

# The Transparency of the Policing of Protests

Using the right of access to information to assess the transparency of police activities during protests

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## About Access Info Europe

Access Info Europe is a human rights organisation dedicated to promoting and protecting the right of access to information in Europe and globally. Access Info's mission is to advance democracy by making the right to information work in practice as a tool for defending civil liberties, for facilitating public participation in decision-making, and for holding governments accountable.

Access Info Europe's Access for Rights project takes this mission forward by using access to information laws to obtain information about a range of human right issues, which include freedom of expression and media freedom, freedom of assembly, and immigration and the detention of migrants.

## About This Report

As part of its Access for Rights work, Access Info Europe has identified policing of protests as a priority area. Our work related to the police includes [The Right to Know: Europe and the Police](#), and [The Right to Protest Briefing](#), developed with [Statewatch](#).

This report was researched, written and edited by members of the Access Info Europe team. Particular thanks are due to **Lydia Medland** for project design and research, to **Morgane Dussud** for following the requests and conducting further research, to **Andreas Pavlou** for analysis and editing, to **Victoria Anderica, Pam Bartlett Quintanilla, Joe Balson, Lisa Georgiou** and **Agnieszka Kubiak** for additional contributions, to **Helen Darbishire** for editing, and to **Luisa Izuzquiza** for design and layout.

**Open Data Policy:** The information provided in this report, collected from access to information requests on police action and equipment in 42 countries and territories in Europe before, during and after protests, is available for other civil society organisations to use in research and advocacy. **Full data and copies of documents obtained can be downloaded from the Access Info Europe website.**

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# Contents

|  |    |
|--|----|
| Executive Summary.....   | 3  |
| Report on Transparency of the Policing of Protests                   |    |
| 1. Introduction: Police Accountability Obligations .....             | 6  |
| 1.1 The Right to Know and the Request to European Police Forces..... | 6  |
| 2. Main Findings   |    |
| 2.1 High Levels of Administrative Silence.....                       | 8  |
| 2.2 Incomplete and Invalid Answers and Refusals .....                | 8  |
| 2.3 Answers per Question   |    |
| 2.3.1 Question on Legislation.....                                   | 10 |
| 2.3.2 Question on Data on equipment .....                            | 10 |
| 2.3.3 Question on Evaluation reports .....                           | 12 |
| 2.3.4 Question on Guidance and Training.....                         | 13 |
| 2.3.5 Question on Types of Equipment .....                           | 14 |
| 2.4 Quality of Information Collection Varies Significantly .....     | 14 |
| 2.4.1 The excessive cost of searching in England .....               | 15 |
| 2.4.2 Law enforcement exception applied in Scotland .....            | 15 |
| 3. Conclusions and Recommendations for Police Authorities.....       | 18 |
| 3.1 On the Failure to Respond Fully or At All to Requests .....      | 18 |
| 3.2 On the Inappropriate and Illegitimate Refusals.....              | 18 |
| 3.3 On the Failure to Compile and to Publish Key Data.....           | 19 |
| Annexes  |    |
| Annex A: Copy of the request sent .....                              | 21 |
| Annex B: Methodology for allocating Final Outcomes .....             | 22 |

# Executive Summary

## Europe-wide Lack of Transparency of Policing of Protests

There is a serious lack of transparency about the use of various types of equipment during policing of protests according to Access Info Europe, following research conducted in 42 countries and territories across Europe by means of access to information requests.

The research by the Madrid-based pro-transparency organisation aimed to get a comprehensive picture of the legal framework for and actual use of different types of equipment – including batons, shields, tear gas, and rubber bullets.

This goal was frustrated by the fact that not one of the 42 countries surveyed provided full information to a set of five questions about the law governing use of equipment during protests, the training on its use, the quantities and nature of equipment held, and post-protest evaluations.

Indeed, there was administrative silence from a full 22 of the countries surveyed (Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, and Turkey) in spite of various follow up attempts.

None of the countries surveyed were clearly more responsive than others, but more comprehensive responses were obtained from Germany, Northern Ireland, and Sweden.

Access Info Europe notes that it is of particular concern that only one third of police forces contacted (13 countries, 31%) responded to requests about the legal framework governing the use equipment during protests. This is basic information that should be provided to anyone who asks for it.

A similarly basic question about training given to police forces on the use of equipment during protests was provided by just five countries (12%) with a further five providing incomplete information. Along with post-protest evaluation reports which were provided by only ten (24%) of counties, such information should be public and available on line without the need to submit requests.

The hardest information to obtain related to the types of equipment that police are permitted by law to use during protests and the quantities of such equipment currently held by the police. Just nine countries (21%) provided information on which equipment police are permitted to use – the details are set out in Table 3 on Page 11 – while the Czech Republic, France and the Netherlands denied access to this data.

When it came to information on the quantities of equipment held by the police there were significantly more refusals than disclosures of information: just Hungary provided the data, with nine countries refusing to do so. Of these nine refusals, only Northern Ireland properly invoked the exceptions in its access to information legislation. France issued an oral refusal during a follow-up phone call, and a further seven countries -

Czech Republic, Denmark, Estonia, Kosovo, Lithuania, Macedonia, and the Netherlands – denied access to the data without a full justification as to why this was necessary.

