



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

## FREEDOM OF INFORMATION REQUEST



**Request Number:** F 2010 01921

**Keyword:** Crime

**Subject:** Number of CHIS and cost

### Request and Answer:

#### Request

I am writing to request the following information:

1. The number of informants or “covert human intelligence sources” currently registered with the Police Service of Northern Ireland that were first recorded whilst in prison or on remand.
2. Total payments to CHIS by the Police Service of Northern Ireland from January 1 2009 – December 31<sup>st</sup> 2009.

I would like to draw your attention to the fact that a similar request made by the BBC in 2007 was denied by a number of police forces, claiming an exemption to the FOI Act had been engaged. However, in July 2007 Nick Clegg, now Deputy Prime Minister, emphasized the need for transparency, telling the BBC: “The refusal of police forces to provide basic information on the use of taxpayers' money is difficult to understand.

“It is not as if we have been asking for operational details on the informants used by the police which, understandably, should remain as confidential information.

“But surely the public is entitled to a rough idea on the amount of public money spent on informants, in the interests of transparency.”

Source: <http://news.bbc.co.uk/1/hi/uk/6220727.stm>

We therefore feel that it is in the public interest to disclose this information, especially due to the fact that our current Deputy Prime Minister has encouraged transparency on this very issue.

Please feel free to pass this email on to whoever is best placed to meet this request. If any clarification of this request is required please do not hesitate to contact me using the contact details below to discuss (rather than waiting until the end of the 20-day period).

If some parts of this request are more difficult to answer than others please release material as it becomes available rather than hold up the entire request for the contested data.

## Question 1

The number of informants or “covert human intelligence sources” currently registered with the Police Service of Northern Ireland that were first recorded whilst in prison or on remand.

## Question 2

Total payments to informants by the Police Service of Northern Ireland from January 1 2009 – December 31<sup>st</sup> 2009.

## Answer 1 & 2

I have considered your request for information within the provisions set out by the Freedom of Information Act 2000.

In relation to the first duty under the Act, which is to confirm if the requested information is held by the Police Service of Northern Ireland (PSNI), I can confirm that I have located some information relating to question 2 of your request.

In relation to the second duty under the Act, which is to provide the requested information to you, I have carefully considered your request and decided not release the information to you. This letter serves as a Refusal Notice under Section 17 of the Freedom of Information Act 2000 (the Act).

Section 17(1) of the Act provides:

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision in part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-

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

In accordance with the Act, this letter represents a Refusal Notice for this particular request. **For question 1**, the PSNI can neither confirm nor deny that it holds the information you requested as the duty in s1(1)(a) of the Freedom of Information Act 2000 does not apply, by virtue of the following exemption:

Section 30(3) Criminal Investigations

### **Section 30 (Investigations and proceedings conducted by public authorities) of the Act states**

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).

This is a qualified exemption for which I am required to conduct a public interest test.

The use of Covert Human Intelligence Source (CHIS) by the police service is well known and is governed by the Regulation of Investigatory Powers Act, 2000.

### **Public Interest Test**

Section 30 (3) Investigations and proceedings conducted by public authorities

#### *Factors favouring confirmation or denial :*

Confirmation or denial that any information exists in relation to the number of CHIS that were first recorded whilst they were in prison or on remand would enlighten members of the public as to how many persons had received payments for information by the Police and the circumstances in which they were recruited. 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.

Factors not favouring confirmation or denial:

Many investigations rely on the use of information from CHIS. Those charged with managing the processes and the welfare of the individuals concerned have a specific statutory obligation (s. 29 of RIPA) to ensure that CHIS welfare is protected that they will do all they can to protect the well being of the persons involved. Confirmation or denial that any information were held in this case would suggest to CHIS that the obligation given to them to not place them at risk 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.

Any reduction in the amount of information received by the police will have 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.

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 CHIS.

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 receive assurances that these risks will not be increased by any deliberate action the police may take. This disclosure compromises those assurances that these individuals have been given.

Release of this information may adversely affect public safety if the criminal fraternity are provided with a tactical advantage over the Police. As outlined previously, this information, linked with related subject matter, begins to assist those with illegal intent.

Release of information would act as a deterrent to the public to provide information to the PSNI. If a relationship between the PSNI and members of the public/CHIS were impeded, the gathering of information to enable the PSNI 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.

### **Balancing Test**

PSNI would never disclose information that would put people at risk or compromise law enforcement. By confirming or denying whether the requested information is held in this case would mean that 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 FOIA to do so. Firstly, there is the NI Audit Office, established by the Audit (Northern Ireland) Order 1987, 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 police authority 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.

It is therefore our opinion that the balance lies in favour of neither confirming nor denying that the information exists.

In accordance with the Act, this letter represents a Refusal Notice for this particular request. **For question 2**, the PSNI can confirm that it holds the information you requested, but the PSNI is unable to release the information in the format that you have asked for, by virtue of the following exemption: Section 30(2) Investigations and proceedings conducted by public authorities.

