



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2009-01240

**Keyword:** Crime

**Subject:** COVERT HUMAN INTELLIGENCE SOURCES (CHIS)

### Request and Answer:

#### Question 1

How many covert human intelligence sources are there as of April 13, 2009?

#### Question 2

How many of these sources have criminal convictions?

#### Question 3

Please list convictions i.e. burglary, assault, murder.

#### Question 4

What is the largest amount paid out to one source?

#### Question 5

What is the lowest amount paid out to one source?

### Answers 1-5

Your request for information has now been considered and the decision has been taken not to supply the information you have requested.

PSNI fully exempt all questions pursuant to the provisions of Section 30(2)(a)(i) and (b) Investigations and Proceedings conducted by Public Authorities and Section 38(1)(a)(b) Health and Safety and neither confirm nor deny any additional information relying on Section 23 (5) Information supplied by, or concerning, certain security bodies and Section 24 (2) National Security.

Section 17 of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which:

- (a) states that fact,
- (b) specifies the exemption in question and
- (c) states (if not otherwise apparent) why the exemption applies.

The exemptions, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

### Qualified Exemptions

Section 30(2)(a) (i) and (b) Investigations

Section 38(1)(a)(b) Health and Safety

## **Evidence of Harm**

Covert Human Intelligence Sources (CHIS) (regardless of their motivation) provide information at particular personal risk to themselves and their families. As previous cases have shown, where CHIS are identified it can result in substantial physical harm, or mental trauma resulting from the threat of physical harm. This problem is particularly acute in cases relating to serious crime and terrorism where the threat against individuals is substantial. The disclosure of information relating to the largest amounts and lowest paid to CHIS in PSNI would allow those involved in serious and organised crime to interpret these payments across forces and apply these to law enforcement activities, which have impacted upon their own criminal network. This would be particularly relevant where CHIS have provided information on high profile or significant cases or have provided information to a smaller force, which would be easier to identify. This would or would be likely to result in such persons actively seeking to identify CHIS within their organisation and using extreme violence against them.

Exposing CHIS to public scrutiny would almost certainly result in violations of their rights as protected by the Human Rights Act 1998. Agreeing to become a CHIS is a major step of trust, based on the understanding that information is given in confidence and that anonymity will be preserved. Any disclosure which undermines the confidence of current and potential CHIS and the ability of law enforcement bodies to keep CHIS identities secret would be a major deterrent to potential CHIS. This would be likely to prejudice substantially the prevention or detection of crime and the apprehension or prosecution of offenders by reducing the flow of information to the police service and intelligence agencies.

The use of CHIS, either paid or unpaid, is a key tool used by law enforcement bodies for gathering intelligence, and CHIS are often the most valuable sources of information, enabling the police and other agencies to secure evidence and subsequent prosecutions. Any disclosure that may reduce the flow of information to the police service and intelligence agencies would have a substantial prejudicial impact on the ability of such authorities to collect reliable and accurate intelligence, and would result in them becoming dependant on more costly and time consuming methods of collecting intelligence.

The use of CHIS is regulated by the Regulation of Investigatory Powers Act, which requires authorities to take into account the provisions of the Human Rights Act when using CHIS (and other covert techniques). Police are always cognisant of their obligations under Article 2 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998), which requires them to protect human life. This is further supported by a recent House of Lords decision in *Van Colle v Chief Constable Hertfordshire Police*. In this case, the issue was whether the police service concerned had provided adequate protection to an individual whose life was at risk because of the criminal acts of a third party. The witness was murdered by a person whom he was about to give evidence against in a criminal trial.

Information relating to CHIS is protected during court proceedings and is viewed as sensitive material. In the majority of cases, information relating to CHIS will only be provided to a court on a sensitive disclosure schedule and is not generally considered in open court (unless it will directly assist the prosecution or aid the defence). CHIS material will often also be subject to Public Interest Immunity, demonstrating that the courts recognise that there is little public interest in the open discussion of information relating to CHIS unless it is critical in a particular case or there is a public interest in disclosure. Even within the law enforcement community, information relating to the payments provided to CHIS is placed strictly on a 'need to know'.