Access Info Europe believes that it should be possible for the public to know how much equipment is held by the police in order to evaluate their preparedness to handle protest situations and to permit public debate on how public funds are being spent.

Even if there is concern that data about the amounts of equipment held might be sensitive, it should be possible to know how many times certain equipment has been used during actual protests in the past five years. Nevertheless, of the responses to this question, just seven police forces (Denmark, Estonia, Germany, Hungary, Latvia, and Northern Ireland) provided data on how often equipment had been used, in most cases stating that it was zero, while three countries (Croatia, Finland and Kosovo) provided incomplete information. There were refusals to release this information from Lithuania, Macedonia, and the Netherlands, but again without proper justifications.

The findings of the Access Info Europe report are of great concern as it is essential that civil society has sufficient information about how police are preparing for, handling, and evaluating protests in order to ensure respect for the right to freedom of assembly.

## Summary of Recommendations

The troubling findings of this pan-European survey, which has revealed a huge lack of transparency from European police forces, point to a series of recommendations for the respective government bodies and police forces.

The overarching recommendation from Access Info Europe is that all police forces should provide detailed and comprehensive information about police action during protests. It is only in this way that there can be true accountability of police forces and their preparation for and actions during protests.

Specific recommendations, which are set out in more detail in Section IV, are:

- » That senior police management reviews and improves the training of relevant officials on their obligations under national access to information legislation to respond to requests; Administrative silence is never an option.
- » That all the police forces in the study ensure that prior to any refusal to grant access to information, officials evaluate the necessity of the denial and apply the harm and public interest tests.
- » That all the police forces in this study review the way in which they collect, manage, and make available information about their activities. Information should be made available on line in places which make it easy to locate and in formats which permit easy download and reuse of the data.
- » There should be proactive disclosure of key information, including the rules and regulations governing police action, about the equipment permitted during protests, and evaluation reports, particularly after any problems which arise or violence which ensues during the policing of protests.

**Table 1: Questions and which countries provided complete responses**

| Question  | Countries Providing Full Answer  | Response Rate       |
|---|--|---------------------|
| 1. What legislation governs the use of equipment at the disposal of police forces in protest situations?  | Croatia, Czech Republic, Denmark, England, Estonia, Finland, Hungary, Kosovo, Latvia, Lithuania, Macedonia, Northern Ireland, Sweden | 13 countries<br>31% |
| 2. What types of equipment are police forces permitted to use in protest situations? (For example: batons, shields, water cannons, rubber bullets, etc.)  | Croatia, Denmark, Estonia, Finland, Germany, Kosovo, Latvia, Northern Ireland, Sweden  | 10 Countries<br>24% |
| 3. For all the equipment types available for use by police officers in situations of protest that are supplementary to normal police equipment, please provide me with data including:<br>a. The number of items in the possession of police forces for each equipment type | Hungary  | 1 Country<br>2%     |
| b. The amount of times that such equipment types have been used in the last five years  | Denmark, Estonia, Germany, Hungary, Latvia, Northern Ireland   | 6 Countries<br>14%  |
| 4. What guidance and training are police provided with on use of equipment for dealing with protest? Please send a copy or direct website link to any guidance documents regarding the use of force in such situations.   | England, Germany, Kosovo, Northern Ireland, Sweden   | 5 Countries<br>12%  |
| 5. Has the police or government compiled any evaluation reports on the policing of protests in the past five years? If so, please send a copy of the evaluation documents or direct me to the direct on-line link.  | Croatia, Czech Republic, Denmark, England, Estonia, Finland, Germany, Lithuania, Northern Ireland, Sweden                            | 10 Countries<br>24% |

# Report on Transparency of the Policing of Protests

## 1 Introduction: Police Accountability Obligations

The serious concerns about lack of transparency and hence lack of accountability by the police, which are exposed by Access Info Europe in this report, are particularly pertinent given the various scandals over police actions in protest situations in a number of European countries in recent years.

In the context of the economic crisis, popular disaffection towards austerity measures, and other current social and political issues, many European law enforcement bodies have had in recent years to police large demonstrations which have controversially led to violence and ended in clashes between the police and protesters.

In recent years, there have been injuries and even some deaths of individuals during protests in France, Germany, Italy, the UK, and other European countries. Police officers in Greece and Turkey have been sentenced to prison terms for the deaths of protesters. The OSCE has specifically expressed concern over police actions, including use of force against journalists during protests in Spain, and in early 2015 the Human Rights Commission of the United Nations expressed concern about legal reforms in Spain which limit the right to protest.<sup>1</sup>

The police tread a fine line; on the one hand they need to maintain public order, but on the other, they are required to protect the right to freedom of assembly.

Human rights bodies such as the 47-member Council of Europe have emphasised that a balance needs to be struck: "public order policing is an important aspect of policing in a democratic society. If the police are seen to repress freedom of assembly, this will undermine the democratic nature of the country."<sup>2</sup>

The Council of Europe also stated in 2011 that "Police officers in charge of policing public order operations should be able to show that they have considered and applied relevant human rights principles. The keeping of adequate records is very important in this regard."<sup>3</sup> Record-keeping alone is not sufficient: in order to hold police forces accountable, citizens have a right to know about their police forces and how they operate.

