

24th April 2019

Freedom of Information Request – Reference No:20190646

REQUEST

I write to request information and records under the FOIA, regarding your force's policy and practices in relation to requesting and taking phones and digital devices from people who have been subject to stop and search procedures, and subsequent access to those devices,

Specifically, I am asking the following:

- 1. Does your force ever request or take mobile phones or digital devices from individuals during a stop and search under any police power and does your force ever access mobile phones or digital devices requested or taken from individuals during stop and searches? If yes, please provide:***
 - i. The legal basis under which you are doing this***
 - ii. Copies of any policy or guidance in relation to this practice***
 - iii. How you access phones taken during stop and searches which are locked with a password***
 - iv. The technical equipment, if any, that your force is using when accessing devices during stop and searches***

RESPONSE

I approached the Force Lead on this subject. The Chief Inspector has provided some details below.

Q1 – Yes – this paragraph is what we would comply with

NPCC : The national policing lead provided the following information:

“Nothing prevents officers from making legitimate enquiries into circumstances to prove that a crime has or hasn't happened. Is this your phone? Can you prove this is your phone? The only time you would take a phone is if you have a power to do so (see below) under section 19 PACE, section 32 PACE or under the authority of a warrant. If you arrest a person following a stop and search and the phone is evidence of an offence or contains evidence, it can then be seized and the phone interrogated per force policy. A police force could examine a person's phone for evidence by consent.”

Q iv – that is also the correct statement, we would not access devices in a stop and search situation

NPCC: The normal procedure would be to seize the phone as evidence and then use technical equipment to access the device at the relevant police station.

Q i & ii

Section 17 of the Freedom of Information Act 2000 requires South Yorkshire Police, when refusing to provide such information (because the information is exempt), to provide you the applicant with a notice which:

- a. states that fact,
- b. specifies the exemption in question and
- c. states (if that would not otherwise be apparent) why the exemption applies).

The exemption applicable to your request falls under Section 21.

Section 21 'Information which is reasonably accessible to the applicant'.

The following link is the legal basis and the policy/guidance used by forces in relation to this matter.

<https://www.gov.uk/government/publications/pace-code-a-2015>

Qiii

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- (a) states the fact,
- (b) specifies the exemption and
- (c) states (if it would not be apparent) why the exemption applies.

Section 31 (1) (a) (b) Law Enforcement states that information is exempt information if its disclosure under the Act would, or would likely to prejudice:

- a) The prevention or detection of crime;
- b) The apprehension or prosecution of offenders.

This exemption is a qualified and prejudice based exemption and therefore the legislators accept that there may be harm if released. The authority has to consider and describe the harm that would occur if a full disclosure of information were released.

HARM

It is important to stress that when a disclosure is made under the Freedom of Information Act, it is a disclosure to the world and not to a single individual. In view of this, we may publish information released under the Freedom of Information Act on our website in order that any member of the public who may wish to view the information can have access to it.

In considering whether or not this information should be disclosed, consideration has been given to the potential harm that would be caused by disclosure and if this could jeopardise the work done within communities to increase the public's confidence in reporting and giving assistance to the Force.

PUBLIC INTEREST

Section 31 – Considerations favouring disclosure

- Disclosure would demonstrate SYPs commitment to transparency and openness

- A full release of information would show that SYP is proactive in its operational policing and capabilities.
- Disclosure would provide better awareness, which may reduce crime or lead to more information from the public.

Section 31 – Considerations favouring non-disclosure

- An impact on police resources, which would hinder the prevention or detection of crime and place individuals at risk.
- More crime would be committed by those individuals intent on committing offences which would impact of the force and the safety of members of the public.

BALANCE

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. While there is also a public interest in the transparency of policing functions and at the same time providing assurance that the police service is appropriately and effectively working to safeguard the public. Having weighed up both parts of the public interest test, I have decided on balance that we will not be providing any information for this question.