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Our Ref: FOI2018/04852

REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000 Ref No: FOI2018/04852

I write in connection with your request for information received on 28th August. I note you seek access to the following information:

I would like to make the following request under the terms of the Freedom of Information Act, 2000.

Since at least 2000, the Government has authorised the use of juveniles as Covert Human Intelligence Sources (CHIS), under the Regulation of Investigatory Powers Act 2000.

I would like to know how many juvenile CHIS have been used by your force since 2000, if possible disaggregated by age range of child (under 16, and 16 and over), type of crime, and year.

I recognise that data about CHIS operations could potentially allow criminals to determine (or cause them to suspect) that a child has acted against them, posing a risk to children. Therefore if more specific details must be withheld, I would be satisfied with simply knowing how many juvenile CHIS have been used since 2000.

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 - Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at s1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at s1(1)(b) is to disclose information that has been confirmed as being held. Where exemptions are relied upon Section 17 of the FOIA requires that we provide the applicant with a notice which: a) states that fact; b) specifies the exemptions in question and c) state (if that would not otherwise be apparent) why the exemption(s) applies.

Hertfordshire Constabulary neither confirms nor denies that it holds information relevant to this request by virtue of the following exemptions.

Section 23(5) Information supplied by, or concerning, certain Security Bodies;
Section 24(2) National Security
Section 30(3) Investigations by virtue of Section 30(2)
Section 31(3) Law Enforcement
Section 38(2) Health and Safety
Section 40(5) Personal Information

Sections 23 and 40 are class based absolute exemptions and there is no requirement to evidence the harm or consider the public interest. With regard to Section 40 please bear in mind that the changes brought about by GDPR apply where you are considering whether the use of NCND is appropriate inasmuch as determining that confirmation or denial would be lawful and fair.

Section 30 is a class based qualified exemption and consideration of the public interest must be given as to whether neither confirming nor denying information exists is the appropriate response.

With Sections 31, 24 and 38 being prejudice based and qualified there is a requirement to articulate the harm that would be caused in confirming or not whether information is held as well as carrying out a public interest test.

Evidence of Harm in complying with Section 1(1)(a) – to confirm or not whether information is or isn't held

The public expect police forces and other law enforcement agencies to use all powers and tactics available to prevent and detect crime or disorder and maintain public safety. There are a number of covert tactics available and the use of informants (CHIS) is one of them. Used correctly, in line with the Regulation of Investigatory Powers Act legislation, it is a proportionate, lawful and ethical tactic which provides an effective means of obtaining evidence and intelligence.

There is considerable harm attributed to the confirmation or denial of any information in relation to police receiving information from confidential sources. Such information would not exist had covert human intelligence sources (CHIS) not been required to participate in the effective investigation of criminal matters. The information is only held because it is obtained and recorded by the force for the purpose of its functions in relation to criminal investigations.

In this case, and irrespective of whether any information relating to this request is or isn't held, confirmation or denial that individuals under the age of 18 are used as CHIS is likely to reduce the flow of information to the Police Service and intelligence agencies and would have a substantial prejudicial impact on the ability of such authorities to collect reliable and accurate intelligence. Furthermore, law enforcement bodies would become dependent on more costly and time consuming methods of collecting intelligence.

Covert Human Intelligence Sources (regardless of their motivation) provide information at particular personal risk to themselves and their families. As previous cases have shown, where a CHIS is identified it can result in substantial physical harm, or mental trauma resulting from the threat of physical harm. This problem is particularly acute in cases relating to serious crime and terrorism where the threat against individuals is substantial. To confirm or deny whether or not individuals under the age of 18 years are used as CHIS by (force name) would place those individual(s), if any, at an increased risk from danger as detailed above.

At present the use of CHIS is regulated by the Regulation of Investigatory Powers Act (soon to fall under the Investigatory Powers Act) which requires authorities to take into account the provisions of the Human Rights Act when using CHIS (and other covert techniques). Police forces are reminded of their obligation under Article 2 of the Human Rights Act which requires them to protect human life. This is further supported by a High Court hearing *Van Colle v Chief Constable Hertfordshire Police*. In this case the force concerned failed to provide adequate protection to an individual whose life was at risk because of the criminal acts of a third party. The witness was murdered by a person whom he was about to give evidence against in a criminal trial.

It may be viewed by those not involved in the management of informants that a statistical number in itself is unlikely to cause any such adverse effects. However, the subject has to be viewed more as a whole.

Those determined to identify informants have the ability to use small pieces of information in order to build a more complete picture and it is the cumulative effect of information disclosures that the Police Service feel will lead to this prejudice being realised.

Irrespective of what information is or isn't held, numbers may be extremely low and not all forces will have recruited children as CHIS. To state 'no information held' or cite a substantive exemption would confirm which forces have individuals under the age of 18 recruited as covert human intelligence sources (CHIS). This in itself would be harm inasmuch as it would potentially reveal CHIS activity and locations.

Public Interest Considerations

Section 24(2) National Security

Factors favouring complying with Section 1(1)(a) confirmation or denying that any other information is held

The public are entitled to know how funds are spent and resources distributed within an area of policing, particularly with regard to how the police investigate terrorist atrocities. To confirm whether information exists would enable the general public to hold (force name) to account in relation to how all CHIS are recruited by (force name) to ensure it is done so in line with RIPA legislation and local force policies and procedures.