### 1.1 The Right to Know and the Request to European Police Forces

Access Info Europe's research into the transparency of police forces made use of the right of access to information, which has been recognised as a fundamental right by the

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<sup>1</sup> <http://www.osce.org/fom/116993>

<sup>2</sup> Op. cit, Council of Europe 2011

<sup>3</sup> Op. Cit., Council of Europe, 2011.

European Court of Human Rights, is developed in the Council of Europe Convention on Access to Official Documents, and is given effect in access to information or freedom of information laws of almost all European countries.

The Council of Europe Convention on Access to Official Documents (2009) in its Explanatory Report<sup>4</sup> specifically confirms that the police are a public body obliged to comply with the public's right to access information.

In this research project, 39 of the 42 countries and territories had access to information laws in force at the time of presenting the requests. Those that did not were Cyprus, Luxembourg, and Spain (we note that Spain now has a law which came into force on 10 December 2014).

The request sent to countries as part of this study contained five (5) questions designed to obtain the information necessary for public oversight of police action during protests.

The requests have a particular focus on the use of force by the police and are about preparation for protests including the equipment police may use, police actions during protests, and evaluation reports after protests.

The requests were translated into the national languages in some cases, in others they were sent in English. The questions were:

1. What legislation governs the use of equipment at the disposal of police forces in protest situations?
2. What types of equipment are police forces permitted to use in protest situations? (For example: batons, shields, water cannons, rubber bullets, etc.)
3. For all the equipment types available for use by police officers in situations of protest that are supplementary to normal police equipment, please provide me with data including:
  - a. The number of items in the possession of police forces for each equipment type;
  - b. The amount of times that such equipment types have been used in the last five years;
4. What guidance and training are police provided with on use of equipment for dealing with protest? Please send a copy or direct website link to any guidance documents regarding the use of force in such situations.
5. Has the police or government compiled any evaluation reports on the policing of protests in the past five years? If so, please send a copy of the evaluation documents or direct me to the direct on-line link.

A sample of the full request can be found in Annex A. The classification of the outcomes is set out in Annex B and the full data set, including the correspondence with each country, can be found [on line](#).

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<sup>4</sup> Council of Europe Convention on Access to Official Documents Explanatory Report, Article 8: <http://conventions.coe.int/Treaty/EN/Reports/Html/205.htm>



## 2 Main Findings

### 2.1 High Levels of Administrative Silence

The police, like any public body, have an obligation to respond to access to information requests under national legislation, even if a request results in a formal refusal to disclose the information based on application of a legitimate exception.

In spite of this obligation, over half (22) of the 42 European countries monitored by Access Info Europe did not reply at all to the access to documents requests we sent.

Of these 22 countries where the requests met with administrative silence, 19 had access to information laws in place at the time Access Info Europe made the request. The three countries which didn't, as noted in the introduction above, were Cyprus, Luxembourg, and Spain.

#### Box A - Case Study Malta and Portugal

In Malta and Portugal we were asked for formal identification in order to process our request for information. Although members of the research team provided their ID numbers, no answer to our requests were ever received.

### 2.2 Incomplete and Invalid Answers and Refusals

Access Info Europe embarked on this research assuming that the police forces we contacted would hold the requested information and that, in most cases, they would provide it in full.

It was therefore remarkable that even **for the 20 countries from which we received replies, not one provided all the information requested.**

As Table 2 (below) shows, more complete responses were given to Question 1 regarding the legislation governing policing of protests (13 countries), and to Question 5 on evaluation reports (10 countries).

Question 3a on the quantities of equipment held by each police force, resulted in the greatest number of refusals (9 countries refusing and just 1 answering with information).

There was a mixed picture with regards to Question 2 on the types of equipment whose use is permitted by law (9 countries), Question 3b on the number of times equipment had been used (6 countries), and Question 4 on examples of guidance and training materials provided to police officers (5 countries).

Table 2 below gives the country-by-country outcomes for each question. We note that for England and Scotland a more detailed breakdown of responses from regional police forces is provided in Section 3, while here we give only the responses from the central authority.

