



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2010-02204

**Keyword:** Operational Policing

**Subject:** Existence And Location Of Section 44 Authorisations

### Request and Answer:

Your request for information has now been considered by the Police Service of Northern Ireland (PSNI) and the decision has been taken not to supply the information you have requested.

### Question

Follow on refinement request from F-2010-01817

Information on the existence and location of Section 44 authorizations (designated areas) by month and year beginning with 2005/2006 to be completed partially giving numbers of requests and authorisations per area, per date of application from 2005.

### Answer

Section 17 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 exemption/s, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

- Section 24(1) - (National Security),
- Section 31(1)(a)(b)(c) - (Law Enforcement)

Both these exemptions are prejudice based qualified exemptions and this means that the public authority is required to provide harm that could occur following the disclosure of the requested information and must consider the balance of the public interest in releasing the information against the public interest in withholding it.

The harm and public interest considerations are outlined below.

In addition, the PSNI can neither confirm nor deny by virtue of Section 23(5) that any of the exempt information requested originated from the security bodies.

### **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 23(5) is an absolute exemption, and as such, no public interest test is required.

### **Harm Test**

#### Section 24(1) National Security

The information you have requested may relate to national security operations and the possible detection of those linked to 'terrorism' and related crimes. The information you have requested therefore in itself relates directly to the protection of national security and the disclosure of such information could give rise to the direct or indirect damage to national security.

Section 44 applications include sensitive information, including an ongoing assessment of the terrorist threat, a consideration of the terrorist threat specific to the relevant police district, a consideration of the geographical extent of an authorisation and an assessment of the operational use of the powers. For these reasons the disclosure of numbers and specific areas cannot be provided to members of the public as to do so may confirm that particular intelligence was available at the time which may jeopardise ongoing anti-terrorist operations.

Stop and search under section 44 of the Terrorism Act 2000 is an important tool in the ongoing fight against terrorism. As part of a structured anti-terrorist strategy, the powers help to deter terrorist activity by creating a hostile environment for would-be terrorists to operate in. The purpose of the policy is to act as a deterrent to terrorists. Therefore revealing the geographic area, numbers of and dates that authorisations have been in place would limit the effect of these powers as a counter terrorism measure. It would also prejudice law enforcement because knowledge of where and when authorisations were in place could be considered beneficial to individuals attempting to avoid detection when planning or carrying out an act of terrorism. In addition, those who had been involved in acts of Terrorism may subsequently be aware as to whether their actions at the time were subject to police intelligence or monitoring.

#### Section 31(1) Law Enforcement

The harm test already provided for Section 24(1) adequately explains the harm to law enforcement should the information you request be released. The main concern as explained, is that providing the information over a period of time and combined with information already in the public domain, the requested information would enable those with criminal intent to try and build a map of perceived 'sensitive' geographical areas or specific events which required a Sec 44 authorisation to be applied for in order to commit acts of terrorism.

The information could be used to try and pin point dates and times where possible terrorist activity appeared less likely to take place or be detected. These mapped areas of perceived 'intelligence' are then likely to become a hotspot for criminal activity, even if in reality the 'intelligence' they base their decision on is flawed. This is likely to lead to a further depletion and allocation of additional policing resources and measures to try and prevent and detect crime as well as ensure justice is administered. Such an outcome due to a Freedom of Information disclosure would not be in the public interest.

Section 44 of the Terrorism Act 2000 is an important tool in the ongoing fight against terrorism, and to reveal details about applications under the Act, which in turn would technically reveal intelligence about the PSNI where such authorisations were in place, would limit the effectiveness of these powers as a counter terrorism measure.

### **Public Interest Test**

#### Factors favouring release – Section 24(1)

The information requested relates directly to the efficiency and effectiveness of the PSNI. As the purpose of the Act is to make public authorities more accountable and transparent, providing the requested information may detail how the PSNI fulfils their role and function in terms of submitting Section 44 applications and authorisations. The public has an interest in knowing specific details regarding applications for the authorised use of Section 44 of the Terrorism Act 2000 as a tool in the ongoing fight against terrorism.

Disclosure of the geographic area, numbers of and dates of authorisations may assist individuals by furthering their understanding of and raising awareness of the use of Section 44 of the Terrorism Act 2000. This is due to the high profile nature of the policing tool, as it is the public whose lives are ultimately affected by such action. To provide specific information such as this would contribute to accurate debate about how valuable the use of Section 44 is. Disclosure could go some way to correct rumour and speculation in regards to media conjecture that the police use of Section 44 of the Terrorism Act 2000 has been unsuitable at times.

#### Factors favouring retention – Section 24(1)

The current and future law enforcement role of the service would be compromised by the release of the information you have requested. The provision of geographic area, numbers of and dates from within the PSNI database would have a negative impact in terms of our use of the Section 44 power as a tool to combat terrorism and protect national security. Such disclosures would enable authorisation details to be monitored both within the PSNI but more importantly nationally in terms of any cycles of use and duration which would provide valuable intelligence to those with criminal intent. This would provide criminals with an opportunity to try and map where Section 44 is and is not used most often, which may indicate perceived 'safe' locations for terrorist activity. Providing an advantage over the PSNI and other forces to those who may wish to commit crimes through terrorism, would not be in the public interest.

#### Factors favouring release – Section 31(1)

As the requested information related directly and indirectly to the efficiency and effectiveness of the service, providing this information into the public domain would show PSNI to be accountable in respect of its Section 44 applications and authorisations. Disclosure would allow the public to gain insight and understanding into the intricate administrative details regarding Section 44 authorisations. This could in turn contribute to accurate debate considering the high profile nature of the issue surrounding police use of the Section 44 of the Terrorism Act 2000.

#### Factors favouring retention – Section 31(1)

The current and future law enforcement role of the service would be compromised by the release of the particular content of the database for which you have requested. To reveal authorisation details would erode and limit the effect of these powers as a counter terrorism measure, as it would still allow the mapping of national information as intelligence that can be used for criminal purposes. Should forces begin to not apply for Section 44 authorisations due to concern in regards to FOI disclosures, this could have a detrimental effect on law enforcement and the ability to use Section 44 as a legitimate and effective tool to combat terrorism.

Release of the information would limit the effectiveness of the use of Section 44 of the Terrorism Act 2000, as detailed knowledge of the duration of requests and whether they were renewals or new applications would be of considerable benefit to those individuals attempting to avoid detection when planning to carry out an act of terrorism.

### **Balance Test**

The security of the country is of paramount importance and the Police service must be careful in not divulging information 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 posed by a terrorist attack, there is a very strong public interest in safeguarding both national security and the integrity of police investigations and operations in the highly sensitive area of terrorism prevention.

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. The areas of police interest is a sensitive issue that reveals local intelligence therefore it is our opinion that for these issues the balancing test for disclosing the requested information is not made out.

For your information the Police Service of Northern Ireland do publish S44 data per district area which you may find useful and this can be viewed at the link below

[http://www.psni.police.uk/index/updates/updates\\_statistics/updates\\_stop\\_and\\_search\\_statistics.htm](http://www.psni.police.uk/index/updates/updates_statistics/updates_stop_and_search_statistics.htm)

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.