

RE: FOI 12387 digital and personal records of sexual abuse victims

Data FOI Essex <data.foi@essex.pnn.police.uk>

Sun 23/12/2018 22:47

To: Griff Ferris <griff.ferris@bigbrotherwatch.org.uk>;

Please accept our apologies in regard to the delay in responding to your original request. This unit has had a substantial increase in FOI requests which has resulted in a delay to the service provided from this unit.

Thank you for your enquiry which has been logged under the above reference.

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Sec1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at Sec1(1)(b) is to disclose information that has been confirmed as being held. Where exemptions are relied upon s17 of FOIA requires that we provide the applicant with a notice which: a) states that fact b) specifies the exemption(s) in question and c) states (if that would not otherwise be apparent) why the exemption applies.

In respect of your revised enquiry:

Thank you for the response. In view of that, I would like to submit a revised request.

Four of the submitted questions (1, 2, 3 and 4) were straightforward yes / no questions in relation to your force's current operations, and therefore answering them would not have exceeded the time and cost limit. Please can you provide me with answers to the four basic yes / no questions.

Questions 1(i) and 1(ii) should be possible based on records held by your forces Digital Forensics Unit. Please can you provide an answer to these question.

Question 2(i) and 2(ii) asks if your force has any digital devices awaiting examination, and the number of devices. This does not require a manual search of all sexual offences, and this information has previously been requested and provided by your force as well as all other UK forces. Please can you provide an answer to these questions.

Question 3 (ii) is possible to provide information as other forces have indicated such information is available automatically, specifically the number of complainants who have given their consent to the disclosure of personal information from digital devices. Please can you provide an answer to this question.

Having completed enquiries Essex Police can respond as follows,

In respect of Sec 1(1)(a), Essex Police does hold information relating to your request however the obligation of Sec 1(1)(b) cannot be met as Essex Police does not hold all the information requested in a format that allows it to be retrieved within the time and cost limits of FOI.

When responding to a request for information under the terms of the Freedom of Information Act, a public authority is not obliged to provide information if the authority estimates that the cost of the retrieval of the information requested would be in excess of £450 (equivalent to 18 hours work).

Section 12(1) of the Freedom of Information Act states that a public authority is not obliged to:

"...comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Please note that your request is quite specific. The following will provide an explanation of the difficulty in

retrieving this information. Essex Police would have difficulty in answering your request as this information is not held in a readily accessible format. Submission forms are required however our current systems do not allow for interrogation of the data that would allow for extraction in regard to whether phone seizure has been obtained from the complainant or suspect. A digital image of each form is contained within each investigation but to manually examine each investigation file would exceed the time and cost limits set under the act and in addition qualify as the creation of data as this process cannot be provided by means of a data query. There is no requirement under the act to create data for the purposes of answering a FOI request.

Consequently, and to this extent, Essex Police are exempt from the duty to provide all the information you have requested under the provisions of section 12(1) of the FOI Act. Therefore, and in accordance with section 17(1) of the Act, this communication must act as a refusal notice to provide all of the information that could be interpreted as being captured by this part of your request.

Having said that, and in an effort to assist - although excess cost removes the forces obligations under the Freedom of Information Act, Essex Police can confirm that the force does collect digital information from devices. At this point in time 508 devices are awaiting examination or being examined, the total number of digital devices and digital media submitted to Digital Forensic Unit during the period December 2017 – November 2018 is 1514. This does not include those processed by the digital hubs (Please note – some of those processed by digital hubs are then also subsequently passed to DFU) The average wait-time for a digital device to be examined is 175 days.

In addition Essex Police can neither confirm nor deny that it holds information pertinent to this request 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 44(2) Prohibitions on Disclosure

Section 40(5) Personal Information

Section 23(5) Information relating to the Security Bodies

Section 24(2) National Security

Section 30(3) Investigations

Section 31(3) Law Enforcement

This should not be taken as conclusive evidence that any information that would meet your request exists or does not exist.

