



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2011-01094

**Keyword:** Complaints/Discipline

**Subject:** Sensitive Email Information

### Request and Answer:

I write in connection with your request for information, which was received by the Police Service of Northern Ireland (PSNI) on 11<sup>th</sup> April 2011.

### Question

Please can I have access to the enquiry/report carried out by (named police officer) Reference number (stated number). Her contact details are 028 90650222 ext (stated number). The matter refers to a sensitive email possibly being leaked by the PSNI to members of a proscribed organisation which had been sent by me, (name), for the attention of (named police officer at named police station). It involved the approach by two men to my wife at our home on the evening of the (date) at (named address) and the chilling message that they would be in touch with me. They also handed my wife a copy of the email which I had sent with information pertaining to recent crimes and those responsible for them. The preliminary enquiry was instigated on or around the (stated date).

### Answer

In accordance with the Act, this letter represents a Refusal Notice for this information. 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 (NCND) 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(3) – Investigations and Proceedings

## **Section 40(5) – Personal Information**

Section 30 is a Class based and Qualified exemption. This means that it is not necessary to consider the harm in confirming or denying the existence of the requested information but it is necessary to consider the public interest. This exemption applies because the requested information, if held would relate to an investigation by the PSNI into an alleged offence or offences.

Although Section 40 is a Class based and Absolute exemption, it is necessary to consider the public interest for the purposes of confirming or denying the existence of the requested information. This exemption applies because all releases under FOI are releases into the public domain. The requested information, if held would relate to the individuals concerned. 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.

### **Public Interest Test**

#### Section 30

##### Factors favouring confirmation or denial

Confirming the existence of information would show that the PSNI conducted an investigation, which the public would expect.

##### Factors against confirmation or denial

An investigation would be compromised and this may impede the prevention and detection of crime. Releasing details which could lead to the identity of possible witnesses or injured parties may prevent future witnesses coming forward for fear of identification. This could lead to unreported crime and a loss of confidence in the PSNI to investigate such cases.

#### Section 40

##### Factors favouring confirmation or denial

Confirming or denying the existence of the requested information would enable the public to have a better knowledge of whether information was known about the incident and the individuals and therefore a better understanding of the decision making process when it comes to the disclosure of personal details.

##### Factors against confirmation or denial

Confirming or denying the existence of the requested information would contravene the first principle of the Data Protection Act which states that personal data shall be processed fairly and lawfully and that a public authority must handle people's personal data only in ways that they would reasonably expect, balanced against the reasonable expectations of the public interest.

The breach of an individual's data protection rights would be caused by a simple 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.

### **Decision**

The PSNI is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. The PSNI will not divulge whether information is or is not held, if to do so would adversely affect these important roles. Whilst there is a public interest in providing assurance that the PSNI is appropriately and effectively dealing with incidents reported to it, there is a strong public interest in safeguarding the integrity of police investigations, 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. None of this however should 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 the Freedom of Information Team on 028 9070 0164. When contacting the Freedom of Information Team, please quote the reference number listed at the beginning of this email.

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.psnipolice.uk](http://www.psnipolice.uk) .

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