



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2011-00932

Keyword: Complaints/Discipline

Subject: Allegations of Misconduct

Request and 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 that it holds the information you have requested.

Question 1

What is the outcome in relation to discipline and further employment with the PSNI following the recent investigation into (named officer) and the allegations of misconduct relating to the murder of Dungannon man - Audrius Aukstolis?

Question 2

Have the PSNI audited all of (named officer) PNC searches?

Question 3

Can you give reasons why a PNC search was carried out on me by (named officer) between 1st July 2009 and 31st October 2009 when I do not live, work or frequent anywhere within the (named) District area where he is stationed?

Answer

In accordance with the Act, this letter represents a Refusal Notice for this particular request. The PSNI can neither confirm nor deny 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 30 (1)(a)(b)(c) - Investigations and Proceedings Conducted by Public Authorities
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 the officer was the subject of an investigation. This would amount to a release into the public domain, of personal information in relation to the officer. The officer would have no expectation that these details would be released into the public domain, therefore his data protection rights would be breached by release.

Audit searches are conducted for investigative purpose to establish if a member of police/police staff has committed any crime/unlawful act or breach of discipline. Investigations and the methods used are confidential and if this information is held, any disclosure into the public domain would breach the law of confidentiality and could have a detrimental impact on an investigation.

Any investigative audit will be for a specific policing purpose and if information existed and was released into the public domain, it will be used for a purpose which is totally incompatible with Policing.

Before refusing to comply with the provisions of section (1) (1) (a) of the Freedom of Information Act, the PSNI also has to analyse any public interest factors in neither confirming nor denying that information is or is not held if any of the exemptions are qualified in nature.

Section 30 is a qualified exemption and so a public interest test must be conducted.

Also, although Section 40 is an absolute, class based exemption; a public interest test is required for the purposes of Neither Confirming nor Denying that the information is held.

Public Interest Test - Section 30

Factors Favouring Neither Confirming nor Denying

The public have a right to expect transparency and accountability in relation to the use of Public Funds. Confirmation or denial that the information is held would reveal whether or not an investigation was or is being conducted and satisfy public interest.

Factors Against Neither Confirming nor Denying

Confirming or denying the existence of the requested information could hinder the prevention and detection of crime as any investigation could be prejudiced.

Public Interest Test – Section 40

Factors Favouring Neither Confirming nor Denying

To confirm or deny the existence of this information would contribute to police accountability, thereby increasing public confidence.

Factors Against Neither Confirming nor Denying

The breach of an individual's data protection rights would be caused by confirmation or denial. This is so whether or not the information is held. 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.

Decision

Whilst there is a public interest in the transparency of policing operations and providing assurance that the PSNI is appropriately and effectively dealing with crime, there is a strong public interest in safeguarding the integrity of police investigations and operations, and in maintaining confidence in the PSNI with regard to its handling of individuals' personal data. It is for these reasons that the Public Interest must favour neither confirming nor denying that the requested information is held.

The release of information under Freedom of Information is a release into the public domain and not just to an individual.

The exemption provided at Section 40(5)(a) of the Freedom of Information Act is specifically provided so that personal data which relates to a requester is dealt with under the appropriate legislation, the Data Protection Act. As this is the type of information being requested, the decision must be to neither confirm nor deny that it is held. Any other course would amount to a release into the public domain of personal information, amounting to a breach of the Data Protection Act.

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

In relation to Question 3 of your request I have provided a copy of DAT1 Subject Access Form, which should be completed when an individual seeks access to his or her own personal data. It should be noted however that the provision of this form is not confirmation that any relevant information is held and that if any information is held, it may be subject to exemptions under the Data Protection Act.

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.psnipolice.uk

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