

Subject: RE: FOIA: Reject - Neither Confirm Nor Deny
From: <TPHQMailbox-.FOIRRequests@met.pnn.police.uk>
Date: 23/07/2014 14:13
To: <chris@statewatch.org>

Dear Mr Jones

The MPS has not procured, nor is it in the process of procuring, any automated algorithmic based predictive crime mapping technologies. However, the MPS is engaged in a research partnership with a small group of vendors and academia, with a view to assessing the efficacy and potential operational usefulness of such technologies. The vendors involved are supplying their products Free of Charge (FoC). This activity is covered by privacy, or Non Disclosure Agreements (NDA). Therefore, the MPS is not at liberty to disclose which parties are involved, or to disclose any interim evaluation material. With regard to litigation this could potentially arise in the following scenarios:

- Any form of confirmation and / or disclosure concerning one particular vendor would be breach of the NDA. This could lead to any one of the other vendors taking legal action against the MPS on the grounds that such a disclosure has given a 'competitor' some form of commercial advantage by way of 'perceived' MPS public endorsement of that product and as a consequence the aggrieved party had suffered damage.
- Any release of interim evaluation material is, by its very nature, incomplete and, therefore, potentially unreliable. This could lead to any party to the research partnership taking legal action against the MPS eg:
 - Representatives from Academia could argue that work they planed to publish has been undermined by a premature 'unauthorised' release.
 - A named vendor directly associated with the evaluation material disclosed could argue that the disclosure unduly prejudices their commercial position. This could be from the point of view that they may not wish potential paying customers to know they are engaged in FoC research, or if they believe the evaluation material unfairly represents the capability and marketability of their product.
- By the same token confirmation that a particular vendor is not engaged in the research partnership could also be viewed by the named vendor as potentially damaging to the marketing activity eg they were not seen as worthy be involved in such research.
- Lastly, the release of any evaluation material from this research, because it would then be in the public domain, could be used erroneously by a supplier who was unsuccessful in any possible future procurement process. Such a vendor could use the disclosure as 'evidence', however unwarranted, of the MPS's predisposition to the successful contractor, or of a predisposition to rival product methodology, to place an injunction on the completion of the procurement process. The legal costs involved in defending and lifting such an injunction would be significant, notwithstanding the costs associated with delaying the operational deployment of a product, which would have been selected objectively on merit, to help the MPS tackle and reduce the impact of crime in London's communities.

Notwithstanding the above, it has to be emphasised that the MPS has, at this time, made no decision around any future procurement of such technologies. The MPS is committed to making London one of the safest cities in the world; hence the research referred to above, which has to be conducted in a particular way to carefully balance a number of legitimate interests. I trust this clarifies the MPS's position, which was explicit and implicit in the original FoI response and that you now feel your questions have been answered.

Regards

Inspector Ramsey

-----Original Message-----

From: Chris Jones [<mailto:chris@statewatch.org>]
Sent: 16 July 2014 14:07
To: Solomon Deborah - TP - C&S
Subject: Re: FOIA: Reject - Neither Confirm Nor Deny

Dear Ms Solomon,

I am writing with regard to the response to my FOI request I received from Detective Superintendent Ryan yesterday. The suggestion of other places I may find information is appreciated. However, I wonder if it would be possible to clarify a point.

The response says that "confirmation and disclosure... could lead to avoidable litigation". On what grounds a company could begin litigation against the MPS, should the MPS release details of evaluations of particular software or products? i.e. what legal options could a company pursue?

I would be grateful if I could receive some further information on this point.

Kind regards,

Chris Jones
Statewatch | www.statewatch.org
chris@statewatch.org | 0207 697 4202

On 15/07/2014 14:39, deborah.solomon@met.police.uk wrote:

Dear Mr Jones

Freedom of Information Request Reference No: 2014050002042

I write in connection with your request for information which was received by the Metropolitan Police Service (MPS) on 20/05/2014. I note you seek access to the following information:

"I am writing to make a request for the following information: -

1. Evaluations of the PredPol software that have been undertaken by or are held by the Metropolitan Police.
2. Copies of any data protection/privacy agreements between the Metropolitan Police and PredPol relating to the transfer of data from the Metropolitan Police's computer systems to PredPol's computer systems."

EXTENT OF SEARCHES TO LOCATE INFORMATION

To locate information relevant to your request searches were conducted at the MPS Territorial Policing Capability and Support Unit.

DECISION

The Metropolitan Police Service neither confirms nor denies that it holds the information you have requested as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the exemption provided under Section 43 of the Act.

In accordance with the Freedom of Information Act 2000 (the Act), this letter serves as a Refusal Notice under Section 17(4) of the Freedom of Information Act 2000 (the Act). Please see the Legal Annex for the sections of the Act that are referred to in this letter.

