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Our Ref: FOI2018/04966

REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000 Ref No: FOI2018/04966

I write in connection with your request for information received on 4th September. I note you seek access to the following information:

How many times in the past three years to date have you asked Facebook to access information in relation to a criminal investigation from Facebook?

How many times has Facebook provided the information without the need of a court order through the Department of Justice in the USA?

How many times have you had to apply for a court order through the Department of Justice in the USA to get information from Facebook to aid a criminal investigation?

Where successful, did Facebook charge you for accessing the information requested and how much did you pay them in total?

I am required by the Freedom of Information Act 2000 (The Act) to handle all requests in a manner that is blind to the identity of the requestor. Any information released in response to a request is regarded as being published and therefore, in the public domain without caveat.

Following enquiries within the Constabulary please see our response below.

Response – Hertfordshire Constabulary neither confirms nor denies that it holds information as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply, by virtue of the following exemptions:

Section 31 (3) – Law Enforcement

Section 23(5) – Information Supplied by, or Concerning, Certain Security Bodies

The Section 23 is a class based absolute exemption and there is no requirement to evidence the harm or consider the public interest with regard to ensuring that information exists is the appropriate response.

The Section 31 exemption is a prejudice based qualified exemption and there is a requirement to articulate the prejudice (harm) confirming or denying information exists as well as considering the public interest.

Harm in confirming that Information is held

Public safety is of paramount importance to the policing purpose and must be taken into account in deciding to disclose whether the information is or is not held. Furthermore, confirming if particular tactics are used and confirming policing methods which are not in the public domain may prejudice the use of this method by allowing criminals to adopt counter measures.

To confirm or deny whether we hold any further information, would allow interested parties to gain an upper hand and awareness of policing policy and decisions. To confirm or deny that any other information is held or provide details relating to what may or may not be held may be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public, and this would also impact upon any current investigation.

Section 31

Factors favouring confirmation or denial for S31

Confirming or denying whether any further information is held would allow the public to see where public funds have been spent and allow the Police service to appear more open and transparent.

Factors against confirmation or denial for S31

By confirming or denying whether any further information is held would mean that law enforcement tactics would be compromised which would hinder the prevention and detection of crime. Investigation procedures and tactics are re-used and have been monitored by criminal groups, fixated individuals and terrorists. These procedures and tactics would need to be reviewed which would require more resources and would add to the cost to the public purse.

Balancing Test

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. The safety of the public is of paramount importance and the Police Service will not divulge whether any other information is or is not held if to do so would place the safety of an individual at risk or undermine an investigation. Whilst there is a public interest in the transparency of policing, providing assurance that the Police Service is appropriately and effectively engaging with the threat from criminals, there is a very strong public interest in safeguarding policing techniques and the integrity of the police, in knowing that policing activity is appropriate and balanced, which will only be overridden in exceptional circumstances.

It is therefore our opinion that for these issues the balancing test for confirming or not that any other information is held is not made out.

Should you have any further enquiries concerning this matter please do not hesitate to contact me quoting the above reference number.

Yours sincerely

James Hodson
Information Rights

Hertfordshire Constabulary provides you the right to request an independent review of this response under its review procedure. If you require such a review you must notify us within two months from the date of this letter. After lodging a complaint with Hertfordshire Constabulary if you are still dissatisfied with the decision you may make an application to the Information Commissioner. For information on how to make a complaint please visit their website at <https://ico.org.uk/concerns/> or contact them on 0303 123 1113.