

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 2021

Public Authority: Chief Constable of Gwent Police

Address: FOI@gwent.police.uk

Decision (including any steps ordered)

1. The complainant requested various information about "Project Habittance", "Project Habittance II" and "Project Inhabittance". Gwent Police refused to confirm or deny whether it held information falling within the scope of the request on the basis of sections 23(5) (security bodies), 27(4)(a) & (b) (international relations), 30(3) (investigations), 31(3) (law enforcement) and section 40(5) (personal information). The Commissioner's decision is that Gwent Police was entitled to rely on section 23(5) to neither confirm nor deny whether or not it holds the requested information. The Commissioner does not require any steps to be taken.

Request and response

2. On 14 December 2020, the complainant wrote to Gwent Police and requested information in the following terms:

"This is a request under the Freedom of Information Act 2000 ("the Act"). We write on behalf of our client [name redacted] in relation to so-called "Project Habittance," "Project Habittance II," and "Project Inhabittance." We understand that Project Habittance "is the [National Crime Agency's] response to hidden services, specifically criminally motivated by Child Sexual Abuse and Exploitation (CSAE) sites and services," and that "Project Habittance II" and "Project Inhabittance" are related in some way. We further understand that Project Habittance, Project Habittance II, and Project Inhabittance II include international law

enforcement partners, including the Federal Bureau of Investigation in the US ("the FBI"). It has been widely reported that the NCA and the FBI work together to investigate cyber-crime.

It is in this context that we seek the following information:

- 1. There are various references in publicly available documents to Project/Operation Habitanace, Project/Operation Habitanace II, and "Project INHABITANCE". What are the differences between these operations?*
- 2. How data that is held by your force was obtained under Project/Operation Habitanace, Project/Operation Habitanace II, and Project Inhabitanace.*
- 3. From January 2019 and continuing to date, the number of tips your force has received from the NCA with information pertaining to specific IP addresses or individuals under Project Habitanace, Project Habitanace II, and Project Inhabitanace. Of the tips received from the NCA, what percentage have resulted in i) charges being filed, and ii) no charges being filed. Of the cases in which charges were filed, the percentage that resulted in convictions, and what for what offenses.*
- 4. There are various references in publicly available documents to quality concerns around products released under Project/Operation Habitanace. For January 2019, continuing to date, can you please i) describe the nature of the quality concerns, ii) the length of time quality issues had been ongoing, and iii) copies of any feedback or complaint forms regarding the quality issues (in redacted form if necessary)?*
- 5. The nature of your data sharing obligations with the NCA in relation to Project/Operation Habitanace, Project/Operation Habitanace II, and "Project INHABITANCE" and in particular whether you are required to share data obtained in this jurisdiction, including but not limited to Internet Protocol ("IP") addresses, with law enforcement agencies outside of the jurisdiction.*
- 6. What is the involvement of foreign law enforcement agencies, in particular US law enforcement agencies with Project/Operation Habitanace, Project/Operation Habitanace II, and "Project INHABITANCE"?*
- 7. The number of occasions on which data held by your force has been incorrectly flagged as CSE from January 2019 and continuing to date. Of the occasions on which data held by your force has been incorrectly flagged as CSE, the number that were a result of officer error and the number that were a result of the use of markers.*
- 8. From January 2019 to continuing to date, the number of requests you have received from the NCA to provide information to them under Project/Operation Habitanace, Project/Operation Habitanace II, and "Project INHABITANCE" since their inception and continuing to date.*

9. Please provide a log of the communications exchanged between your force and the NCA, from January 2019 and continuing to date, arising under Project Habitanace, Project Habitanace II, and Project Inhabitanace.

10. The number of requests you have received to provide information under

Project/Operation Habitanace, Project/Operation Habitanace II, and "Project

INHABITANCE" to law enforcement agencies in the United States since their

inception and continuing to date. Please indicate the number of occasions and dates on which you have complied with those requests?

11. Administrative staff manuals and instructions to staff, including any training materials and national guidance issued relating to

Project/Operation Habitanace,

Project/Operation Habitanace II, and "Project INHABITANCE."