However, in order to be helpful and provide you with the majority of the information that you have requested, PSNI can disclose that the total payments to CHIS for the financial year 2009/2010 can be found on the below link for the obtaining of information to combat crime.

[http://www.psni.police.uk/money\\_chis.pdf](http://www.psni.police.uk/money_chis.pdf)

## **Public Interest Test**

### **Section 30 (2) Investigations and proceedings conducted by public authorities**

#### **Factors favouring disclosure**

By disclosing the total payments to CHIS by calendar year would enable the public to see how their funds are being allocated, especially as the issue of CHIS is of a sensitive national nature.

#### **Factors favouring the non-disclosure**

By disclosing the total payments to CHIS by calendar year would allow those intent on criminal activity against CHIS to calculate the amount paid to them over a three month period. This then might encourage existing speculation as to who the CHIS are, putting their lives at risk and jeopardising ongoing investigations. This would hinder the prevention and detection of crime, and also prejudice our ability to maintain confidential sources. Consequently, the PSNI's future law enforcement capabilities would be affected.

#### **Balance test**

The PSNI is tasked with protecting the community and solving crime and would not disclose information if it would jeopardise those important roles. Although the amount paid to CHIS is a sensitive issue and the public are entitled to know how their funds are spent, this does not outweigh the PSNI's obligations to the public, in the prevention and detection of crime. As has already been mentioned, CHIS play a vital role in helping the police with this task. It is therefore our opinion that the balance lies in favour of non-disclosure of the information in the requested format, particularly given the disclosures already made by financial year.

Additionally, the PSNI can neither confirm nor deny that they hold any further information relevant to the whole of your request by virtue of the following exemptions:

Section 23(5) Information relating to security bodies listed at Section 23 (3)

Section 24(2) National Security

### **Section 23 of the Act states**

23 Information supplied by, or relating to, bodies dealing with security matters.

(5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

### **Section 24 National security**

(1) 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.

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

The police service works in partnership with other agencies in order to combat issues such as terrorism and organised crime. As such, information may sometimes be provided by bodies listed at section 23(3). In this case, I am unable to confirm or deny whether the PSNI holds any further information relevant to your request and sections 23 (5) and 24(2) are cited in conjunction to protect the involvement or non-involvement of bodies listed at section 23(3).

Section 23(5) is an absolute exemption and as such no public interest test is required. Section 24(2) is a qualified exemption and as such there is a requirement to complete a test of the public interest in confirmation or denial.

The above quoted total payments to CHIS does not include any payments made to CHIS where funding may have been supplied by exempt bodies.

### **Harm Test**

Disclosure of CHIS data could impact on the recruitment and retention of CHIS in general, due to the perception of (rather than the actual) risk of identification. In a recent Information Tribunal case relating to the payments made to CHIS in Croydon (EA/2010/0006), it was accepted that this argument applied as much to CHIS providing intelligence in relation to national security concerns as to CHIS engaged in countering more traditional criminal threats. In this way, the disclosure of payment information would damage national security through discouraging current national security CHIS from cooperating with the police service in other geographical areas, or preventing the recruitment of national security CHIS in the future – regardless of whether the area in question actually currently runs CHIS reporting on serious crime, terrorist or other threats.

### **Public Interest test**

#### **24(2) National Security.**

#### **Factors favouring confirmation or denial :**

Confirmation or denial that any other information exists relevant to the request would lead to a better informed public and the public are entitled to know how public funds are spent. The information simply relates to national security and disclosure would not actually harm it.

#### **Factors not favouring confirmation or denial:**

Other organisations outside the police service are also widely engaged in rewarding CHIS in a number of ways, and therefore by confirming or denying that any other information exists relevant to the request would 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.

To confirm or deny whether the PSNI hold any additional information would allow inferences to be

made about the nature and extent of national security related activities which may or may not take place in a given area. This could enable terrorist groups to take steps to avoid detection, and as such, confirmation or denial would be damaging to national security.

By confirming or denying any policing arrangements of this nature would render national security measures less effective. This would lead to the compromise of ongoing or future operations to protect the security or infra-structure of the UK and increase the risk of harm to the public.

## **Balancing Test**

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. The security of the country is of paramount importance and the Police service will not divulge whether information is or is not held if to do so would place the safety of an individual at risk or undermine National Security. Whilst there is a public interest in the transparency of policing operations and providing assurance that the police service is appropriately and effectively engaging with the threat from criminals, there is a very strong public interest in safeguarding both national security and the integrity of police investigations and operations in this highly sensitive area. As much as there is public interest in knowing that policing activity is appropriate and balanced in matters of national security, this will only be overridden in exceptional circumstances. It is therefore our opinion that for these issues the balancing test for confirming or not that information is held, is not made out.

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 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.psni.police.uk](http://www.psni.police.uk)

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