



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2011-00831

Keyword: Crime

Subject: Information Regarding an Incident That Took Place

Request and Answer:

Question 1

Please would you supply me with a copy of the report sent to the NIHE, Church Road, Dundonald by (Named police officer), Castlereagh, in relation to an incident which took place at my home on the 10th January 2011 involving 2 men approaching my wife and handing her an email which had been sent to the PSNI with details of a recent crime and of graffiti which was written on several walls in the Belvoir Park estate.

Question 2

I would also like to have access to any and all information surrounding the subsequent enquiry which is being carried out by (Named police officer) in relation to the above email the 2 men had and how they came to be in possession of an email sent to a PSNI email address.

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.

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(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. If the information were held it must fit into the class of information covered by this exemption and if it were held it would be held for the purposes of an investigation to determine whether an offence has been committed and therefore would clearly fall within the class of information provided by this exemption. Confirming or denying that the PSNI holds any information in relation to investigations it may or may not have conducted would undermine any such investigation by alerting those who are suspected of offences and giving them the opportunity to and means to influence the outcome of any such investigation or subsequent court proceedings, including any subsequent potential appeal or retrial.

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 and not just to an individual. The requested information, if held would relate to the individuals concerned. Whilst the PSNI would always wish to be transparent and accountable, no release under FOI should be made where an individual's data protection rights would be breached. Not only would this be a breach of Data Protection legislation by the PSNI, but it would also leave the PSNI open to action against it by individuals concerned.

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

Confirming or denying the existence of the requested information in relation to this alleged incident/enquiry would hinder the prevention and detection of crime as an investigation or the outcome of subsequent proceedings could be compromised.

Section 40

Factors Favouring Confirmation or Denial

Confirming or denying whether the PSNI hold this information would aid accountability in that the public could see what action is or is not taken by police when an incident is reported to the police service.

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

Decision

At this time the potential harm to current and/or future investigations outweighs any public benefit in knowing if any information is, or is not held. Whilst there is a public interest in the transparency of

policing operations and providing assurance that the PSNI is appropriately and effectively dealing with incidents reported to it, there is also a strong public interest in maintaining confidence in the PSNI with regard to its handling of individuals' personal data. Police Officers are held to public account for their actions, including how matters are investigated, by the PSNI Code of Ethics and/or in some cases by the Police Ombudsman for Northern Ireland. There is no further tangible community benefit in complying with section 1(1)(a) of the Act at this time. 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.

For your information I have attached a link below to a subject access request form which should be completed when a member of the public seeks access to his or her own personal data. It should be noted however that the provision of this link 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.

<http://www.psni.police.uk/dat.pdf>

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.