Harm in Confirming or Denying Information is Held

Every effort should be made to release information under Freedom of Information. However, to confirm or deny many of the policing actions around RIPA would undermine ongoing investigations, reveal policing techniques, contravene legislation, risk the identification of individuals, the possibility of revealing involvement of any exempt bodies and the risk in undermining national security.

Irrespective of whether information is or isn't held, to confirm or deny whether Essex Police has carried out any directed or intrusive surveillance would compromise ongoing operations and investigations, some of which may be covert, and undermine the effective delivery of operational law enforcement by revealing tactical capability of (force name).

The Police Service would never divulge information regarding whether or not specific covert tactical options are or are not used. To do so would undermine both tactical and investigative processes; these processes should be protected to the utmost degree, in line with relevant legislation.

The impact of confirming or denying the use of covert tactical options, would contravene the constrictions laid out within Section 19(2)(e) and 19(4) of the Regulation of Investigatory Powers Act (RIPA).

By merely citing an exemption (confirming information is held relative to this request) or stating 'no information held' would reveal whether or not these covert tactics have or have not been used and would be inappropriate as it would reveal police 'intelligence' about the activity of ongoing police investigations.

The prevention and detection of crime is the foundation upon which policing is built. The Police Service has a clear responsibility to prevent crime and arrest those responsible for crime or those that plan to commit crime. By confirming whether or not any information is held relevant to this request could directly influence the effective delivery of operational law enforcement.

In order to counter criminal and terrorist behaviour it is vital that the police have the ability to work together, where necessary covertly, to obtain intelligence within current legislative frameworks to assist in the investigative process to ensure the successful arrest and prosecution of offenders who commit or plan to commit acts of terrorism.

To achieve this goal, it is vitally important that information sharing takes place between police officers, members of the public, police forces as well as other security law enforcement bodies within the United Kingdom. This information sharing supports counter-terrorism measures in the fight to deprive terrorist networks of the ability to commit crime.

To confirm or deny whether information is held relevant to this case would be extremely useful to those involved in criminal activities and also terrorists as it would enable them to identify whether specific covert tactical options are being used.

In addition, any disclosure, no matter how generic, which may assist a criminal, terrorist or terrorist organisation will adversely affect public safety.

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Public Interest Considerations

Section 24(2) National Security

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

The public is entitled to know how public funds are spent and resources distributed within an area of policing. To confirm whether information exists relating to a specific type of covert tactical option would enable the general public to hold Essex Police to account where these tactics are utilised.

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

As evidenced within the harm, to confirm detail of specific covert tactics that may or may not have taken place would highlight to campaigners, terrorists and individuals intent on carrying out criminal behaviour, covert policing tactical activity. This would ultimately increase the risk of harm to the general public and significant undermine any ongoing or future operations to protect the security or infrastructure of the United Kingdom.

Taking into account the current security climate within the United Kingdom, no information (such as the citing of an exemption which confirms information pertinent to this request is held, or conversely, stating 'no information is held') which may aid a terrorist should be disclosed. To what extent this information 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.

Irrespective of what information is or isn't held, the public entrust the Police Service to make appropriate decisions with regard to their safety and protection and the only way of reducing risk is to be cautious with

what is placed into the public domain.

The cumulative effect of terrorists gathering information from various sources would be even more impactful when linked to other information gathered from various sources about terrorism. The more information disclosed over time will give a more detailed account of the tactical infrastructure of not only a force but also a country as a whole.

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

By confirming or denying any policing arrangements of this nature would render national security measures less effective. This would lead to the compromise of ongoing or future operations to protect the security or infra-structure of the UK and increase the risk of harm to the public.

Section 30(3) Investigations

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

Confirming or denying whether information exists relevant to this request would lead to a better informed general public identifying that Essex Police robustly investigate offences which may encourage individuals to provide intelligence in order to assist with investigations and reduce crime. This would further promote public trust in providing transparency and demonstrating openness and accountability into where the police are currently focusing their investigations. The public are entitled to know how public funds are spent, particularly in the current economic climate.