## **Public Interest Test**

### **Considerations Favouring Disclosure**

#### Accountability

When information disclosed relates directly to the efficiency and effectiveness of the service or its officers. The purpose of the Act is to make public authorities more accountable and this factor, therefore, may be applied to a wide range of scenarios from how an individual or the service fulfils their role or function, to policy decisions that have been taken in relation to investigations or general policy issues. In this instance, disclosure allows public scrutiny of information relating to CHIS.

#### Public awareness and debate

Where disclosure can assist individuals by raising awareness of issues, which may be of relevance to them. In this instance, there has been public concern about the use of CHIS by law enforcement bodies, and disclosure of this information would contribute to more accurate public debate, allowing the opportunity to correct speculation and falsehoods.

#### Use of public funds

Where public funds are being spent, there is a public interest in accountability and justification. Disclosure of this information would enlighten members of the public as to the approximate amounts of money spent by the PSNI on CHIS. This will promote transparency and accountability where expenditure of public funds is concerned.

### **Favouring Non-Disclosure**

#### Investigations

It is rare that details of an investigation will be disclosed as to do so will invariably release personal information, law

enforcement techniques and in the case of uncompleted cases potentially damage the criminal justice process.

#### Efficient and Effective Conduct of the service

The current or future law enforcement role of the service may be compromised by the release of information, i.e. where the prevention/detection of crime, the apprehension/prosecution of offenders or the administration of justice may be hindered as a result of the release of information. Disclosure of the requested information would impact on the ability of police services to gather valuable intelligence.

#### Interests of individuals or third parties

Where individuals or third party interests might be jeopardised by release of information that relates to personal affairs of individuals and/or sensitive information held about operational issues. A CHIS provides the information solely on the grounds that it is completely confidential; disclosure, of any kind, could adversely affect the reputation of an individual with dangerous consequences.

#### Public Safety

There may be occasions where the release of information relating to public safety may not be in the public interest. Public safety is of paramount importance to the policing purpose and must be considered in respect of every release. Release of this information may also adversely affect wider public safety if the criminal fraternity/less law-abiding individuals are provided with a tactical advantage over the PSNI.

#### Flow of Information to the service

Release of information would act as a deterrent to the public to provide information to the service. There is a need to protect the flow of information from CHIS and the public, to allow all to have confidence that their information will be treated sensitively and appropriately. If the relationship between the service and members of the public/CHIS were impeded, the gathering of information to enable the service to perform its public service functions would become increasingly difficult. The use of CHIS takes place in an environment of absolute trust and confidence. Anything, which undermines this ethos, would have a detrimental effect, reducing the quality of information the service receives.

#### Human Rights, Morals and Ethics

The public interest will not be served if disclosure breaches the obligations placed on an authority under the European Convention on Human Rights, particularly the right to life, fair trial and privacy. Particularly relevant here is the obligation, under Article 2 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act), which requires police to protect human life. Disclosure of CHIS information would also compromise individuals' right to privacy and a private life as defined in Article 8 of the Convention.

#### **Balancing Test**

While accountability is a strong factor, the police service and law enforcement agencies are already subject to scrutiny and full oversight by the Office of the Surveillance Commissioner. All police are subject to regular inspections by this body, which is adept at identifying cases where an inappropriate use of a CHIS has occurred.

On balance, if disclosed, there could be the likelihood that the future law enforcement role of the service could be compromised and the safety of individuals and the public put at risk. It cannot be justified that the public's interest would be served in releasing this specific information if either of these aspects were to be compromised in any way.

We would draw your attention to Case FS50078588 - Guardian Newspaper v ICO and Avon and Somerset police (Jeremy Thorpe). It was established in this case that the disclosure of information particularly where Sec 30 is engaged, need only be for a tangible community benefit and the public interest is not defined by matters that the public would simply just find interesting.

