest that the disclosure of the use (or lack of use) of Rekognition could materially impede policing."

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

## **Reasons for decision**

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### **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. Nottinghamshire 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 Nottinghamshire 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 the Nottinghamshire 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 submissions to the Commissioner, Nottinghamshire Police explained that:

‘Confirming or denying if a particular policing tool of this type (in this case Amazon Rekognition) is used or has been trialled by Nottinghamshire 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 in order to counteract criminal or terrorist behaviour. It has been previously documented in the media that many terrorist incidents have been thwarted due to intelligence gained by these means.

Modern day policing is intelligence led and this is particularly pertinent with regard to law enforcement, and Counter Terrorism. The public expect police forces to use all powers and tactics available to them to prevent and detect crime or disorder and maintain public safety. As such, confirmation or denial is only possible when doing so would not reveal certain tactics and techniques, the extent to which they may be deployed, and whether information is held that has a bearing on matters of National Security.

The threat from terrorism cannot be ignored. It is generally recognised that the international security landscape is increasingly complex and unpredictable. Since 2006, the UK Government has published the threat level based upon current

intelligence, and that threat is currently judged as "SUBSTANTIAL".

Given the sensitive areas in which tools may be used, including within the sphere of counter-terrorism investigations, to disclose if any particular 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 adjusting how they interact and present themselves to take advantage of any weaknesses or gaps in capability they identify.

At a simple level, if for example, a policing tool doesn't do something, such as searching a particular social media site or was unable to identify a specific format of images, and criminals can establish this, they will be able to exploit this position. 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. We consider the use of facial recognition technology in much the same way.

To confirm or deny its use, instantly identifies particular strengths or weakness in a specific area of law enforcement. Nottinghamshire Police must take into consideration that determined and well-resourced terror groups use intelligence gathering methods as part of their activities. Sophisticated Terrorist and Criminal groups could use this information as part of a mosaic of information to build up a pattern of technological capabilities or lack thereof, at a local and national level. Then use that information to predict policing levels at any time and location.

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 and 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 Nottinghamshire 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 Nottinghamshire 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):

"It is in the public interest to understand whether certain specific technologies - which have different capabilities and rules around their use - are being used or have been used by the force. There are significant civil liberties and privacy concerns related to the use of specific facial recognition technologies. It is also worth noting that other UK police forces have voluntarily disclosed their use of specific facial recognition technologies, either via their press officers or via their FOI teams and have not raised concerns about the potential for such disclosure to jeopardise their policing.

There is an array of publicly available information outlining how Amazon's Rekognition technology works, including via Amazon's own promotional materials. Criminals are aware of the general use by law enforcement of facial recognition technologies and could already take steps to avoid or counteract the use of Rekognition and other tools using the existing public information about them and how they work."

19. Nottinghamshire 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. Nottinghamshire Police told the complainant 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.

The security of the country is of paramount importance and Nottinghamshire 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 ... 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".

21. In its submissions to the Commissioner, Nottinghamshire Police argued 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. To confirm or deny information is held would render security measures less effective.

Any information shared between law enforcement partners (i.e. intelligence) has the potential to cover all aspects of criminal activity, be it threats to life, or intelligence relating to terrorist activity. Confirmation or denial could highlight to those intent on criminality, whether or not information has been shared. Confirming such would dramatically weaken the effectiveness of intelligence led policing. The public entrust the Police Service to make appropriate decisions with regard to their safety and protection and the only way of reducing risk is to be cautious with any information, no matter how generic that is.

Confirmation or denial across the Police Service would infer that there are gaps within the intelligence picture nationally which, for certain criminal elements and extremists, may embolden them to focus efforts within areas that they deem to be "soft" targets. Any incident that results from such a disclosure would by default affect National Security.'

### **Balance of the public interest**

22. Nottinghamshire Police told the Commissioner that:

“The security of the country is of paramount importance and Nottinghamshire 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. To confirm or deny whether the Force hold information would allow inferences to be made about the nature and extent of national security related activities which may or may not take place in a given area. This could enable group(s) to take steps to avoid detection, and as such, confirmation or denial would be damaging to National Security and law enforcement.

Although we acknowledge that the public are fully aware that facial recognition technology exists, and could be a useful law enforcement tool, to confirm or deny the use of Amazon ‘Rekognition’ by Nottinghamshire Police would be prejudicial to National security and law enforcement.

Any disclosure by Nottinghamshire Police that places the security of the country at risk, no matter how generic, would undermine any trust or confidence individuals have in us. Therefore, at this moment in time, it is our opinion that for these issues the balance test favours neither confirming nor denying that any information exists.

The use of technology can be a sensitive issue that would reveal police tactics and therefore it is our opinion that 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.

However, this should not be taken as necessarily indicating that any information that would meet their request exists or does not exist.’

23. 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.



24. 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 Nottinghamshire Police may use. It would also further debate on what remains an emotive subject matter given the associated privacy issues.
25. 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.
26. In view of this finding, the Commissioner has not considered Nottinghamshire Police's reliance on section 31(3) of FOIA.
27. It follows that Nottinghamshire Police was not required to confirm or deny whether it held the information requested by the complainant.

## **Right of appeal**

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28. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.

30. 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**  
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