**Table 2: Outcomes for the “Transparency of Policing Protests”**

|  | <b>Question 1<br/>Law governing<br/>use of equipment</b>  | <b>Question 2<br/>Types of<br/>equipment</b>  | <b>Question 3a<br/>Quantities of<br/>Equipment</b>  | <b>Question 3b<br/>Times equipment<br/>used in protests</b>            | <b>Question 4<br/>Training on use<br/>of equipment</b>                          | <b>Question 5<br/>Post-protest<br/>evaluations</b>  |
|--|---|---|---|--|---|---|
| <b>Information Received</b>  | Croatia<br>Czech Republic<br>Denmark<br>England<br>Estonia<br>Finland<br>Hungary<br>Kosovo<br>Latvia<br>Lithuania<br>Macedonia<br>Sweden<br>Northern Ireland  | Croatia<br>Denmark<br>Estonia<br>Finland<br>Germany<br>Kosovo<br>Latvia<br>Sweden<br>Northern Ireland | Hungary   | Denmark<br>Estonia<br>Germany<br>Hungary<br>Latvia<br>Northern Ireland | England<br>Germany<br>Kosovo<br>Sweden<br>Northern Ireland                      | Croatia<br>Czech Republic<br>Denmark<br>England<br>Estonia<br>Finland<br>Germany<br>Lithuania<br>Sweden<br>Northern Ireland |
| <b>Incomplete Information<br/>(not all info provided)</b>                                  |   | Macedonia   | Finland<br>Germany  | Croatia<br>Finland<br>Kosovo   | Croatia<br>Estonia<br>Finland<br>Latvia<br>Macedonia                            |   |
| <b>Invalid Answer</b>  | Germany<br>Liechtenstein<br>Netherlands<br>Spain  | Hungary<br>Liechtenstein<br>Lithuania<br>Spain  | Croatia<br>Latvia<br>Liechtenstein<br>Spain<br>Sweden   | Czech Republic<br>Liechtenstein<br>Spain<br>Sweden                     | Czech Republic<br>Hungary<br>Liechtenstein<br>Lithuania<br>Netherlands<br>Spain | Hungary<br>Kosovo<br>Latvia<br>Liechtenstein<br>Macedonia<br>Netherlands<br>Spain   |
| <b>Information Not Held</b>  | Switzerland<br>Scotland   | England<br>Switzerland<br>Scotland  | England<br>Switzerland<br>Scotland  | England<br>Switzerland<br>Scotland                                     | Scotland  | Switzerland<br>Scotland<br>Switzerland<br>Scotland  |
| <b>Information Refused</b>   |   |   | Northern Ireland  |  | Switzerland   |   |
| <b>Information Illegitimately<br/>Refused - no exception or<br/>justification provided</b> | France  | Czech Republic<br>France<br>Netherlands   | Czech Republic<br>Denmark<br>Estonia<br>France<br>Kosovo<br>Lithuania<br>Macedonia<br>Netherlands | France<br>Lithuania<br>Macedonia<br>Netherlands                        | Denmark<br>France   | France  |
| <b>Administrative Silence</b>  | Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Turkey |   |   |  |   |   |

## 2.3 Answers per Question

### 2.3.1 Question on Legislation

It is vital that legislation governing the use of equipment and police actions during protest situations is available to the public as citizens should know what the rules are governing police actions.

Just under one third (13 countries or 31%) of all the police forces to which we submitted requests provided full information on the legislation governing the use of equipment at their disposal.

A further 4 countries (10%) gave an invalid answer meaning their response did not answer the question asked.

In two cases, Switzerland and Scotland, the reply stated that they did not hold the information and we were referred to local police forces.

From France the refusal to provide information came orally over the phone when the Access Info Europe research team called to ascertain the status of the request after we had not received a response to a reminder message sent as a follow up to the initial request.

It is essential that, when the police are asked, they be ready to provide information about legislation to the public. The failure of some police forces to provide such information is one of the most concerning findings of Access Info Europe's study.

#### Box B - Case Study France

In France, the Information and Communication Department of the French Ministry of Interior made an oral refusal to disclose any information on the grounds that what we requested was made for internal use and not for the general public.

Access Info Europe was informed by the Ministry that it is transparent, but was told that only members of parliament are able to request such documents (for use as part of parliamentary commissions) rather than citizens, NGOs or journalists.

### 2.3.2 Question on Types of Equipment

The public should be clearly informed about which types of equipment police forces are permitted to use during protests in order to know whether the equipment being deployed is being done so legally. This is basic information which may be hard to obtain in more repressive countries, but should be available in any democratic society.

In spite of the evident public interest knowing about the legal basis for use by the police of certain types of equipment, comprehensive responses were obtained from only nine (9) countries (21%).

The details provided by the nine countries are set out in Table 3 below. The information disclosed shows a marked variation in the kinds of equipment that may be used by police forces across Europe, ranging from batons, shields and handcuffs, to dogs, tear gas, and even rubber

across Europe, ranging from batons, shields and handcuffs, to dogs, tear gas, and even rubber bullets in Croatia, Estonia and Latvia. Access Info Europe notes that we have not verified independently if this data is correct, but it is the information we were provided by the respective police forces.

**Table 3: Content of Responses to Question 2**

|                    | Croatia | Denmark | Estonia | Finland | Germany | Kosovo | Latvia | Sweden | Northern Ireland |
|--------------------|---------|---------|---------|---------|---------|--------|--------|--------|------------------|
| Baton              | ✓       | ✓       | ✓       | ✓       | ✓       | ✓      | ✓      | ✓      | ✓                |
| Shield             | ✓       |         | ✓       | ✓       | ✓       | ✓      |        |        | ✓                |
| Water canon        | ✓       |         | ✓       |         | ✓       | ✓      | ✓      |        | ✓                |
| Pepper spray       |         | ✓       |         | ✓       | ✓       | ✓      | ✓      | ✓      |                  |
| (Tear) Gas & Smoke |         | ✓       | ✓       |         |         | ✓      | ✓      |        | ✓                |
| Handgun            |         | ✓       |         |         | ✓       | ✓      |        | ✓      | ✓                |
| Police Dogs        | ✓       | ✓       |         | ✓       | ✓       |        |        |        | ✓                |
| Handcuffs          |         | ✓       |         |         | ✓       |        | ✓      | ✓      |                  |
| Rubber bullets     | ✓       |         | ✓       |         |         |        | ✓      |        |                  |
| Horse              | ✓       |         |         | ✓       | ✓       |        |        |        |                  |
| Other              | ✓       |         |         | ✓       | ✓       |        | ✓      | ✓      | ✓                |

In addition to these responses, Macedonia provided incomplete information, whilst Hungary, Liechtenstein, Lithuania, and Spain provided invalid answers insofar as they did not properly answer the question (for example Liechtenstein, as noted in Box D below, observed that it is very rare for there to be any demonstrations in the principality, and certainly not non-peaceful ones).