The issue of surveillance and privacy is a highly emotive subject area often attracting high profile media. Confirming or denying that information exists could provide reassurance to the general public.

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

Modern-day policing is intelligence led and Essex Police shares information with other law enforcement agencies as part of their investigative processes. To confirm or not whether specific covert tactical options have or have not been used could hinder the prevention and detection of crime as well as undermine the partnership approach to investigations and law enforcement.

Should offenders take evasive action to avoid detection police resources may well be diverted from frontline duties and other areas of policing to locate and apprehend these individuals. In addition, the safety of individuals and victims would be compromised.

Section 31

Factors favouring complying with Section 1(1)(a) to confirm or deny that information is held

There is a vast amount of information within the public domain relating to this subject and that in itself is considered to be a factor for disclosure.

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

Confirming whether or not information is held in this case would compromise the safety of individuals who are the target of such offending. Public safety is of paramount importance and if offenders are provided with confirmation by Essex Police that they are actively monitoring private communications devices would encourage offenders to commit crimes elsewhere and potentially adapt patterns of behaviour, undermining law enforcement activities and thereby compromising public safety.

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Balancing Test

The points above highlight the merits of confirming or denying whether information pertinent to this request exists. The security of the country is of paramount importance and 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 covert policing tactics may or may not be used. 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 National Security. Whilst there is a public interest in the transparency of policing operations and investigations, 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 both National Security and the integrity of policing tactics. As much as there is public interest in knowing that policing activity is appropriate and balanced in matters of National Security, this will only be overridden in exceptional circumstances.

In addition any disclosure by Essex Police that places the security of the country at risk, no matter how generic, would undermine the trust or confidence the public has in the Police Service. Therefore, at this moment in time, it is our opinion that for these issues the balance test favours neither confirming nor denying that information exists.

No inference can be drawn from this refusal that information is or isn't held.

Kind regards,

Information Rights Team
Information Management Department
Strategic Change Directorate
E-Mail: Datafoi@essex.pnn.police.uk



Please note, if you require further information or wish to resubmit a request please refer to the information found on the Commissioner's website regarding submission of effective requests https://www.ico.org.uk/for_the_public/official_information

Your right to complain

If you feel your request has not been properly handled, or you are otherwise dissatisfied with the outcome of your request you have the right to complain.

Complaints should be submitted within 20 working days from the date of this response and should be addressed to the Senior Information Officer at the above address or by email to: datafoi@essex.pnn.police.uk

We will conduct a review to investigate your complaint and endeavour to reply within 20 working days.

Please explain which aspect of the reply you are not satisfied with, and if your complaint concerns the decision to apply an exemption it would assist the review if you would outline why you believe the exemption does not apply.

If you are still dissatisfied following our review, you have the right under Section 50 of the Act to complain directly to the Information Commissioner. Before considering your complaint, the Information Commissioner would normally expect you to have exhausted the complaints procedures provided by Essex Police

The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF or via <https://ico.org.uk/>

From: Data FOI Essex
Sent: 15 November 2018 11:07
To: Griff Ferris <griff.ferris@bigbrotherwatch.org.uk>
Subject: FOI 12387 digital and personal records of sexual abuse victims

Thank you for your enquiry which has been logged under the reference 12387.

Under the Freedom of Information Act we are required to reply within 20 working days. The Act does not specify a limit to the number of information requests a public authority may receive or the number of requests or questions an applicant may submit. However, there are exemptions in the Act that can apply and these include where the cost of complying with the request would extend beyond the reasonable cost limit, (currently 18 hours or £450), or if the request is otherwise manifestly unreasonable in its scope or nature.

