



FREEDOM OF INFORMATION REQUEST



Request Number: F-2011-04053

Keyword: Complaints/Discipline

Subject: Papers relating to the investigation

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

I request the papers relating to a PSD investigation into a criminal investigation by District Police.

Answer

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(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 (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:

The PSNI is refusing to provide the information by virtues of Sections 40, and 30 of the Freedom of Information Act 2000.

Section 40(5)(b)(i) - Personal Information

This is a class based absolute exemption, however it is necessary to consider the public interest for the purposes of confirming or denying the existence of the requested information. By confirming or denying that the information is held must constitute personal data and the release of this data must

contravene at least one of the Data Protection Act Principles.

A disclosure under Freedom of Information is a release of information to the world in general, i.e. a **public disclosure** and not to an individual applicant. All requests made under FOIA are applicant blind, and a public authority will always view any disclosure as into the public domain and not just to an individual. Personal Data is regulated under the principles of the Data Protection Act 1998 and when information contains personal data about a third party it can only be released if disclosure would not breach any of the data protection principles. Simply to confirm the existence of the requested information would amount to a release of that personal information into the public domain, and this would be a breach of the Data Protection Act.

Section 30(3) - Investigations and proceedings conducted by public authorities

This is a class based and qualified exemption. If the information were held it must fit into the class of information covered by this exemption. If the information were held it would be held for the purposes of investigation to determine whether any person has committed an offence and therefore clearly falls within the class of information provided by this exemption.

As Section 30 is qualified exemption a public interest test is necessary.

Public Interest Test

Factors Favouring Confirmation or Denial – Section 40

Confirmation or denial of the existence of the requested information would enable the public to have a better knowledge of what information is recorded by PSNI and therefore a better understanding of the decision making process when it comes to the disclosure of personal details

Factors Against Confirming or Denial –Section 40

To confirm or deny that the requested information is held would amount to the processing of personal information in breach of the Data Protection Act.

Factors Favouring Confirmation or Denial -Section 30:

Confirming the existence of information would show that an investigation was conducted, which the public would expect. The release of such information would provide an insight into the police service and enable the public to have a better understanding of the effectiveness of the police. The release of information could allow the public to make informed decisions about police procedures, assisting in the quality of public debate, which would otherwise be steeped in rumour and speculation.

Factors Against Confirmation or Denial –Section 30:

Confirming or denying whether a crime has been reported and investigated, or whether specific individuals are of interest to the PSNI would hinder the prevention or detection of crime.

Decision

Whilst there is public interest in the transparency and accountability of the Service, there is also a strong public interest in maintaining confidence in the PSNI with regard to it's handling of individual's personal data. Irrespective of whether or not the information is or is not held, public safety and the ability to deliver effective law enforcement is also of paramount importance to the Police Service. At this time the potential harm to current and future investigations outweighs any public benefit in knowing if any information is, or is not held.

No inference can be taken from this refusal that the information you have requested does 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.

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.psnj.police.uk

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