



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2010-02659

Keyword: Complaints/Discipline

Subject: Details of All Material Held by PSNI In Relation to a Complaint

Request and Answer:

I write in connection with your request for information, which was received by the Police Service of Northern Ireland (PSNI) on the 09th September 2010.

This is to inform you that the Police Service of Northern Ireland has now completed its search for the information requested and I have decided to respond to question 3 and neither confirm nor deny that the PSNI holds record in answer to questions 1, 2 and 4 pursuant to the provisions of sections 40, and 30 of the Act.

Question 3

Is not protocol within the PSNI to question any potential witness?

Yes, it is protocol within the PSNI that potential witnesses to an incident are questioned. The PSNI Code of Ethics, the disciplinary code for police officers, at Article 2.1 says

“Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual offence or crime. They shall be conducted in a prompt, thorough, impartial and careful manner so as to ensure accountability and responsibility in accordance with the law”.

In complying with their obligations to be “thorough” PSNI officers would be expected to question potential witnesses.

Question 1

Can you please outline in detail what investigations you have carried out to either substantiate or negate my allegations?

Question 2

Has he been questioned in detail about the veracity of (a named police officer's) account

Question 4

I would ask that you provide within the statutory time frame, full details of all material held by PSNI in connection with this matter, including all documents, emails, correspondence, statements,

comments, internal memos/emails, reports and associated material

In accordance with the Act, this letter represents a Refusal Notice for these particular questions. The Police Service of Northern Ireland can neither confirm nor deny (NCND) that it holds the information you have requested.

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1)(a) is to confirm or deny whether the information specified in the request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held. Where exemptions are relied upon Section 17 of FOIA requires that we provide the applicant with a notice which

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

The Police Service of Northern Ireland (PSNI) can neither confirm nor deny that it holds the information relevant to your request as the duty in Section (1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the following exemptions :

- **Section 40(5)(a) and (b) – Personal Information**
- **Section 30(3) - Investigations**

Section 40(5) Personal Information

The release of information under Freedom of Information is a release into the public domain, and not just to an individual. To confirm that the PSNI hold the requested information would in fact confirm whether or not a complaint was reported to and investigated by the PSNI. This would amount to a release into the public domain, of personal information about individuals involved in an alleged incident, either as a victim, a suspect, or as being involved in any potential investigation. The individuals would have no expectation that these details would be released into the public domain, therefore their data protection rights would be breached by release.

Although Section 40 is an absolute class-based exemption, a Public Interest Test is required for the purposes of NCND

Section 30(3) - Investigations

This is a class based and qualified exemption. If the information were held it must fit into the class of information covered by this exemption and if it were held it would be held for the purposes of an investigation to determine whether an offence has been committed and therefore would clearly fall within the class of information provided by this exemption. Confirming or denying that the PSNI holds any information in relation to investigations it may or may not have conducted would undermine any such investigation by alerting those who are suspected of offences and giving them the opportunity to and means to influence the outcome of any such investigation or subsequent Court proceedings, including any subsequent potential appeal or retrial.

As section 30 is a qualified exemption a public interest test is necessary.

PUBLIC INTEREST TEST

Factors Favouring Confirmation Or Denial – Section 40

Confirming or denying whether the PSNI hold this information would aid accountability in that the public could see what action is or is not taken by police when an incident is reported by a member of the police service.

Factors Against Confirmation Or Denial – Section 40

The breach of any individual's data protection rights would be caused by confirmation or denial. This is so whether or not the information is held.

Balance Test – Section 40

Confirmation or denial of whether the PSNI hold information of this nature would amount to a release of personal data, i.e. whether or not the individuals concerned were employed by the PSNI, whether or not they were involved in such a complaint/investigation, etc. Whilst the PSNI would always wish to be transparent and accountable, no release under FOI should be made where an individual's data protection rights would be breached. Not only would this be a breach of Data Protection legislation by the PSNI, but it would also leave the PSNI open to action against it by individuals concerned. The Public Interest therefore must favour neither confirming nor denying that the information is held.

Factors Favouring Confirmation Or Denial – Section 30

Confirming the existence of information would show that the PSNI conducted an investigation, which the public would expect.

Factors Against Confirmation Or Denial – Section 30

An investigation or the outcome of subsequent proceedings could be compromised.

Balance Test – Section 30

At this time the potential harm to current and/or future investigations outweighs any public benefit in knowing if any information is, or is not held. Police Officers are held to public account for their actions, including how matters are investigated, by the PSNI Code of Ethics and/or in some cases by the Police Ombudsman for Northern Ireland. There is no further tangible community benefit in complying with section 1(1)(a) of the Act at this time. None of this however, should not be taken as conclusive evidence that the information you requested exists or does not exist.

If you have any queries regarding your request or the decision please do not hesitate to contact the Freedom of Information Team 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.psnipolice.uk .

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