REASONS FOR DECISION

A Freedom of Information Act request is not a private transaction. Both the request itself, and any information disclosed, are considered suitable for open publication. This is because, under Freedom of Information, any information disclosed is effectively released into the wider public domain (potentially globally), not just to one individual.

To confirm or deny whether evaluation material, data protection or privacy agreements exist in relation to a named company could publicly reveal that information in a way that might prejudice the commercial interests of the MPS, the company named and its competitors and could be in breach of any such privacy or Non Disclosure Agreements if they existed.

The Information Commissioner's Office (ICO) has provided guidance in respect of commercial interests. I will make reference to the ICO guidance in this response and will provide a link to the guidance in the Legal Annex.

The ICO guidance provides some examples of the types of information that may affect commercial interests - two elements of which are relevant in this instance. It is acknowledged that, in respect of the procurement of products and services, information provided which may link to a tendering process (whether current or in the future) would be likely to be subject to this exemption. Similarly the commercial interests' exemption would need to be considered in relation to public private partnerships.

Section 43 of the Act provides an exemption for information that if disclosed "would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)". As Section 43 is prejudice based and qualified I am required to consider both the prejudice that would be likely to occur from disclosure and the public interest.

Prejudice test

The ICO guidance provides a useful aid to the consideration of the prejudice test by raising six review points. I believe that four of these points are relevant.

Does the information relate to or could it impact on a commercial activity?

The information requested relates to any evaluation material held on a named predictive crime mapping software solution. Regardless of the named vendor, if possession of this information was confirmed and disclosed it would impact on that companies legitimate commercial activities and potentially the worldwide procurement of their product. It could also impact in a similar way on the same activities by competitors of that named company. Equally, it would impact on any possible future procurement activity initiated by the MPS in relation to automated, algorithmic based predictive crime mapping software.

Is that commercial activity conducted in a competitive environment?

The predictive crime mapping technology described above is being actively marketed by a number of UK and international companies. It is a competitive environment.

Whose commercial interests are affected?

The ICO guidance states that in many cases it will be clear whose commercial interests are likely to be prejudiced by disclosure and that is true in this instance. As mentioned above, confirmation or denial around the possession of the requested information would prejudice the commercial interests of the MPS in any future procurement process, although no

decision has been made around any such procurement at this stage. As a general point disclosure of evaluation material could be seen as setting a 'benchmark' which other competitive providers could use unfairly to influence their marketing strategies against the named vendor. As indicated above, it could also impact on a named vendor's ongoing tendering for contracts with other 'users'.

What is the likelihood of the prejudice being caused?

A disclosure of evaluation material could be seen either as an official endorsement of that product by the MPS, which other competitors might rely on to challenge any possible future procurement process by the MPS, or it could be seen as a criticism of the product, which the vendor could legitimately challenge.

It is considered that to either confirm or deny the possession of such material is highly likely to prejudice a number of legitimate commercial interests.

Public Interest Test

Factors favouring confirming that information is held

The MPS recognise the benefits of being open, honest and transparent regarding the use of public funds. If the MPS was in a position to confirm and disclose the requested information it could potentially further the debate around the efficacy and ethics of using such technologies to meet legitimate policing objectives and the 20:20:20 challenge set by MOPAC, for example.

The disclosure could also contribute to improving the accountability of decisions taken in relation to the research and development of such technologies and any piloting that may or may not be operative.

Factors against confirming that information is held

As explained in the prejudice test, confirmation and disclosure of this information would be likely to prejudice the commercial interests of the MPS and potentially the commercial interests of all suppliers of the technology in question. It is argued that it is in the public interest for the MPS to neither confirm nor deny the possession of any information outlined in the request. To do otherwise could lead to avoidable litigation, which the MPS would have to defend at cost to the public purse.

MPS resources, including funds, are finite. The MPS is doing all it can to meet the challenges of policing in austerity. There is a public duty to ensure that all MPS resources are as public facing as possible and not diverted to dealing with avoidable litigation from commercial entities.

Balancing Test

After weighing up the competing interests I have determined that to confirm or deny whether evaluation material, data protection and privacy agreements exist in relation to a named company would not be in the public interest at this time. To clarify, the public interest is not what interests the public, but is what would be of greater benefit to the community as a whole. It would not be in the best interests of the public for the MPS in this case to confirm or deny the possession of any information that would have a negative impact on the appropriate allocation of public funds.