The central authorities of England, Scotland and Switzerland said they did not hold the information and referred us to local police forces. As noted in Section 3 below, three of the four regional police forces we then contacted informed us that it would take too much time to compile the information, and one provided an incomplete response. It is clearly of concern that this question could not be answered easily by any English police authority, central or regional.

France, as noted above, refused to provide the information in an oral response. In addition, the Czech Republic and the Netherlands provided written refusals which Access Info Europe has classified as illegitimate as they did not specify which exceptions in the national access to information legislation were being used as the basis for justifying the denial.

Access Info Europe asserts that there can be no accountability for police actions during protests if the public is not adequately informed of the types of equipment that it is legal to use, with any accompanying details about the criteria set out in law for the use of such equipment. That we were refused these details in some countries and that others failed to provide them is of particular concern.

### 2.3.3 Question on Data on equipment

Not only is it important for citizens to know which kinds of equipment are available to police forces during protest situations, but also the quantity of equipment held, as well as how many times each type of equipment has been used. Such information is essential to ascertain that the police are adequately equipped to deal with protest situations as well as to evaluate after the fact if they are using such equipment appropriately according to the situation at hand.

**Question 3a**, on the number of items in the possession of police forces for each equipment type;

Only Hungary provided full information on how many pieces of equipment police officers had at their disposal for use during protest situations.

Finland and Germany provided incomplete information, with Germany failing to specify the total number of pieces or units available for some types of equipment (see case study in Box C, below).

A further five countries – Croatia, Latvia, Liechtenstein, Spain, and Sweden – provided invalid answers insofar as they did not answer the question asked.

Northern Ireland refused to provide the information invoking exceptions in the access to information legislation. France, as noted above, refused orally, and a further seven countries (Czech Republic, Denmark, Estonia, Kosovo, Lithuania, Macedonia, and the Netherlands) denied access in a manner, which Access Info Europe has classified as illegitimate insofar as they did not provide a justification of the legal basis under their access to information legislation for the refusals.

**Question 3b**, on the amount of times that such equipment types have been used in the last five years;

Of the countries which replied in some way or other to Question 3b, seven police forces (Denmark, Estonia, Germany, Hungary, Latvia, and Northern Ireland) provided full answers about how many times equipment had been used (we note that in most cases they stated that this was zero).

Croatia, Finland and Kosovo provided incomplete information, and four countries (Czech Republic, Liechtenstein, Spain, and Sweden) gave invalid answers since they did not address the question properly and failed to provide meaningful responses.

Lithuania, Macedonia, and the Netherlands refused to disclose the information. In each instance these were illegitimate refusals as they failed to employ an exception from their access to information legislation to justify why the requested data could not be made public.

## Box C - Case Study Germany

Germany was one of the few countries that provided detailed information on the types of equipment available. This is our translation of their response:

Regarding the clothing, the police forces are equipped with the following:

- police operation clothing (36 articles)
- Equipment (for operation purposes, 5 articles)
- additional items (4 articles)

Depending on the situation of the operation the federal police officers are equipped with different items. The personal equipment consists of:

- 1 duty pistol with holster
- 1 baton with holster
- 1 riot agent spray with holster
- 1 handcuff with holster
- 1 flashlight with holster
- 1 protection vest (to be worn underneath the shirt)

In case of "unpeaceful" demonstrations further operation equipment can be used. The federal police officers can be equipped with the following:

- personal body protection garment
- protective shield
- protection vest (to be worn over the shirt)

In addition the following equipment can be provided:

- riot agent sprays with holster
- police dogs
- police horses
- water cannons
- protected vehicles

### 2.3.4 Question on Guidance and Training

Police forces should be well-trained and know what to do during protest situations. Police forces should also ensure that human rights principles are respected, and hence it is important that the public be able to obtain information about the training and guidance provided to police officers in order to ensure public oversight and accountability.

Only five countries (12%), namely England, Germany, Kosovo, Sweden, and Northern Ireland, answered our request for information providing full information on the training and guidance provided to police. Another five (Croatia, Estonia, Finland, Latvia, and Macedonia) provided incomplete information.

A further 6 countries (14%) (Czech Republic, Hungary, Liechtenstein, Lithuania, the Netherlands, and Spain) provided invalid answers, meaning they did not actually answer the question in their response.

The central authority in Scotland said it did not hold the information requested.

There were three refusals (7%) to provide information about guidance and training. France refused orally to disclose the information requested as noted above. Switzerland refused and justified the denial by applying an exception in the Swiss law relating to revelation of professional, business or manufacturing secrets. Denmark also refused, although it did not provide a reason under its access to information law as to why, merely stating "it is not publically available".

#### Box D - Case Study Liechtenstein

Liechtenstein provided an invalid answer to the questions in our request for information.

The two replies from the Landes Polizei stated:

"In Liechtenstein are demonstrations very rarely."

and

"We do not have any non peaceful demonstrations in Liechtenstein."

