



FREEDOM OF INFORMATION REQUEST



Request Number: F 2011 02550

Keyword: Crime

Subject: PIRA

Request and Answer:

I would like to see copies of all documents, in whatever form including reports, memos and emails, sent to or by the PSNI or within the PSNI, which mention the Provisional IRA, in any guise, as possibly being involved in criminal activities of any sort in G District. I would like this information for the period July 1, 2010 to today, July 28, 2011.

I am happy for personal details, including names to be redacted if there are any security concerns.

In accordance with the Act, this letter represents a Refusal Notice for this particular request. The Police Service of Northern Ireland (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 (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 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:

Absolute Exemptions

Section 23 (5) Information relating to security bodies.

Section 40 (5) Personal Information

Section 41 (2) Information provided in Confidence

Qualified Exemptions

Section 24 (2) National Security.

Section 30 (3) Investigations.

Section 31 (3) Law enforcement.

Sections 23 (5), and 41 (2) are absolute exemptions and therefore PSNI are not required to comment any further. Regarding Section 40 (5), although this is an absolute exemption, it is qualified and requires a public interest test.

Sections 24 (2), 30 (3) and 31 (3) are qualified exemptions which means PSNI are required to conduct a public interest test in relation to their usage in neither confirming nor denying the existence of any information.

Section 24(2) National Security.

Factors favouring confirmation or denial :

Any confirmation or denial that the PSNI holds such information would allow the public to gauge the appropriate use of public funds in carrying out their national security investigations. In addition it would provide appropriate transparency and reassurance that intelligence/information in relation to the Provisional IRA within G District is known or not known.

Factors not favouring confirmation or denial:

Confirmation or denial in this particular case would present a high risk in that any terrorist organisation responsible for criminal activities of any sort in G District in the requested time frame, and who still remain undetected, would be able to act on the information released thereby jeopardising the security or infrastructure of the United Kingdom as they would be able to identify whether their actions have been detected and whether links have or have not been made with any previous incidents. In some cases it is possible that such analyses may be assisted by intelligence supplied by one or more of the bodies listed at section 23(3) of the Act. Sections 23(5) and 24(2) are therefore cited in conjunction to protect the involvement or non-involvement of security bodies.

Section 30 (3) Investigations.

Factors favouring confirmation or denial

The public interest will always be in providing appropriate information that police investigations are being carried out efficiently and effectively. Confirmation of information held in this case could promote public trust in providing transparency, whilst demonstrating openness and accountability into the level of information the PSNI may or may not be aware of in the requested time frame.

Factors not favouring confirmation or denial:

Routine confirmation or denial about the level of information held in any current police investigation could seriously undermine the investigation and prejudice the detection of crime and prosecution of offenders. This would lead to the investigation being prejudiced and would effect the PSNI's future law enforcement capabilities if such information was released before an investigation had been concluded.

Despite the fact that there has been substantial recent media comments concerning particular terrorist groups activities in Northern Ireland, the fact that investigations are still open and ongoing, the PSNI consider the release of any information which would or would not identify what information they may or may not hold other than those already in the public domain would hinder current investigations. Such a release could also undermine the right to a fair trial should any person be subsequently charged with any offence connected to your request.

Section 31(3) Law Enforcement.

Factors favouring confirmation or denial

Confirmation or denial around the information that PSNI may or may not hold in relation to your request would assist the public to be better informed about the level of information PSNI may or may not hold regarding the Provisional IRA being involved in criminal activities of any sort in G District.

Factors not favouring confirmation or denial

PSNI operational techniques and capabilities would be placed at risk if relevant information were to be released which significantly impacted on any current investigation process as this may/may not identify where the PSNI had been successful in obtaining vital intelligence as part of any investigation. Such a disclosure would seriously impact on the operational effectiveness of the PSNI in carrying out its law enforcement role.

Section - 40(5) Personal Information

Although Section 40 is an absolute, class based exemption, a Public Interest Test is required for the purposes of NCND. To confirm that the PSNI hold the requested information would in fact amount to a release into the public domain of personal information about individuals. Individuals would have no expectation that their details would be released into the public domain, therefore their data protection rights would be breached by confirmation or denial that the information is held.

Public Interest Test

Factors Favouring Confirmation or Denial

Confirming or denying whether the PSNI hold this information would aid accountability in that the public could see what kind of information is held on individuals.

Factors Against Confirmation or Denial.

Individuals will expect that any information relating to them, if held by PSNI, will be treated in confidence. Confirming or denying the existence of this 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 an individual's data protection rights would be caused by confirmation or denial. This is the case whether or not the information is held.

Balance Test :

I am obliged to weigh up the above factors in order to determine whether the public interest lies in maintaining a neither confirm nor deny stance. In this case, the public benefit in being more aware of what information PSNI may or may not hold in relation to the Provisional IRA being involved in criminal activities of any sort in G District is outweighed by the potential risk to national security, investigations and effective law enforcement.

A disclosure under the Freedom of Information Act is a release of information to the world in general and not just to an individual applicant. The public interest is not what interests the public but what will be of greater good, if released to the community as a whole. It is for these reasons that the public interest must favour neither confirming nor denying that the requested information is held.

The PSNI has therefore determined that in all the circumstances of the case the public interest in maintaining the exclusion of the duty to neither confirm nor deny outweighs the public interest in confirming whether or not information is held.

However, this should not 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 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.