Requests that ask a great many questions, or a number of detailed requests submitted at the same time, may make it necessary for Essex Police to refuse the requests wholly or in part. The exemption at s14 may be engaged if the burden on the authority is increased through multiple requests on differing subjects

The Information Commissioner's Office (ICO) has responsibility for providing oversight and guidance for the legislation and they have produced advice for applicants on submitting effective requests. Further information can be found on the Commissioner's website at www.ico.gov.uk specific information relating to submitting a request can be found at: <https://ico.org.uk/for-the-public/official-information/>

While we process your request, please take the time to consider the ICO's advice and whether you feel it may be beneficial to amend or refine your request. Our team is happy to discuss your request with you and will be able to provide advice as to what kind of information will be available from Essex Police.

Kind regards

Information Rights Team
Information Management Department
Strategic Change Directorate
E-Mail:Datafoi@essex.pnn.police.uk



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From: Griff Ferris [<mailto:griff.ferris@bigbrotherwatch.org.uk>]

Sent: 14 November 2018 11:29

To: Mark Heard 42073464

Cc: Data FOI Essex

Subject: Re: FOI 12244 digital and personal records of sexual abuse victims

Dear Mr Heard,

Thank you for the response. In view of your response, I would like to submit a revised request.

Four of the submitted questions (1, 2, 3 and 4) were straightforward yes / no questions in relation to your force's current operations, and therefore answering them would not have exceeded the time and cost limit. Please can you provide me with answers to the

four basic yes / no questions.

Questions 1(i) and 1(ii) should be possible based on records held by your forces Digital Forensics Unit. Please can you provide an answer to these question.

Question 2(i) and 2(ii) asks if your force has any digital devices awaiting examination, and the number of devices. This does not require a manual search of all sexual offences, and this information has previously been requested and provided by your force as well as all other UK forces. Please can you provide an answer to these questions.

Question 3 (ii) is possible to provide information as other forces have indicated such information is available automatically, specifically the number of complainants who have given their consent to the disclosure of personal information from digital devices. Please can you provide an answer to this question.

Regards,

Griff

On 13/11/18 13:30, Mark Heard 42073464 wrote:

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Sec1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at Sec1(1)(b) is to disclose information that has been confirmed as being held. Where exemptions are relied upon s17 of FOIA requires that we provide the applicant with a notice which: a) states that fact b) specifies the exemption(s) in question and c) states (if that would not otherwise be apparent) why the exemption applies.

In respect of your enquiry:

1. Is your force currently collecting digital information from devices belonging to complainants of sexual offences? For reference, "collecting digital information" in this context should be taken to mean and include any form of examination, access, extraction, copying or download of such digital information from digital devices, whether by self-service kiosks (SSKs), other device extraction software, or by external digital forensic examiners. If yes, please provide details of:

i. the number of complainants who have had information from their digital device(s) collected by your force in the last 12 months.

ii. the number of digital devices that your force has collected information from in the last 12 months.

iii. the number of times complainants have withdrawn their complaint or their support for the investigation at the point they were asked to hand over their digital device or information.

2. Does your force currently have any digital devices awaiting examination? If yes, please provide details of:

i. The number of devices currently awaiting examination.

ii. the average wait time for a digital device to be examined.

3. Does your force seek consent from complainants of sexual offences for the

collection and/or disclosure of their personal information from their digital device or a third party organisation such as medical records, counselling records, local authority records or educational records? If yes, please provide details of:

i. the number of complainants who have been asked for their consent to the collection of their personal information, via consent or 'Stafford' statements, in the last 12 months.

ii. the number of complainants who have given their consent, via consent or 'Stafford' statements, in the last 12 months.

iii. the number of complainants who have refused to give their consent, via consent or 'Stafford' statements, in the last 12 months.

iv. the number of complainants who have withdrawn their complaint or their support for the investigation after being asked for their consent to their device and personal information being collected by the police.

