



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2009-01830

Keyword: Crime

Subject: SECTION 44 OF THE TERRORISM ACT 2000

Request and Answer:

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

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.

Question

According to Section 44 of the Terrorism Act 2000, an authorisation of stop and search powers may be given by the Home Secretary for a specified area for up to 28 days and confirmed in writing as requested by a Chief Constable.

Furthermore, according to the Home Office, the disclosure of a Section 44 authorisation in a particular area is an operational matter for the police force covering that area.

Please can you send me confirmation whether the Chief Constable in your area has asked for such authorisation under Section 44 of the Terrorism Act 2000. And if so, can you provide a list of all areas subject to Section 44 Terrorism Act 2000 authorisations.

Answer

The decision has been taken not to supply the information you have requested.

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

Section 24 National Security. This states that information which does not fall within Section 23 (1) is exempt information if exemption from Section 1 (1)(b) is required for the purpose of safeguarding national security. This is a qualified and prejudice based exemption and therefore the legislators accept that there may be harm if the information were to be released. The authority must consider and describe the harm that would occur if the information were released and carry out a public interest test.

Section 31 Law Enforcement. This states that information by virtue of Section 30 is exempt information if its disclosure under this Act would, or would be likely to prejudice;

- The prevention or detection of crime
- The apprehension or prosecution of offenders

- the administration of justice
- The maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.

This is a qualified and prejudice based exemption and therefore the legislators accept that there may be harm if released. The authority has to consider and describe the harm that would occur if the information were released and carry out a public interest test.

Section 38 Health and Safety. This states that information is exempt if its disclosure would, or would be likely to endanger:

- the physical or mental health of any individual; or
- the safety of an individual.

This is a qualified and prejudice based exemption and therefore the legislators accept that there may be harm if information is released. The authority has to consider and describe the harm that would occur if the information were released i.e. carry out a harm test.

In view of the fact that Section 24 (National Security), Section 31 (Law enforcement) and Section 38 (Health and Safety) are qualified exemptions, I am required to apply a public interest test. In addition, in view of the fact that Section 24, 31 and 38 are prejudice based, I am required to evidence the harm.

Harm test

Community - If information which is connected with Section 44 of the Terrorism Act 2000 i.e. detail about stop and search authorisation, is released into the public domain, substantial harm would be caused to the community. It would be extremely easy to provide a clear opportunity to educate those persons intent on terrorist crime, in regard to operational and intelligence-led activity, potentially high profile targets and potential vulnerabilities, which could occur if Section 44 stop and search operational activity details were released into the public domain. Areas and dates considered vulnerable could be identified, as could 'safe' places and times in which to commit terrorist attacks.

Police Service - PSNI's ability to protect the physical and mental health and safety of its workforce and the community would be affected if this information were to be released. Release of the information would also influence the service's ability to prevent and detect crime and to apprehend or prosecute offenders. This is particularly relevant in the current terrorist climate. It would not benefit law enforcement and protect life and property to know the specifics of police tactics with regard to authorisation made under Section 44 of the Terrorism Act 2000.

Public Interest Test

For Release

Accountability

The information could relate directly to the efficiency and effectiveness of the PSNI and its officers, showing the public either positively or negatively that satisfactory resourcing and security measures are taken. In respect of this request, the force and its employees are accountable to the public for efficient resourcing and security measures. There is a legitimate public interest in knowing that the PSNI fulfils its policing functions effectively and efficiently. There is also a public interest in knowing that the PSNI is proactive in the fight towards terrorism.

Use of Public Funds/Resources

Where public funds are being spent, there is public interest in accountability and justification. There is a legitimate public interest in knowing that financial resources are used appropriately i.e. there is not under-spend or over-spend in certain areas and that the fight against terrorism is adequately resourced to service the needs of the community.

For Retention

Efficient and Effective Conduct of the Service

The current or future law enforcement role may be compromised by the release of any information relating to Section 44 of the Terrorism Act. Release may jeopardise the integrity of an operation and, by implication, the ability of the service to prevent and detect crime may be prejudiced. The health and safety of officers/staff may also be compromised if the

intelligence details are released and sensitive tactical information is made available in the public domain.

Public Safety

The release of this information may damage public and employee safety and consequently the disclosure may not be in the public interest. The PSNI have a responsibility to protect the health, safety and welfare of members of the public as well as its employees who may be at greater risk of physical and mental harm if criminals are armed with valuable information concerning the tactical and operational details of terrorism investigation. Any erosion of police advantage against criminals would not be in the public interest.

Decision

I have decided on balance that it is in the public interest to withhold the requested information. There is an identifiable public interest in knowing that the police have taken adequate measures with regard to fighting terrorist activity. However, if information, which is either connected with the operational/emergency planning or tactics, were to be released into the public domain, substantial harm would be caused to all individuals involved i.e. police employees and the community.

While the public interest considerations favouring disclosure carry particular weight, it is felt that, on balance, the perceived national security, public safety and law enforcement, derived from non-disclosure is of greater importance than the perceived public confidence derived from disclosure.

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

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

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.psni.police.uk

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.