



FREEDOM OF INFORMATION REQUEST



Request Number: F-2011-03089

Keyword: Complaints/Discipline

Subject: Breaches Committed by Officers

Request and Answer:

I refer to your request for further information in relation to FOI request F-2011-02668 regarding privacy and confidentiality breaches by police officers.

This is to inform you that the Police Service of Northern Ireland has now completed its search for the information you requested. The decision has been taken to disclose the located information to you in full.

Question 1

The 2 officers who breached Article 3 of Code of Ethics in 2009 to present, what part of the DPA did they breach?

Answer

Neither of these officers breached the Data Protection Act. Both of these officers were disciplined for unauthorised use of police systems.

Question 2

Is this offence not treated as criminal by the PSNI?

Answer

The Code of Ethics represents a framework of ethical standards, setting out the principles which guide police officers' conduct. Any breaches of the principles in this Code may result in disciplinary action being taken. When an apparent failure to meet standards set out in the Code is considered too serious to be dealt with by local management, the case is referred for formal investigation by PSNI Professional Standards Department. The investigating officer may recommend any of the following;

- Criminal Action
- Formal Misconduct Hearing
- Words of Advice/Training
- No Further Action

Therefore an officer will only face criminal proceedings if an internal investigation detects criminal behaviour.

Question 3

Are these breaches reported to the Information Commissioner?

Answer

The Information Commissioner would not be informed of cases where a PSNI officer has breached Article 3 of the PSNI Code of Ethics.

By way of further information in relation to reporting data breaches, I can inform you that there is no current law within the UK that places an obligation on a Data Controller to report a data breach. However, as good practice, the PSNI will follow the advice provided within the Data Protection Manual of Guidance as follows :-

10.3.2 Offence or misconduct identified by, or reported to, the Police relating to Police held personal data.

This section concerns the misuse of police-held personal data by those working for or on behalf of a police force.

In these circumstances, details of the allegation must be forwarded to the police force's Professional Standards Department (PSD). PSD will assess the circumstances of the case and identify a proportionate response to the allegation. The assessment will include consideration of all relevant factors including:

- The motive of the offender – was it a case of curiosity, was it for personal gain, was it for another person's gain? The nature of the personal data – what quantity was involved, what it related to, its sensitivity, and so on;
- The harm and/or distress, potential or otherwise, caused to the person to whom the personal data related and others;
- The level of intrusion or breach of privacy suffered; previous misconduct or criminal breaches by the offender; whether the offender was one of many;
- The wider public interest.

Where necessary (for example, confirmation that an offence has occurred), PSD will seek the views of the data protection officer. The Information Commissioner may also be in a position to provide advice. In all cases the data protection officer should be regularly appraised by PSD of the progress of any investigation and prosecution into offences under the Act. Having carried out the assessment, PSD will be in a position to determine the seriousness of the offence.

Although it is not possible to draw up definitive criteria to assess that seriousness, the scale of an offence will be apparent. Those offences deemed to be low-level in nature for example, a member of staff browsing a record containing a minimal amount of personal data out of curiosity, where there was little prospect of harm or distress may be dealt with under misconduct only and will not necessarily require a criminal investigation. Each case will need to be assessed against the above criteria. Those of a more serious nature for example, a member of staff selling the names and addresses of witnesses in a forthcoming criminal trial to associates of the person charged, is likely to be considered high-level in nature and would be likely to merit a criminal investigation and prosecution.

A decision by the Crown Prosecution Service not to proceed with a prosecution under the Act should not preclude notification of the case to the Information Commissioner. The Information Commissioner is particularly keen on pursuing those who procure the disclosure or sale of Police-held personal data. PSD will notify the data protection officer of the outcome of the case in order that any necessary remedial action can be identified and undertaken by the force. Where a criminal

investigation has concluded and guilt has been proven PSD will inform the Head of Enforcement at the Information Commissioner's Office, by providing the following details: name of individual, offence and court disposal.

Question 4

Are the investigation files sent to the PPS?

Answer

As outlined in the response to question 2 of your request, Professional Standards Department investigations are forwarded to the PPS if there is criminal behaviour identified and it is determined there is a reasonable prospect of prosecution.

The PSNI Code of Ethics may be viewed at www.psni.police.uk/code_of_ethics_2008

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.

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

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