### 2.3.5 Question on Evaluation reports

The evaluation of police actions after protest situations should always be made public in order to ensure accountability, and to permit debate on the appropriate measures that can be developed to improve policing of such situations.

Only ten countries (24%) responded to Question 5 with evaluation reports, which were either provided or links to on-line reports were sent.

Seven countries (17%), comprising Hungary, Kosovo, Latvia, Liechtenstein, Macedonia, Netherlands, and Spain, provided invalid answers to the question and failed to provide any evaluation reports.

The central authorities in Scotland and Switzerland said they did not hold the information.

France, as noted above, refused to disclose any information regarding our questions.

Access Info Europe finds the failure to provide evaluation reports to be very serious. Police officers in charge of policing public order operations should be able to show that they have considered and applied relevant human rights principles. The guidance from the Council of Europe mentioned in Section II, which advises that records be kept, must be taken seriously by all police forces and the resulting evaluation reports should always be available to the public to full and effective accountability of the way in which protests are policed.

## 2.4 Quality of Information Collection Varies Significantly

There is a mixed picture with regards to the collection and storage of information about police actions in Europe.

In 16 of the 20 countries that replied to our requests, answers came from a Ministry or central agency. In four countries (England, Finland, Scotland, and Switzerland) however, we were referred to other entities – local police forces, and to cantons in the case of Switzerland - in order to receive answers to our questions.

These results from the central authorities have been included in the global results of Table 2 (although the results for Finland reflect our follow up with the Helsinki police). The outcomes of the responses received from four local police forces in England and eight local police forces in Scotland are explained below (see Table 4, below). Access Info Europe did not follow up with further requests at the canton level in Switzerland.

### 2.4.1 The excessive cost of searching in England

In England, the central authority we contacted provided full information on the legislation, training materials and evaluation reports of police actions during protests. For the remainder of the questions (Questions 2, 3a and 3b) which related to equipment held, we were informed that this data is not held centrally and were referred to individual police forces.

Access Info Europe selected four police forces and asked for the specific equipment data.

In response to these supplementary requests, three police forces – the Metropolitan, Greater Manchester, and West Yorkshire police – told us that disclosure would be refused due to the excessive cost of compiling the information. On the other hand, we received some information about equipment, albeit incomplete, from the Thames Valley police force.

Whilst excessive costs to find information is a valid reason to refuse access to information according to the UK Freedom of Information Act, it does bring into question the information management systems of these three police forces if they are not able to locate in the period of 18 hours of work, worth £450 at £25 an hour, which is the national threshold according to the three police forces, the data on the amounts of equipment in their possession. Only the West Yorkshire Police Force estimated the actual amount of time needed to provide the information requested, which was calculated to be at around 62 hours, needing a manual search of each incident record to establish if / what type / how many officers / equipment deployed, with 15 minutes of search per incident and 250-300 incidents in the requested period.

### 2.4.2 Law enforcement exception applied in Scotland

In Scotland, the central authority we contacted told us they did not hold any information and that our requests would be handled by local police forces. After contacting eight local police forces, we were answered by seven, with administrative silence coming from the Northern Constabulary police force.



The quality and completeness of the answers from the remaining seven police forces in Scotland varied considerably (see Table 4, below).

For Question 1 on legislation, we received two complete answers, four incomplete answers, and one invalid answer.

Six Scottish police forces provided incomplete information when answering Question 2 on the types of equipment, whilst Tayside police answered the question in full.

All seven police forces refused information on Question 3a on the quantity of equipment in their possession, grounding the refusal in the "Law Enforcement" and "Health and Safety & the Environment" exceptions in the Freedom of Information Act (Scotland) 2002, to which they also applied a public interest test but nevertheless concluded that the information should not be disclosed.

Similarly, all seven of the police forces refused to disclose information in response to Question 3b on the number of times that they had used equipment. The grounds for these refusals were the same, with the exception the Grampian police force which stated that it did not hold this information.

Answers to Question 4 resulted in Tayside police force disclosing full information, Lothian and Borders police force disclosing incomplete information, three providing invalid answers, and two refusals to disclose the information with the same exceptions applied to Questions 3a and 3b, previously.

We received full information five times and two invalid answers in reply to Question 5.

**Table 4: Outcomes from English and Scottish Police Forces**

|   |          | Question 1             | Question 2           | Question 3a          | Question 3b          | Question 4           | Question 5           |
|---|----------|------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| <b>England<br/>(Central Authority)</b>      | Referred | Information Received   | Information Not Held | Information Not Held | Information Not Held | Information Received | Information Received |
| <i>Metropolitan Police Service</i>          |          | -                      | Refused              | Refused              | Refused              | -                    | -                    |
| <i>Greater Manchester Police</i>            |          | -                      | Refused              | Refused              | Refused              | -                    | -                    |
| <i>West Yorkshire Police</i>                |          | -                      | Refused              | Refused              | Refused              | -                    | -                    |
| <i>Thames Valley Police</i>                 |          | -                      | Incomplete           | Incomplete           | Incomplete           | -                    | -                    |
| <b>Scotland<br/>(Central Authority)</b>     | Referred | Information Not Held   | Information Not Held | Information Not Held | Information Not Held | Information Not Held | Information Not Held |
| <i>Central Scotland Police</i>              |          | Incomplete             | Incomplete           | Refused              | Refused              | Invalid              | Invalid              |
| <i>Dumfries &amp; Galloway Constabulary</i> |          | Information Received   | Incomplete           | Refused              | Refused              | Invalid              | Information Received |
| <i>Fife Constabulary</i>                    |          | Incomplete             | Incomplete           | Refused              | Refused              | Refused              | Information Received |
| <i>Grampian Police</i>                      |          | Information Received   | Incomplete           | Refused              | Information Not Held | Refused              | Information Received |
| <i>Lothian &amp; Borders Police</i>         |          | Invalid                | Incomplete           | Refused              | Refused              | Incomplete           | Information Received |
| <i>Strathclyde Police</i>                   |          | Incomplete             | Incomplete           | Refused              | Refused              | Invalid              | Invalid              |
| <i>Tayside Police</i>                       |          | Incomplete             | Information Received | Refused              | Refused              | Information Received | Information Received |
| <i>Northern Constabulary</i>                |          | Administrative Silence |                      |                      |                      |                      |                      |

