

Not to be distributed outside of the Police network or other agencies without prior authorisation from the CRU

Dear All,

Apologies for having to wait and chase on this one. The decision taken is to continue the stance previously given in 2022 which we also held at IR stage (CRU 1750/22 – S.40(2) refers). Whilst applicant and motive blind I think it is reasonable to suggest S.31(1)

In brief, the continued approach is :

- if your force has placed a formal disclosure regarding the use of Palantir technology into the public domain then you can confirm information is held and exempt it via s21, providing a link to the information in the public domain. A partial NCND s31(3) and s24(2) will also be required for any information that may or may not be held in relation to Palantir software used for covert purposes..
- If your force has not formally acknowledged use of Palantir software then a full NCND is required via s31(3) and s24(2).

I have attached the previous advice and IR advice for 1750/22 which gives further explanation as to the rationale for the decision.

In addition, a form of words kindly supplied by the MPS is below to assist. Reference to the MPS needs to be removed and replaced accordingly.

Section 24(2) National Security and Section 31(3) Law Enforcement

Section 1 of the Act places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held.

Where exemptions are relied upon Section 17 of the Act 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(s) apply.

The MPS needs to be alert to requests for certain types of information, and there is a need for consistency when neither confirming nor denying whether information is held in order to protect policing information.

Factors in favour of disclosure:

Confirming or denying whether the requested information is held would enable the public to have a better understanding of the type of policing tools and tactics employed by the MPS in carrying out their law enforcement role. This would give more confidence to the public that we are using (or, as the case may be, not using) policing tools and tactics to help us detect and prevent crime appropriately.

Factors against disclosure:

To confirm or deny whether any other information relating to the use of a particular investigative tool is held would harm the integrity of sensitive policing tactics used to prevent and detect crime and safeguard national security.

Any disclosure under FOI is a release to the public at large. Whilst not questioning the motives of the applicant, confirming or denying if a particular policing tool of this type (in this case Palantir Technologies) is used by the Met as part of an investigative process is different from confirming if, in principle, commercial tools generally are used to assist with searches against information that may be found online.

It is well established that police forces use publically available data in order to counteract criminal behaviour. It has been previously documented in the media that many terrorist incidents have been thwarted due to intelligence gained by these means. However, given the sensitive areas in which tools of this type may be used and the Met's role in counter-terror investigations, to disclose if any particular tools are used would allow criminals and other adversaries to focus on evaluating the particular capabilities of a particular tool. With this knowledge it would allow criminals and other adversaries to take steps to counteract a specific tool – be it adjusting how they interact and present themselves to take advantage of any weaknesses or gaps in capability they identify. At a simple level, if a policing tool doesn't search 'X' social media site or was unable to identify 'Y' format of images and criminals can establish this, they will exploit this position. The Met's more sophisticated adversaries may be able to go further and take more proactive measures to undermine the tool and/or its provider, and a specific confirmation allows efforts to be focused accordingly.

This detrimental effect is increased if the request is made to several different law enforcement bodies. In addition to the local criminal fraternity now being better informed, those intent on organised crime throughout the UK will be able to 'map' where the use of certain tools are or are not deployed. This can be useful information to those committing crimes. It would have the likelihood of identifying location-specific operations which would ultimately compromise police tactics, operations and future prosecutions as criminals could counteract the measures used against them.

Any information identifying the focus of policing activity could be used to the advantage of terrorists or criminal organisations. Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both National Security and Law Enforcement.

Balancing test

Accordingly, in a position taken in common with other law enforcement agencies, confirming or denying if the Met uses Palantir Technologies would lead to an increase of harm to covert investigations and compromise law enforcement. This outweighs the benefits to disclosure, not least as disclosure would be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public. Therefore it is our opinion that for these issues the balance test favours neither confirming nor denying that information is held.

If it exists, the disclosure of this information to the public by the MPS would undermine the integrity of police investigations and operations and in maintaining confidence in the MPS.

The effective delivery of operational law enforcement is of paramount importance to the MPS in their duty to ensure that the prevention and detection of crime is carried out and the effective apprehension or prosecution of offenders is maintained.

Therefore it is our opinion that for these issues the balance test favours neither confirming nor denying that information is held.