4. Has your force disclosed any digital information collected from digital devices belonging to complainants of sexual offences to the Crown Prosecution Service or the defendants' legal representatives? If yes, please provide details of:

i. the number of times this information has been disclosed to the Crown Prosecution Service in the last 12 months.

ii. the number of times this information has been disclosed to the defence or legal representatives of the defence in the last 12 months. Having completed enquiries Essex Police can respond to your enquiry as follows,

In respect of Sec 1(1)(a), Essex Police does hold information relating to your request however the obligation of Sec 1(1)(b) cannot be met as Essex Police does not hold all the information requested in a format that allows it to be retrieved within the time and cost limits of FOI.

When responding to a request for information under the terms of the Freedom of Information Act, a public authority is not obliged to provide information if the authority estimates that the cost of the retrieval of the information requested would be in excess of £450 (equivalent to 18 hours work). The costs criteria relates to a *request in its entirety*, which means that if we cannot retrieve all of the information requested within the costs limit, we are not obliged to retrieve any of the information requested.

Section 12(1) of the Freedom of Information Act states that a public authority is not obliged to: *"...comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."*

The following will provide an explanation of the difficulty in retrieving information from our systems

For the offences Part 1 of this request we can provide some data, however because of the range of circumstances that exist, information is not readily accessible and in order to retrieve ALL of the information, it would involve a manual search by opening and reading individual records of all sexual offences to determine if the information is held. Data therefore would not be specifically recorded in a format which can easily be extracted. This process would exceed the time and costs limits and in addition qualify as creation of data as the results cannot be processed by means of sorting or filtering data sources or running a database query tool. There is no requirement under the act for this to be carried out to answer questions within a FOI request.

Consequently Essex Police are exempt from the duty to provide all the information you have

requested under the provisions of section 12(1) of the FOI Act. Therefore, and in accordance with section 17(1) of the Act, this communication must act as a refusal notice to provide all of the information that could be interpreted as being captured by this part of your request.

Thank you for your interest in Essex Police and we are sorry that we have not been able to provide the information you have requested on this occasion. If you do require further information a new request will need to be submitted and the request will be dealt with accordingly.

To provide some explanation, and to meet our duty to assist under Section 16 of the FOI, Essex Police can provide the total number of devices subject to investigation by our Data Forensics however no the breakdown required in your current submission if you wish to refine your request please resubmit your request referring to the above reference. It will be logged as a new request but the above history will assist in our enquiries. and we shall deal with this accordingly.

Kind Regards

Information Rights Team
Information Management Department
Strategic Change Directorate
[E-Mail:Datafoi@essex.pnn.police.uk](mailto:Datafoi@essex.pnn.police.uk)

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Your right to complain

If you feel your request has not been properly handled, or you are otherwise dissatisfied with the outcome of your request you have the right to complain.

Complaints should be submitted within 20 working days from the date of this response and should be addressed to the Senior Information Officer at the above address or by email to: datafoi@essex.pnn.police.uk

We will conduct a review to investigate your complaint and endeavour to reply within 20 working days.

Please explain which aspect of the reply you are not satisfied with, and if your complaint concerns the decision to apply an exemption it would assist the review if you would outline why you believe the exemption does not apply.

If you are still dissatisfied following our review, you have the right under section 50 of the Act to complain directly to the Information Commissioner. Before considering your complaint, the Information Commissioner would normally expect you to have exhausted the complaints procedures provided by Essex Police

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From: Data FOI Essex
Sent: 16 October 2018 10:51
To: 'Griff Ferris' <griff.ferris@bigbrotherwatch.org.uk>
Subject: FOI 12244 digital and personal records of sexual abuse victims

Thank you for your enquiry which has been logged under the reference 12244.

Under the Freedom of Information Act we are required to reply within 20 working days. The Act does not specify a limit to the number of information requests a public authority may receive or the number of requests or questions an applicant may submit. However, there are exemptions in the Act that can apply and these include where the cost of complying with the request would extend beyond the reasonable cost limit, (currently 18 hours or £450), or if the request is otherwise manifestly unreasonable in its scope or nature.