My decision is partly influenced by the fact that, in accordance with the Coalition Government's Transparency Agenda, records of our spending

(including details of contracts, tenders and individual items of expenditure) are now published on our website. Therefore, once any contracts have been agreed the costs associated will be available at the following link: http://www.met.police.uk/foi/c_what_we_spend.htm

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

Section 16 - Advice and Assistance

I understand that this is not the response you wished to receive. However, I trust I have explained why we do not believe the requested information should be confirmed or denied at this time. In order to assist you I would like to suggest:

Contacting Kent Police who are engaged in a Force wide pilot and evaluation of PredPol software, which they have made various public references to

Contacting LAPD who are also engaged in the same

Contacting PredPol direct for evaluation material

Contacting the College of Policing to establish if they intend to publish any generic evaluation findings around automated, algorithmic based predictive crime mapping solutions and Analyst driven approaches towards the end of this year or early next year, which may be drawn on work that is being undertaken by a variety of Forces.

COMPLAINT RIGHTS

If you are dissatisfied with this response please read the attached paper entitled Complaint Rights which explains how to make a complaint.

Should you have any further enquiries concerning this matter, please contact Deborah Solomon on 0207 161 4291 or at the address at the top of this letter, quoting the reference number above.

Yours sincerely

Detective Superintendent Ryan
Capability and Support
Territorial Policing Command

LEGAL ANNEX

Section 17(4) of the Act provides:

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 43(3) of the Act provides:

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

Link to the ICO guidance for Section 43 of the Act:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_5_v3_07_03_08.pdf

COMPLAINT RIGHTS

Are you unhappy with how your request has been handled or do you think the

decision is incorrect?

You have the right to require the Metropolitan Police Service (MPS) to review their decision.

Prior to lodging a formal complaint you are welcome to discuss the response with the case officer who dealt with your request.

Complaint

If you are dissatisfied with the handling procedures or the decision of the MPS made under the Freedom of Information Act 2000 (the Act) regarding access to information you can lodge a complaint with the MPS to have the decision reviewed.

Complaints should be made in writing, within forty (40) working days from the date of the refusal notice, and addressed to:

FOI Complaint
Public Access Office
PO Box 57192
London
SW6 1SF
PublicAccessOffice@met.police.uk

In all possible circumstances the MPS will aim to respond to your complaint within 20 working days.

The Information Commissioner

After lodging a complaint with the MPS if you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at www.informationcommissioner.gov.uk. Alternatively, phone or write to:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Phone: 01625 545 700

Total Policing is the Met's commitment to be on the streets and in your communities to catch offenders, prevent crime and support victims. We are here for London, working with you to make our capital safer.

Consider our environment - please do not print this email unless absolutely necessary.

NOTICE - This email and any attachments may be confidential, subject to copyright and/or legal privilege and are intended solely for the use of the intended recipient. If you have received this email in error, please notify the sender and delete it from your system. To avoid incurring legal liabilities, you must not distribute or copy the information in this email without the permission of the sender. MPS communication systems are monitored to the extent permitted by law.

Consequently, any email and/or attachments may be read by monitoring staff. Only specified personnel are authorised to conclude any binding agreement on behalf of

the MPS by email. The MPS accepts no responsibility for unauthorised agreements reached with other employees or agents. The security of this email and any attachments cannot be guaranteed. Email messages are routinely scanned but malicious software infection and corruption of content can still occur during transmission over the Internet. Any views or opinions expressed in this communication are solely those of the author and do not necessarily represent those of the Metropolitan Police Service (MPS).

Find us at:

Facebook: [facebook/metpoliceuk](https://www.facebook.com/metpoliceuk)

Twitter: [@metpoliceuk](https://twitter.com/metpoliceuk)

E-Mail scanned for viruses by The Co-operative Phone & Broadband.

E-Mail scanned for viruses by The Co-operative Phone & Broadband.

Total Policing is the Met's commitment to be on the streets and in your communities to catch offenders, prevent crime and support victims. We are here for London, working with you to make our capital safer.

Consider our environment - please do not print this email unless absolutely necessary.

NOTICE - This email and any attachments may be confidential, subject to copyright and/or legal privilege and are intended solely for the use of the intended recipient. If you have received this email in error, please notify the sender and delete it from your system. To avoid incurring legal liabilities, you must not distribute or copy the information in this email without the permission of the sender. MPS communication systems are monitored to the extent permitted by law.

Consequently, any email and/or attachments may be read by monitoring staff. Only specified personnel are authorised to conclude any binding agreement on behalf of the MPS by email. The MPS accepts no responsibility for unauthorised agreements reached with other employees or agents. The security of this email and any attachments cannot be guaranteed. Email messages are routinely scanned but malicious software infection and corruption of content can still occur during transmission over the Internet. Any views or opinions expressed in this communication are solely those of the author and do not necessarily represent those of the Metropolitan Police Service (MPS).

Find us at:

Facebook: [facebook/metpoliceuk](https://www.facebook.com/metpoliceuk)

Twitter: [@metpoliceuk](https://twitter.com/metpoliceuk)

E-Mail scanned for viruses by The Co-operative Phone & Broadband.