## 3. Conclusions and Recommendations for Police Authorities

With increasing concerns across Europe about the way in which protests are managed by the police, and with some very controversial incidents of violence having arisen, it is imperative that members of the public have the information needed to be able to hold police forces to account.

This research study by Access Info Europe has found that this is currently not the case in most European countries and calls for senior government officials and senior police management to review the lack of transparency as a matter of high priority.

Here we set out three main findings that need to be addressed.

### 3.1. On the Failure to Respond Fully or At All to Requests

Access Info Europe's research has uncovered a serious failure to provide information to the public, which clearly demonstrates the need for police authorities across Europe to comply significantly better with their legal obligation to respond to access to information requests.

The high level of administrative silence throughout Europe underscores the pressing need for greater openness about the use of equipment and force by police during protests. Without such transparency, it is impossible for the civilian oversight mechanisms, the media, and the wider public to scrutinise and to ensure accountability of police actions and to guarantee respect for the human right to freedom of assembly.

#### **Access Info Europe recommends:**

- » That for each of the police authorities in this report, senior management reviews and improves the training of relevant officials on their obligations under access to information legislation. Such training should make clear that officers handling information requests must always respond and must do so within the time frames specified by the law, and should take care to provide complete and comprehensive answers to the questions asked. Administrative silence is never an option.

### 3.2. On the Inappropriate and Illegitimate Refusals

The refusals to provide some of the requested information by Northern Ireland and Switzerland, and in particular the illegitimate refusals from the Czech Republic, Denmark, Estonia, France, Kosovo, Lithuania, Macedonia, and the Netherlands, are highly problematic in the context of seeking police accountability.

Access Info Europe believes that the information it requested as part of this research into the use of police force should always be in the public domain. Whilst we anticipated that some police forces might have considered that data on the quantity of equipment

held is sensitive information not to be made public, in fact only two countries attempted to make this argument in a way consistent with the obligations under the national access to information laws. Furthermore, for Croatia, Denmark, Estonia, Finland, Germany, Kosovo, Latvia, Northern Ireland and Sweden, there was no problem in providing some or all of this data, indicating that it is not necessarily particularly sensitive.

What our research revealed then was a rather blatant disregard for the obligation to ground refusals in the law. It is never acceptable to deny access to information without justifying why such information cannot be made public. The fact that this occurred a number of times indicates lack of readiness to be accountable to the public.

#### **Access Info Europe recommends:**

- » That all the police forces in the study review their procedures for assessing requests and for evaluating whether or not to grant information. Prior to any refusal, officials must evaluate the necessity of the denial, must verify the relevance of the exception being applied, and must apply the harm and public interest tests. A refusal letter must always include a clear and precise reference to the exceptions being invoked, and an explanation of how the harm and public interest tests were applied. The requester must also be informed of their rights of appeal, to whom and how this is done.

### **3.3. On the Failure to Compile and to Publish Key Data**

An effective transparency and accountability system should not have to rely on requests but should include the compilation and proactive publication of information. This is precisely the recommendation from the Council of Europe to ensure good record-keeping relating to police actions.

Essential data such as the legal framework for police use of various types of equipment in protest situations should always be readily available for the public, along with data on types and quantities of equipment held by police.

Such information is an essential part of a debate about how police resources are spent and whether the amount of equipment held is sufficient, or if it is insufficient or excessive. Central ministries and police authorities should know which information is available at the regional and local level.

Every country in this study should have been able to provide such information via a link to a web page or document which explained the rules and core data in user-friendly terms.

The same goes for information about the training which the police receive on how to use the various types of equipment that they are permitted to use during protests, as well as for evaluation reports after protests. The evaluation of police actions during protests,

particularly where these are controversial, for example because violence has broken out, is an absolutely essential part of a police accountability system and necessary for maintaining trust in the police, providing, of course, that such trust is merited by behaviour which is consistent with the legal framework and respect for human rights, something which evaluation reports should ascertain.

It is not sufficient to provide information in response to information requests. The police obligation to transparency must be ensured through proactive publication of the information that the public needs to hold police forces to account for their actions, to participate in the debate on how to improve the quality of policing, and to ensure the safe exercise by citizens of the right of freedom of assembly.

