



FREEDOM OF INFORMATION REQUEST



Request Number: 2011 02720

Keyword: Crime

Subject: CHIS

Request and Answer:

Question

How much money has the Police Service of Northern Ireland in County Fermanagh paid to police informants over the last five years?

Answer

Your request for information has now been considered and the decision has been taken not to supply the information you have requested. However, a decision has been taken to release figures in respect of Northern Ireland.

Section 17 (1) of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland (PSNI), 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, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

Qualified Exemption

Section 30 (2) (a) (b) Investigations and Proceedings

Section 30 is a class based qualified exemption which means that the legislators have identified that the public interest considerations need to be evidenced and articulated to the applicant.

HARM

The amount of money paid to CHIS can not be broken down to lower than PSNI service level for the following reasons. Any disclosure that may reduce the flow of information to the police service and intelligence agencies would have a substantial prejudicial impact on the ability of such authorities to collect reliable and accurate intelligence. Furthermore, law enforcement bodies would become dependent on more costly and time consuming methods of collecting intelligence. Whilst it may not

be seen by the public to be wholly acceptable to offer payments to individuals who may be close to criminal activity, Covert Human Intelligence Sources (CHIS) are often the most valuable sources of information and enable the police and other agencies to secure evidence and subsequent prosecutions.

CHIS (regardless of their motivation) provide information at particular personal risk to themselves and their families. As previous cases have shown, where a CHIS is identified it can result in substantial physical harm, or mental trauma resulting from the threat of physical harm. This problem is particularly acute in cases relating to serious crime and terrorism where the threat against individuals is substantial.

The use of CHIS is regulated by the Regulation of Investigatory Powers Act which requires authorities to take into account the provisions of the Human Rights Act when using CHIS (and other covert techniques). Police forces/services are reminded of their obligation under Article 2 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998) which requires them to protect human life. This is further supported by a recent House of Lords decision in *Van Colle v Chief Constable Hertfordshire Police*. In this case the House of Lords made it clear that police forces must provide adequate protection to an individual whose life is at risk because of the criminal acts of a third party. (Note: This is because, in the House of Lords judgment, the finding was that the threat was not real and immediate, but clarified that police do have an obligation to protect persons subject to such threats.)

It may be viewed by those not involved in the management of CHIS that any amount regardless of value in itself is unlikely to cause any such adverse effects. However, the subject has to be viewed more as a whole.

Those determined to identify CHIS have the ability to use small pieces of information in order to build a more complete picture and it is the cumulative effect of information disclosures that the police service feel will lead to this prejudice being realised.

Public Interest Considerations

Section 30 Factors favouring disclosure

There is information within the public domain confirming that police use CHIS to assist them with investigations and the effective delivery of law enforcement. Disclosure of the requested information would enhance the public's knowledge in relation to the prevention and detection of crime; the apprehension and prosecution of offenders and the administration of justice.

Section 30 Factors favouring non-disclosure

Disclosure of the information requested could identify CHIS activity within a particular county within Northern Ireland. Over a period of time if several disclosures were made, individuals could analyse the information and identify any sudden peaks or troughs in CHIS activity. This would hinder the prevention and detection of crime and also prejudice our ability to maintain confidential sources. The PSNI's future law enforcement capabilities would be affected as follows:

- (i) The potential adverse effect on the retention of existing CHIS.
- (ii) The potential adverse effect on the recruitment of future CHIS.
- (iii) The potential risk that operational vulnerabilities will be identified.
- (iv) The potential risk of individuals being identified, rightly or wrongly, as CHIS.

Balancing Test

There is information within the public domain confirming that police use CHIS to assist them with

investigations and the effective delivery of law enforcement. The Police Service is tasked with protecting the community we serve and solving crime and there is a public interest argument in ensuring we are open and transparent with regard to policing investigations and operations. There is no doubt that for the issues outlined above any disclosure relating to sensitive CHIS information would jeopardise those important roles.

As has been mentioned, CHIS play a vital role in assisting the police and is based very much on relationships built on trust and the expectation of complete confidentiality PSNI would never disclose information which would compromise our tactics.

It is therefore our opinion that the balance lies in favour of non-disclosure of the information.

Additionally, the PSNI can neither confirm nor deny that they hold any other information relevant to the whole of your request by virtue of the following exemptions Section 23(5) Information relating to security bodies listed at Section 23 (3) and Section 24(2) National Security.

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 is an absolute exemption and I am therefore not required to complete a public interest test.

Section 24 of the act states:

24 National Security

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

The police service works in partnership with other agencies in order to combat issues such as terrorism and organised crime. As such, information may sometimes be provided by bodies listed at section 23(3). In this case, I am unable to confirm or deny whether the PSNI hold any other information relevant to your request and sections 23 (5) and 24(2) are cited in conjunction to protect the involvement or non-involvement of bodies listed at section 23(3).

Section 23(5) is an absolute exemption and as such no public interest test is required. Section 24(2) is a qualified exemption and as such there is a requirement to complete a test of the public interest in confirmation or denial.

Harm for neither confirming nor denying that any other information is held for Section 24

Disclosure of CHIS data could impact on the recruitment and retention of CHIS in general, due to the perception of (rather than the actual) risk of identification. In a recent Information Tribunal case relating to the payments made to CHIS in Croydon (EA/2010/0006), it was accepted that this argument applied as much to CHIS providing intelligence in relation to national security concerns as to CHIS engaged in countering more traditional criminal threats. In this way, the disclosure of payment information would damage national security through discouraging current national security CHIS from cooperating with the police service in other geographical areas, or preventing the recruitment of national security CHIS in the future – regardless of whether the area in question actually currently runs CHIS reporting on serious crime, terrorist or other threats.

Public Interest test

Section 24 Factors favouring confirming or denying that any other information is held

Confirmation or denial that any other information exists relevant to the request would lead to a better informed public and the public are entitled to know how public funds are spent. The information simply relates to national security and disclosure would not actually harm it.

Section 24 Factors against confirming or denying that any other information is held

By confirming or denying that any other information exists relevant to the request would harm the close relationship that exists with other organisations, where trust and confidence in this specific area has been built up in the exchange of information and financial assistance during the Criminal Justice process.

To confirm or deny whether PSNI hold any additional information would allow inferences to be made about the nature and extent of national security related activities which may or may not take place in a given area. This could enable terrorist groups to take steps to avoid detection, and as such, confirmation or denial would be damaging to national security.

By confirming or denying any policing arrangements of this nature would render national security measures less effective. This would lead to the compromise of ongoing or future operations to protect the security or infra-structure of the UK and increase the risk of harm to the public.

Balance

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. The security of the country is of paramount importance and the Police service will not divulge whether information is or is not held 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 from criminals, there is a very strong public interest in safeguarding both national security and the integrity of police investigations and operations in this highly sensitive area. 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.

It is therefore our opinion that for these issues the balancing test for confirming or not that any other information is held, is not made out

Although the exemptions removes the service's obligations under the Freedom of Information Act, as a gesture of goodwill, I have supplied information below, relative to your request.

The below crime figures are per financial year. This information is provided in keeping with the spirit of openness and transparency.

2007/2008 £194,671.00
2008/2009 £299,000.00
2009/2010 £405,115.00
2010/2011 £395,800.00

I trust this will be helpful, but it does not affect our legal right to rely on the exemptions for the remainder of your request.

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.