Factors against complying with Section 1(1)(a)

Taking into account the current security climate within the United Kingdom, no information which may aid a terrorist should be disclosed. To what extent confirmation or denial may aid a terrorist is unknown, but it is clear that it will have an impact on a force's ability to monitor terrorist activity.

The public entrust the Police Service to make appropriate decisions with regard to their safety and protection. The only way of reducing risk is to be cautious with what is placed into the public domain and in some circumstances such as these, confirmation or denial that information is held.

The cumulative effect of terrorists gathering information from various sources would build a picture of vulnerabilities within certain scenarios, such as the use of individuals under the age of 18 being recruited as CHIS. The more information disclosed over time will provide a more detailed account of the tactical infrastructure of not only a force area but also the country as a whole.

Any incident which results from such a disclosure would by default affect National Security.

Section 30(3) Investigations

Factors favouring complying with Section 1(1)(a) confirming that information is held

Confirming or denying that any information exists would lead to a better informed public, improving their knowledge and understanding of how the Police Service utilise the use of Covert Human Intelligence Sources as part of their investigative policing.

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. Confirming that information exists could promote public trust in providing transparency and demonstrating openness and accountability into how the investigation took place. It could also provide reassurance to the public that the Police Service takes all reports of a crime seriously and conducts investigations appropriately. To confirm information is held could allow the public to have a better understanding of the effectiveness of the Police Service.

Factors against complying with Section 1(1)(a) confirming or denying that information is held

However, by its very nature information held relating to informants is sensitive in nature. Under FOI there is a requirement to comply with Section 1(1)(a) and confirm what information is held. In some cases it is that confirmation, or not, which could disclose facts harmful to informants. In some cases their mere existence can place individuals in grave danger. The only methodology which will provide the required degree of protection to those individuals is if the force takes advantage of its ability under FOI legislation to, when appropriate, not confirm or deny that the information requested is, or is not held. The Police Service will never confirm or deny information is held if in doing so could identify investigative activity and therefore undermine their investigations. To do so would hinder the prevention or detection of crime.

Section 31 Law Enforcement

Factors favouring complying with Section 1(1)(a) confirming information is held

There is information within the public domain, such as Lord Trefgarne's Scrutiny Committee report into the use of juvenile CHIS by the Police Service, see below link, and that in itself favours confirmation information is held:

<https://publications.parliament.uk/pa/ld201719/ldselect/ldsecleg/168/168.pdf>

Factors against complying with Section 1(1)(a) neither confirming nor denying that information is held

Hertfordshire Constabulary has a duty of care to the community at large and public safety is of paramount importance. If an FOI disclosure reveals information to the world by not adopting an NCND position, would not only compromise and undermine the security of the national infrastructure, the effective delivery of operational law enforcement would also be undermined as offenders, including terrorist organisations, could use this knowledge to their advantage which would compromise public safety and more worryingly encourage offenders to carry out further crimes.

Hertfordshire Constabulary relies on information being supplied by the public. Irrespective of what information is or isn't held, by applying substantive exemptions would indicate that information is held and therefore a juvenile CHIS located within Hertfordshire Constabulary's jurisdiction. Such action would act as a deterrent to the public to provide intelligence to the force which would further undermine public safety, with repercussions that could hinder the prevention or detection of crime.

Section 38 Health and Safety

Factors favouring complying with Section 1(1)(a) confirming information is held

Confirming whether information is or isn't held would provide reassurance to the general public that (force name) use tactical options with regard to the use of Covert Human Intelligence Sources as a means of acquiring intelligence. This awareness could be used to improve any public consultations; debates in relation to this subject and also allow the public to take steps to protect themselves.

Factors against complying with Section 1(1)(a) confirming or denying that information is held

Confirming or denying that information exists could lead to the loss of public confidence in Hertfordshire Constabulary's ability to protect the wellbeing of individuals recruited as CHIS as well as members of the community at large.

Hertfordshire Constabulary has a duty of care towards any individual who has been recruited as a CHIS. To reveal information via an FOI request which would place the safety of individuals in grave danger, is not in the public interest.

Balancing Test

The points above highlight the merits of confirming, or denying, whether any information pertinent to this request exists. The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. As part of that policing purpose, various tactical options, including the use of juvenile CHIS, may or may not be utilised. The Police Service will never divulge whether or not information pertinent to this request does or does not exist, if to do so would place the safety of an individual(s) at risk, compromise an ongoing investigation or undermine the policing purpose in the effective delivery of operational law enforcement.

Whilst there is a public interest in the transparency of policing operations and investigations, providing reassurance that the Police Service is appropriately and effectively engaging with the threat from criminals, there is a very strong public interest in safeguarding the health and safety of individuals. As much as there is a public interest in knowing that policing activity is appropriate and balanced it will only be overridden in exceptional circumstances.

Therefore, at this moment in time, it is our opinion that for these issues the balance test for confirming, nor denying that information is held is appropriate.

No inference can be taken from this refusal that information does or does not exist.

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.