3. Gwent Police responded on 7 January 2021 and refused to confirm or deny whether any information was held in reliance on sections 23(5), 27(4)(a) and (b), 30(3), 31(3) and 40(5) of the FOIA.
4. On 1 February 2021 the complainant wrote to Gwent Police and requested an internal review of its handling of the request. The complainant said that they were unable to see how confirming or denying whether recorded information was held could apply to the whole request, but specifically with regard to some of the more general requests such as parts 3, 7, 8 and 10.
5. Gwent Police provided the outcome of its internal review on 11 February 2021 and upheld its position not to confirm or deny whether relevant information was held by virtue of sections 23(5), 27(4)(a) and (b), 30(3), 31(3) and 40(5) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 22 February 2021 to complain about the way their request for information had been handled.
7. In relation to this complaint it is important to note that the right of access provided by FOIA is set out in section 1(1) and is separated into two parts. Section 1(1)(a) gives an applicant the right to know whether a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the requested information, if it is held. Both rights are subject to the application of exemptions.

8. As explained above, Gwent Police is seeking to rely on sections 23(5), 27(4)(a) and (b), 30(3), 31(3) and 40(5) of the FOIA to neither confirm nor deny (NCND) whether it holds information falling within the scope of the request. Therefore, this notice only considers whether Gwent Police was entitled, on the basis of these exemptions, to refuse to confirm or deny whether it holds the requested information. The Commissioner has not considered whether the requested information – if held – should be disclosed.

Reasons for decision

Section 23 – security bodies

9. Section 23(1) of FOIA states that:

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in sub-section (3)".

10. Section 23(5) of FOIA states that:

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)".

11. The full list of bodies specified in section 23(3) can be viewed online¹.

12. Section 23(5) is an absolute exemption. This means that if section 23(5) is engaged the public authority is not obliged to give the confirmation or denial with no requirement to consider the balance of the public interest.

13. In the Commissioner's opinion the exemption contained at section 23(5) should be interpreted so that it is only necessary for a public authority to show that **either** a confirmation **or** denial of whether requested information is held would involve the disclosure of information relating to a security body. It is not necessary for a public authority to demonstrate that both responses would disclose such information. Furthermore, the Commissioner considers that the phrase 'relates to'

¹ <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

should be interpreted broadly. Such an interpretation has been accepted by the First-Tier Tribunal (Information Rights) in a number of different decisions².

14. Whether or not a security body is interested or involved in a particular issue is in itself information relating to a security body. Therefore, in the Commissioner's opinion section 23(5) could be used by a public authority to avoid issuing a response to a request which revealed either that a security body was involved in an issue or that it was not involved in an issue.
15. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
16. The issue for consideration by the Commissioner here is whether giving the confirmation or denial in response to the complainant's request would involve the disclosure of information, whether or not already recorded, that would relate to or have been supplied by any of the bodies listed in section 23(5). The request in this case is for information about Project Habitanice. The Commissioner understands both from the wording of the request and publicly available information³ that Project Habitanice is a National Crime Agency (NCA) project to tackle child sexual exploitation.
17. The NCA is listed in section 23(5) of the FOIA. As the request is for information relating to a project carried out by the NCA, the Commissioner's view is that giving the confirmation or denial in response to this request would involve a disclosure of information relating to the NCA. This means that the exemption provided by section 23(5) is engaged in this case and the NCA was not obliged to confirm or deny whether it held the information requested by the complainant.

² See for example [Dowling v Information Commissioner and The Police Service for Northern Ireland](#), EA/2011/0118, paras 17 to 22.

³ [An inspection of the National Crime Agency's criminal intelligence function \(justiceinspectorates.gov.uk\)](#) – page 11

18. The Commissioner appreciates the complainant's point that simply complying with section 1(1)(a) may not reveal sensitive or individual case specific information. However, this point is not relevant to whether section 23(5) of the FOIA is engaged.
19. In light of her conclusion in relation to section 23(5), the Commissioner has not gone on to consider the MOD's reliance on sections 27(4)(a) and (b), 30(3), 31(3) and 40(5) of FOIA.

Right of appeal

20. 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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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