



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F2010 00007
Keyword: Crime
Subject: PAYMENTS TO CHIS

Request and Answer:

The estimated amount of money paid to covert human intelligence sources from March 09 to Dec 31 09. A breakdown of payments made each month would be useful, but not essential.

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

In accordance with the Act, this letter represents a Refusal Notice for this particular request.

Section 17 (1) 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 and Proceedings conducted by Public Authorities.

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

HARM

In line with national advice, PSNI only provide CHIS data per financial year as to release data at a lower level is likely to seriously impact on our ability to use CHIS in the fight against crime.

Whilst it may not be seen by the public to be wholly acceptable to offer payments to individuals who are close to criminal activity, Covert Human Intelligence Sources (CHIS) are often the most valuable

sources of information and enable the police and other agencies to secure evidence and subsequent prosecutions.

However, 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. Furthermore, law enforcement bodies would become dependent on more costly and time consuming methods of collecting intelligence.

CHIS (regardless of their motivation) provide information at particular personal risk to themselves and their families. As previous cases have shown, where a CHIS is 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 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 reminded of their obligation 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 force concerned failed to provide 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.

It may be viewed by those not involved in the management of CHIS that a statistical number in itself is unlikely to cause any such adverse effects. However, the subject has to be viewed more as a whole.

Those determined to identify CHIS have the ability to use small pieces of information in order to build a more complete picture and it is the cumulative effect of information disclosures that the police service feel will lead to this prejudice being realised. Any release of part-year data would lead to a harmful picture of PSNI's overall CHIS activity.

Section 30

Considerations favouring disclosure

Disclosure of this information would enlighten members of the public as to how much money has been spent within the requested time frame as opposed to a financial year. This may go some way to promoting awareness and accountability where expenditure of public funds is concerned, and could lead them to challenging whether the expenditure is value for money in the circumstances.

Release of this information would assist in any public debate on the Police Service use of CHIS. Such debate at the moment will be based on a lack of information provision and could be subject to inaccurate rumour and speculation.

Section 30

Considerations Favouring non-disclosure

Many investigations rely on the use of information from CHIS. Those charged with managing the processes and the welfare of the individuals concerned make a solemn promise that they will do all they can to protect the well being of the persons involved. The disclosure of this information would suggest to CHIS that this promise to protect them is not a cast iron guarantee as we can be forced to make disclosures under FOI. This would result in the withdrawal of co-operation from current investigations and a reluctance to assist in the future. This can be evidenced by the very recent court

ruling with regard to protecting the anonymity of witnesses which immediately resulted in the collapse of a £6m trial and urgent government action to restore the previous rules. See below link for further information.

<http://www.telegraph.co.uk/news/uknews/2186422/6m-trial-collapses-after-Law-Lords-ruling.html>

To provide a more detailed monthly breakdown of money spent on CHIS rather than a full financial year figure could identify which investigations involved CHIS information and therefore reduce confidence in the process and subsequently impact on the amount of information received by the Police and lead to an adverse effect on the way that we conduct investigations. This is primarily based on the national intelligence model and any disruption to that process will make it less effective.

Release of information would act as a deterrent to the public to provide information to the service. If a 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 more difficult than it already is. 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.

Section 38

Considerations favouring disclosure

Release of the requested information could provide better informed public awareness and debate in relation to the amount of money paid to CHIS by the PSNI from March 2009 to December 31 2009. The release could also assure the wider community that public funds are being spent effectively and efficiently.

Section 38

Considerations Favouring non-disclosure

A CHIS provides the information solely on grounds that it is completely confidential. Disclosure, of any kind, could have an adverse affect on the health and well being of a CHIS or his family. This view is based on the professional knowledge and understanding of those involved in the CHIS handling process. CHIS are briefed with regard to the risks they may face, and are assured that these are not increased by any deliberate action the Police may take. Disclosure would compromise those assurances that these individuals have been given and would be inconsistent with the obligations of the police service under Section 29 of the Regulation of Investigatory Powers Act.

Release of this information may adversely affect public safety if the criminal fraternity/less law abiding individuals are provided with a partial year figure as opposed to a financial year total, which causes them to speculate on who may/may not be providing information to the police. As outlined previously, this information, linked with related subject matter, begins to assist those with illegal intent.

Having considered the relevant factors there is a requirement to balance these public interest factors.

Balance of the Public Interest

On balance, if disclosed, there could be the likelihood that the future law enforcement role of the service could be compromised and the public's safety put at risk. Criminal investigations would be less effective and the small benefit in increased public awareness would not be adequate compensation for such an impact on society.

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.

The use of CHIS by the police service is well known and is governed by the Regulation of Investigatory Powers Act, 2000. 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.

This notice acts as a refusal notice under the provisions of S17 (1) of the Freedom of information Act 2000 by virtue of the listed exemption Section 23 Information supplied by, or relating to, bodies dealing with security matters.

The police service works in partnership with other agencies in order to combat issues such as terrorism and organised crime. As such, funding may sometimes be provided by bodies listed at section 23(3) In this case, PSNI are unable to confirm or deny whether such funding has been provided to this service within the time periods specified above, by virtue of section 23 (5) of the act.

Section 23(5) is an absolute exemption and does not require the public interest to be considered. This should not be taken as confirmation or denial that PSNI did or did not receive such funding during the time period specified by your request.

However under Section 16 (provide advice and assistance) PSNI can advise you that information in relation to the financial year 2008/2009 can be provided. This figure includes money paid to CHIS in the month of March 2009.

The total figure provided below reflects the financial year 2008/2009

£299,000.00

The above amounts do not include any payments made to CHIS where funding may or may not have been supplied by exempt bodies.

In addition under Sec 22 (intended for future publication), I can confirm that the PSNI will publish a figure relating to the 2009/2010 financial year from April 2010 onwards.

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.

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.