



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2010-01057

**Keyword:** Operational Policing

**Subject:** Documents Held in Respect of Case

### Request and Answer:

#### Question

(a) Whether or not the communication of the information at (b) below to the victim of the case there mentioned may be prejudicial to the reopening and successful prosecution of the case.

(b) Subject to (a) above, (no prejudice to legal proceedings) copies of all documents held by PSNI in respect of case Reference No CC2009060800459 (dated 03/07/2009) to include records of initial report from victim, written statements taken from the victim, notes of conversations with the victim, notes of conversations with other persons in relation to the case, statements taken from other persons, whether or not under caution, written submissions made by other persons in relation to the case and report sent to PPS by the investigation officer.

#### Answer

In accordance with the Act, this letter represents a Refusal Notice for this particular request. 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(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the following exemptions :

## 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 this alleged incident was reported to and recorded by the PSNI. This would amount to a release into the public domain, of personal information about individuals involved in the alleged incident. 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

### **Public Interest Test**

#### Factors Favouring Confirmation Or Denial

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 such as this is reported by a member of the public.

#### Factors Against Confirmation Or Denial

The breach of individual's data protection rights would be caused by confirmation or denial. This is so whether or not the information is held, because if the PSNI refused to confirm or deny only in cases where information is held then it may be reasonably concluded that information is held when NCND is used.

#### Balance Test

Confirmation or denial of whether the PSNI hold information of this nature would amount to a release of information either on this occasion or on other occasions where a similar request is made. 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.

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 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.