



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2009-01947

**Keyword:** Operational Policing

**Subject:** 'BUSINESS CASE' FOR USE OF SEC 44 (TERRORISM ACT) - B DISTRICT

### Request and Answer:

#### Question 1

Request to be supplied with the business case (including supporting evidence and justification) which was made to the Urban Region ACC to request permission for the use of section 44 powers under the Terrorism Act in Belfast's 'B' District in the last three months of 2008.

#### Answer

Business cases were not submitted for the last 3 months of 2008 as authorisation for the use of section 44 was given to all Districts.

#### Question 2

Have any business cases been submitted from Belfast's 'B' District to the Urban Region ACC to allow the use of section 44 powers in 2009? If yes, I request to be supplied with this business case and any supporting evidence and justification.

#### Answer

Any use of police power is conducted in a proportionate and lawful manner. This includes the use of Section 44 powers, which remains a tool to ensure the safety of all in our community.

There are a number of powers currently available to police under PACE, The Justice and Security Act and the Terrorism Act, however, the exact powers to be used will be dependant on the specific operational circumstances and context at that time.

There is no longer a blanket approach to the use of Section 44 within the PSNI. Each District must submit a business case to the Urban Region ACC providing sufficient supporting evidence and justification for needing the powers and the length of time they are required for. If approved, they are then forwarded to the NIO for confirmation by the Secretary of State for Northern Ireland.

Authorisation is given for a specified period of up to 28 days and if required for longer a further business case must be submitted.

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.

## **Absolute Exemptions**

Section 40 (2) Personal Information

Section 44 (1)(a) Information covered by Prohibitions on Disclosure

## **Qualified Exemptions**

Section 31(1) (a)(b)(c) Law Enforcement

Section 38 (2) Health and Safety

## **HARM**

The essence of the work undertaken by the PSNI is to protect both individuals and society as a whole.

Crime Operations Department PSNI is entrusted with a considerable amount of information. It has an important role in countering the many threats against society. The flow of information is essential to its work and any release of information in relation to question 2 could compromise the confidence of individuals supplying information.

The safety of the community, police officers and staff is of paramount importance to the PSNI. Due to the significant threat from dissident republicans in Northern Ireland, this may in the short term, influence the style of service PSNI deliver. The release of the information in relation to question 2 could put the community, police officers and staff unnecessarily at risk.

Operational procedures, methodology and tactics must be protected by the correct application of exemptions. This is because the release of this type of information would rarely be in the Public Interest and may reduce the PSNI's capability to perform its overall functions under the Police (NI) Act 2000, which states:

"It shall be the general duty of police officers –

- (a) to protect life and property;
- (b) to preserve order;
- (c) to prevent the commission of offences;
- (d) where an offence has been committed, to take measures to bring the offender to justice."

The European Convention of Human Rights states under Article 2 that each person has the right to life. Section 38 of the Freedom of Information Act 2000 also protects an individual's physical health and mental wellbeing whether the harm is real or perceived. Therefore the PSNI consider that by releasing the information you have requested in relation to question 2 may have the potential to identify different person/s and would not be in keeping with the Act.

Public authorities are in general, exempt from the Act's duty to provide access to 'personal data' (as defined in the Data Protection Act 1998).

Where an application for information is made by someone other than the 'data subject' disclosure of that information will often constitute a breach of the Data Protection Act and consequently the public authority will usually be exempt from its duties under the Act as a result of Section 40 (2).

## **Public Interest Test**

The public interest test relevant is as follows: -

### **Favouring Disclosure**

#### Accountability

The release of information could enable the public to have a better understanding of the efficiency and effectiveness of the police service.

#### Media and Public Interest

To satisfy the media and public interest.

## Public Debate

Where the release of information would contribute to the quality and accuracy of public debate.

## **Considerations Favouring Non-Disclosure**

### Efficient and effective conduct of the service.

It would not be in the public interest to release information that may prevent or hinder current and future police investigations and regulatory enforcement.

### Investigations

It would not be in the public interest to release information that may still be of assistance the PSNI in relation to any unresolved investigations.

### Flow of Information to the Service

Where releasing information would act as a deterrent to the Public to provide information to the Service. With this relationship impeded, it would be more difficult for the Service to gather information required to perform its Public service functions.

## **Balancing Test**

After weighing up the competing interests PSNI have determined that the disclosure of the information would not be in the public interest.

In addition, the PSNI can neither confirm nor deny that it holds any other information as the duty in Section 1(1)(a) of the Freedom of Information 2000 does not apply by virtue of the following exemptions:

## **Absolute Exemption**

Section 23(5) Information Supplied by or relating to Security Bodies

## **Qualified Exemption**

Section 24 (2) National Security

Section 23 is a classed based absolute exemption and therefore there is no need to explain the public interest considerations in this area, it is though required that PSNI articulate the public interest considerations for the use of NCND within exemption Section 24.

## **HARM**

The release of information under FOIA must be considered a release of information to the world as a whole. Therefore, simply confirming or not that any additional information were held could disclose sensitive information.

To neither confirm nor deny any additional information could identify any intelligence held by the PSNI to any interested criminal group or organisation in respect of specific threats made to their Officers. The harm in doing this is that the criminal and terrorist fraternity can then potentially gauge the level and exchange of intelligence with other partner's, identify police tactics and reveal operational capabilities that currently exist within the PSNI law enforcement process. Such a disruption could subsequently damage national security in reducing the ability and manner in which the PSNI would be able to effectively protect the safety and well being of its community.

Confirming or denying any additional information could lead to individuals being personally identified and their own and family's safety endangered should the information be acted upon by an individual or criminal organisation intent on breaching current PSNI security processes.

## **Public Interest Test**

The public interest test is as follows: -

## **Considerations Favouring Disclosure**

### Accountability

When information relates directly to the efficiency and effectiveness of the PSNI or its officers it would generally be of benefit to the community to confirm whether any additional information is held or not.

### Public Debate

To confirm whether any additional information requested is held or not could contribute to the quality and accuracy of public debate and encourage the community to be more vigilant and proactive in the fight against crime.

## **Considerations Favouring Non-Disclosure**

### Efficient and effective conduct of the service.

To confirm or deny whether any additional information is held or not has the potential to compromise the prevention and detection of crime.

### Current investigations

It is in the public interest to engage the neither confirm nor deny principals to any additional information that may be of assistance to anyone involved in criminal activity or matters relating to national security.

### Balancing Test

To the extent that Section 24 applies, PSNI have determined that in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether PSNI hold any additional information.

No inference can be taken from this refusal that the information you have requested does 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 @ <http://www.psnipolice.uk/>

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