**Access Info Europe recommends:**

- » That all the police forces in this study review the way in which they collect, manage, and make available information about their activities, in particular about the rules and regulations governing the use of equipment, and the reports on and evaluations of the use of such equipment in actual protest situations. This information should be made available on line in places which make it easy to locate and in formats which permit easy download and reuse of the data.
- » There should also be a particular effort to ensure proactive disclosure of key information, including the rules and regulations governing police action, the equipment permitted during protests, and evaluation reports, particularly after any problems which arise or violence which ensues during the policing of protests.

# Annexes

## Annex A: Copy of the request sent

### **Request for Information Regarding Police Equipment and Training for Protest Situations**

Dear Sir or Madam,

I am writing to request information and/or documents held by you or stored in archives accessible to you regarding police actions in situations of public demonstration, assembly or protest. Specifically, under the Law on Public Documents, I am requesting the following:

For each question listed below, please provide information and/or documents relating to the activities of the police forces in situations of protest. We refer to "protest" as assemblies of people (including marches, demonstrations, rallies etc) in which the motive for the assembly, usually in a public place, is for the purposes of expressing themselves about issues of concern.

- 1. What legislation governs the use of equipment at the disposal of police forces in protest situations?**
- 2. What types of equipment are police forces permitted to use in protest situations? (For example: batons, shields, water cannons, rubber bullets, etc.)**
- 3. For all the equipment types available for use by police officers in situations of protest that are supplementary to normal police equipment, please provide me with data including:**
  - a. The number of items in the possession of police forces for each equipment type;**
  - b. The amount of times that such equipment types have been used in the last five years;**
- 4. What guidance and training are police provided with on use of equipment for dealing with protest? Please send a copy or direct website link to any guidance documents regarding the use of force in such situations.**
- 5. Has the police or government compiled any evaluation reports on the policing of protests in the past five years? If so, please send a copy of the evaluation documents or direct me to the direct on-line link.**

I kindly request you to provide this information and/or these documents in electronic format if at all possible, to the email address [morgane@access-info.eu](mailto:morgane@access-info.eu) copying [lydia@access-info.org](mailto:lydia@access-info.org).

For responses including datasets (for example for question 2 above), I would be very grateful if you could send me the requested data in an Excel or other type of spreadsheet format.

If you should require any further information, or a clarification of any part of this request, please do not hesitate to contact me. Thank you.

Yours sincerely,

**Morgane Dussud**

Researcher, Human Rights

Access Info Europe

Cava de San Miguel 8, 4º centro

28005 Madrid – España

[morgane@access-info.eu](mailto:morgane@access-info.eu)

## Annex B: Methodology for allocating Final Outcomes

This section describes in detail the possible outcomes of requests.

### Unable to submit

When the outcome is "Unable to Submit", this implies that it was not physically possible to submit the request for access to information. This might be because of procedural problems, such as refusal to accept the request via email, or for not providing a national ID card.

### Administrative Silence

"Administrative Silence" is when public bodies fail to respond to a request for access to information. Even in cases where there was simply an acknowledgement of receipt but no actual reply to the request, or where email or phone follow-ups have occurred without some kind of formal reply afterwards, the status of the request was registered as "Administrative Silence".

### Referral

A "Referred" outcome is recorded when the public body states in a response that the request for access to information should be presented to a different body. Referred outcomes are recorded, but for the purposes of this study, are not technically responses to the set of questions that have been asked; the responses following referred requests are recorded as the final outcomes for countries and territories in the study.

### Information Received

"Information received" means that the information requested was disclosed by the public body or institution in full. Sometimes an "Information Received" outcome may not result in any documents or information disclosed as they do not exist at all!

### Partial Access

A request has been recorded as "Partial Access" if the authority has provided information to part of the information requested, but some part of it has been formally refused due to an exception in access to information legislation. For instance, some information may be blacked-out. A "Partial Answer" implies that the information exists but is not being disclosed.

### Information Not Held

An "Information Not Held" outcome is when the public body informs the requester that the information exists or may exist, but that it is not the public body that holds the information that is being requested. The requester may or may not be referred to another body.

### Refused

A "Refused" response is a refusal to disclose any information according to exceptions in access to information legislation. Reasons must be provided, or at least referenced to the relevant article(s) in the law. Refusals may be in oral form (over the phone) although it is preferred if written down (via post or email) as it makes it easier to record what happened and present a complaint or appeal later, if desired.

### **Illegitimate Refusal**

An "Illegitimate Refusal" is recorded in cases where the authority has said that the information will not be disclosed, but does not provide any reason under access to information legislation as to why. Often, an authority will simply state the information is 'secret' or 'for internal use', but will not provide any further reason, nor state if this is part of the access to information law, or an exception provided by another law.

### **Incomplete Information**

When a public body or institution discloses "Incomplete Information", they have provided some of the information requested, but have simply not answered the question in full. They may have missed out part of the answer, or not in the detail required or requested by the requester. The outcome however, does not mean the institution has specifically refused to provide the information as in "Partial Access", "Refused", or "Illegitimate Refusal" outcomes.

### **Invalid Answer**

When the information disclosed is not relevant or scantily related to the question asked, the outcome has been recorded as "Invalid Answer". The authority may have provided a website address or a large document without clear indications as to where to find the information. Invalid Answers are also recorded where the authority simply appears to ignore the question asked and does not address it at all in their response to the request.