Requests that ask a great many questions, or a number of detailed requests submitted at the same time, may make it necessary for Essex Police to refuse the requests wholly or in part. The exemption at s14 may be engaged if the burden on the authority is increased through multiple requests on differing subjects

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While we process your request, please take the time to consider the ICO's advice and whether you feel it may be beneficial to amend or refine your request. Our team is happy to discuss your request with you and will be able to provide advice as to what kind of information will be available from Essex Police.

Kind regards

Information Rights Team
Information Management Department
Strategic Change Directorate
E-Mail: Datafoi@essex.pnn.police.uk



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Commissioner's website regarding submission of effective requests [https://www.ico.org.uk/for the public /official information](https://www.ico.org.uk/for_the_public/official_information)

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Please explain which aspect of the reply you are not satisfied with, and if your complaint concerns the decision to apply an exemption it would assist the review if you would outline why you believe the exemption does not apply.

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From: Griff Ferris [<mailto:griff.ferris@bigbrotherwatch.org.uk>]

Sent: 16 October 2018 10:32

To: Griff Ferris

Subject: Freedom of Information Act 2000 ("FOIA") Request

By email only

16th October 2018

Dear Sir or Madam,

Freedom of Information Act 2000 ("FOIA") Request

I write to request information and records under the FOIA, regarding your force's access, collection, analysis and disclosure of digital evidence and personal records from complainants of sexual offences. Specifically, I am asking the following:

1. Is your force currently collecting digital information from devices belonging to complainants of sexual offences? For reference, "collecting digital information" in this context should be taken to mean and include any form of examination, access, extraction, copying or download of such digital information from digital devices, whether by self-service kiosks (SSKs), other device extraction software,

or by external digital forensic examiners. If yes, please provide details of:

- i. the number of complainants who have had information from their digital device(s) collected by your force in the last 12 months.
 - ii. the number of digital devices that your force has collected information from in the last 12 months.
 - iii. the number of times complainants have withdrawn their complaint or their support for the investigation at the point they were asked to hand over their digital device or information.
2. Does your force currently have any digital devices awaiting examination? If yes, please provide details of:
 - i. The number of devices currently awaiting examination.
 - ii. the average wait time for a digital device to be examined.
3. Does your force seek consent from complainants of sexual offences for the collection and/or disclosure of their personal information from their digital device or a third party organisation such as medical records, counselling records, local authority records or educational records? If yes, please provide details of:
 - i. the number of complainants who have been asked for their consent to the collection of their personal information, via consent or 'Stafford' statements, in the last 12 months.
 - ii. the number of complainants who have given their consent, via consent or 'Stafford' statements, in the last 12 months.
 - iii. the number of complainants who have refused to give their consent, via consent or 'Stafford' statements, in the last 12 months.
 - iv. the number of complainants who have withdrawn their complaint or their support for the investigation after being asked for their consent to their device and personal information being collected by the police.
4. Has your force disclosed any digital information collected from digital devices belonging to complainants of sexual offences to the Crown Prosecution Service or the defendants' legal representatives? If yes, please provide details of:
 - i. the number of times this information has been disclosed to the Crown Prosecution Service in the last 12 months.
 - ii. the number of times this information has been disclosed to the defence or legal representatives of the defence in the last 12 months.

Please send the requested information by email to griff.ferris@bigbrotherwatch.org.uk and do not hesitate to contact me should you

wish to discuss this matter. As under section 16 FOIA please contact me should the request go over the cost limit or is in any way unanswerable.

If further information is required to process this request, then please kindly contact me by return for clarification, and provide any information that you can obtain in the meantime.

This request was submitted on **16th October 2018** and I therefore look forward to hearing from you by **13th November 2018**, within 20 working days in accordance with your obligations under section 10 of the Freedom of Information Act 2000.

Yours sincerely,

Griff Ferris

Legal and Policy Officer

Big Brother Watch

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