



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

## FREEDOM OF INFORMATION REQUEST



**Request Number:** F 2010 01379

**Keyword:** Crime

**Subject:** COVERT SURVEILLANCE

### Request and Answer:

#### Request

Re Our Client

Are you in a position to confirm or deny that our client has been the subject of covert surveillance?

The Police Service of Northern Ireland (PSNI) has taken the above question as your FOI request. This is because it is the only question raised in the letters sent, to which the PSNI would be in a position to comment on. The other questions are a matter for the Investigatory Powers Tribunal.

#### Answer

In accordance with the Act, this letter represents a Section 17(1) Refusal Notice for this particular request.

Section 1 of the Freedom of Information (FOI) Act 2000 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(1) 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 can neither confirm nor deny that it holds any information in relation to your request as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the following exemption:

## **Section 40(5) Personal Information**

Section 40 subsections (1) and (2) is a class based absolute exemption, however Section 40(5) is not, as it is not listed in the schedule of absolute exemptions in Section 2(3). With citing Section 40(5) there is a requirement to articulate the public interest to ensure that neither confirming nor denying that information exists is the appropriate response.

## **Section 40 Public Interest Considerations**

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

Confirmation or denial of whether information is held would enable the public to have a better knowledge of whether covert surveillance was used appropriately on an individual.

### **Factors against confirmation or denial**

Such disclosure would be a clear breach of the first principle of the Data Protection Act, which states that personal data shall be processed fairly and lawfully and that a public authority must handle people's personal data only in ways they would reasonably expect.

### **Balancing Test**

A disclosure under the Freedom of Information Act is a release of information to the world in general and not an individual applicant. Any information released under the Freedom of Information Act in response to requests is deemed to be released into the public domain. Therefore, simply confirming or not that such information were held would disclose personal information about an individual thereby breaching the Data Protection Act.

Neither confirm nor deny is needed to protect any harm, which may arise if the Police Service of Northern Ireland has to confirm or deny it holds particular information. In some situations, simply to confirm or deny whether a particular category of information is held could in itself disclose sensitive or damaging information.

Personal data, if held by a police service, should not be disclosed into the public domain and privacy must be respected. Irrespective of whether information is or isn't held the Police Service of Northern Ireland will not disclose information which would be a breach of any enactment, i.e. the Data Protection Act. Therefore, at this moment in time, it is our opinion that for these issues the balancing test for confirming whether or not any information is held is not made out.

However, this should not be taken as conclusive evidence that the information you requested exists or does not exist.

## **Section 16 Duty to provide advice and assistance**

I have also attached a Data Protection subject access form, which should be completed when requesting personal data, however, it should be noted that the provision of this form is not confirmation that any relevant information is held and that if any is held it may be subject to exemptions under the Data Protection Act.

Please use the following link if you wish to submit the subject access form electronically via our website. <http://www.psni.police.uk/dat.pdf>

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