We would also suggest that any small community benefit is already catered for in other ways, which reduces the need for Freedom of Information Act to do so. Firstly, there is the Audit Commission Act where all police expenditure is monitored by an independent audit process. This ensures that funds are not used inappropriately and guarantees that fact to the public. In addition to this legal regulation, the Policing Board also maintains an interest in ensuring the correct expenditure of public money and produce annual reports, which are released, to the community. This negates the need for any further requirements to disclose how public funds are spent.

Secondly, the use of CHIS is an extremely sensitive area of police business and in our opinion is already substantially monitored and regulated through strict guidelines and procedures outlined within the Regulation of Investigatory Powers Act, whilst also taking into account the provisions of the Human Rights Act when deploying such resources. In addition, the Office of the Surveillance Commissioner scrutinises police activity in this area and reports to the prime minister on an annual basis. He chooses not to produce the requested information as part of his annual report, indicating the sensitivity he also considers in making such information widely available within the public domain. Such robust processes ensure that any individual employed by the police service aren't exploited or subject to inappropriate action.

Other organisations outside the police service are also widely engaged in rewarding CHIS in a number of ways, and therefore the release of police statistical information is likely to harm the close relationship that exists with such organisations, where trust and confidence in this specific area has been built up in the exchange of information and

financial assistance during the Criminal Justice process.

In relation to the information, which we have refused to disclose, we are unable to confirm nor deny that any other information may or may not be held.

In relation to any additional information, this notice acts as a refusal notice, under the provisions of S17 (1) of the Freedom of information Act 2000.

In addition to the above, and by virtue of the listed exemptions Section 23 (5) (Information supplied by, or relating to, bodies dealing with security matters) and Section 24 (2) (National Security), I can neither confirm nor deny that any further information is held to that withheld under the exemptions listed above.

The police service works in partnership with other agencies in order to combat issues such as terrorism and organised crime. As such, funding and/or assistance may sometimes be provided by bodies listed at section 23(3). In this case, PSNI are unable to confirm or deny whether such funding or assistance has been provided to this service by virtue of section 23 (5) of the act. In addition to this, it is judged that it would be detrimental to the national security of the UK to confirm or deny whether further information is held regarding the recruitment or funding of CHIS for national security purposes. Section 24 is a qualified exemption and I have considered whether the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether or not the PSNI holds further information. PSNI recognises that there is a general public interest in openness and accountability because this increases public trust in and engagement with the police. On the other hand, there is a very strong public interest in safeguarding national security. This interest could only be overridden in exceptional circumstances. I have determined that in all circumstances of the case, the public interest in maintaining the exclusion outweighs the public interest in confirming or denying whether further information is held.

This response should not be taken as evidence that the information you have requested exists or does not exist.

If you have any queries regarding your request or the decision please do not hesitate to contact 028 9070 0164. When contacting the Freedom of Information Team, please quote the reference number listed at the beginning of this letter.

If you are dissatisfied in any way with the handling of your request, you have the right to request a review. You should do this as soon as possible, or in any case within two months of the date of issue of this letter. In the event that you require a review to be undertaken, you can do so by writing to the Head of Freedom of Information, PSNI Headquarters, 65 Knock Road, Belfast, BT5 6LE or by emailing [foi@psni.pnn.police.uk](mailto:foi@psni.pnn.police.uk).

If following an internal review, carried out by an independent decision maker, you were to remain dissatisfied in any way with the handling of the request you may make a complaint, under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office and ask that they investigate whether the PSNI has complied with the terms of the Freedom of Information Act. You can write to the Information Commissioner at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out, however the Commissioner has the option to investigate the matter at his discretion.

Please be advised that PSNI replies under Freedom of Information may be released into the public domain via our website @ [www.psnipolice.uk](http://www.psnipolice.uk).

Personal details in respect of your request will be, where applicable, removed to protect confidentiality.