



FREEDOM OF INFORMATION REQUEST



Request Number: F-2011-03968

Keyword: Crime

Subject: Office of Surveillance Inspection Report

Request and Answer:

F-2011- 3968

I understand that your force is subject to annual inspections from the Office of the Surveillance Commissioner (OSC). With regard to the latest inspection report, I would like to request:

Question 1

A copy of the executive summary and/or introduction

Question 2

A copy of the 'significant issues' section

Question 3

A copy of the 'recommendations' section

Question 4

A copy of the conclusions

Question 5

If possible, a full copy of the report

Question 6

A copy of the covering letter from the OSC

Question 7

A copy of the force's reply to the OSC.

F-2011- 4006

I am writing to make a request for information, under the Freedom of Information Act.

I understand from the 2010-11 Annual Report of the Chief Surveillance Commissioner that Chief Officers are required to report to the Chief Surveillance Commissioner "all covert operations in which statutory requirements have not been observed and also cases in which trial judges exclude the product of covert surveillance because of the way in which it is obtained"

(<http://surveillancecommissioners.independent.gov.uk/docs1/OSC%20Annual%20Report%202010-11.pdf> see page 5).

Question 1

I would like to request a copy of all such reports from your force to the Chief Surveillance Commissioner from 1 January 2010 to the present day.

Answer

As the subject of this request F-2011-3968 is similar to your other request F-2011 4006 i.e. request for material in connection with the Officer of Surveillance Commissioner (OSC) and these requests were received by the Police Service of Northern Ireland (PSNI) within 60 working days of each other, these requests have been aggregated for the purpose of a response.

Your request for information has now been considered and the decision has been taken not to supply the information you have requested.

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

Absolute Exemption

Section 40 (2) Personal Information

Qualified Exemptions

Section 24 (1) National Security

Section 30 (1) (a) Investigations and proceedings conducted by the public authority

Section 31 (1) (a) (b) Law Enforcement

Section 38 (1) (b) Health and Safety

Section 40 is an absolute exemption and does not require the public interest or harm to be evidenced and articulated to the applicant.

Section 40(2) Personal Information

Public authorities are in general, exempt from the Act's duty to provide access to 'personal data' (as defined in the Data Protection Act (DPA) 1998).

Where an application for information is made by someone other than the 'data subject' disclosure of that information will often constitute a breach of the DPA and consequently the public authority will be exempt from its duties under the Act as a result of Section 40 (2).

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.

Sections 24, 31 and 38 are prejudice based qualified exemptions which means that the legislators have identified that the harm (prejudice) in disclosure as well as the public interest considerations need to be evidenced and articulated to the applicant.

Harm

The essence of the work undertaken by the PSNI is to protect both individuals and society as a whole.

The PSNI is entrusted with a considerable amount of information and it has an important role in countering the many threats against society. The protection of information is essential to its work and the release of any inappropriate information could compromise front line policing.

It is PSNI practice to liaise with other law enforcement and intelligence agencies and sharing intelligence with them in accordance with the law and established protocols. Intelligence is gathered for the preservation of national security and law enforcement.

The release of the requested information would also reveal policing tactics regarding who was of interest to the police generally. This could be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public.

The success of criminal investigations is very often dependent on the use of covert techniques and methodology. The individuals involved in this type of activity, or any individual suspected by the criminal fraternities of being so involved, would have their safety put at risk, if the information were released that could identify any individual or policing activity.

Many criminals are constantly active and astute in their assessment of police capabilities and will capitalise on any information they can glean about policy and practice. Using the information to compromise policing methods will assist their offending behaviour. For example, enabling offenders to engage counter measures against disclosed surveillance techniques.

In addition, members of the public assisting in this type of activity would be less inclined to come forward if their assistance and information about them is disclosed through FOI disclosure, resulting in a reduced capability for law enforcement and a negative impact on future police operational work. This would impact on the ability to prevent or detect crime and breakdown the maintenance of the ethos of confidentiality engaged with any member of public that assists the police, including Covert Human Intelligence Sources (CHIS).

Operational procedures, methodology and tactics must be protected by the correct application of exemptions. This is because the release of this type of information would rarely be in the Public Interest and may reduce the PSNI's capability to perform its overall functions under the Police (NI) Act 2000, which states:

“It shall be the general duty of police officers –

- (a) to protect life and property;
- (b) to preserve order;
- (c) to prevent the commission of offences;
- (d) where an offence has been committed, to take measures to bring the offender to justice.”

Public Interest Test

Section 24 (1)

Factors favouring disclosure

The public are entitled to know how public funds are spent and by disclosing this information the public would be able to see where public money is being spent and know that police are doing as much as they can to combat terrorism.

Factors favouring non disclosure

Ongoing or future operations to protect the security or infrastructure of the UK would be compromised.

By disclosing this information would render 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. The risk of harm to the public would be increased if the location of vulnerable areas of the UK were made

public as this would provide opportunity for terrorist planning. Ongoing or future operations to protect the security or infrastructure of the UK would be compromised as terrorists could map across the country the level of counter-terrorist activity, giving them the knowledge of force's individual capabilities.

Section 30 (1) (a)

Factors favouring disclosure

The release of information could enable the public to have a better understanding of the efficiency and effectiveness of the police service and how they adhere to the Regulation of Investigatory Powers Act (RIPA) legislation particularly in relation to investigations.

Factors favouring non disclosure

It is the Association of Chief Police Officers approach that information relating to an investigation will rarely be disclosed under the provisions of the Freedom of Information Act. Whilst such information may be released if it provides a tangible community benefit, for example to prevent or detect crime or to protect life or property, it is hard to see how the information requested here will do so as release would jeopardise the effectiveness of gathering intelligence and compromise the confidence the public has in the police service that their information will be treated sensitively and appropriately.

In this case, the OSC inspection report will contain sensitive information, names of individuals and signatories, who work in covert roles that will be involved in ongoing operations, as evidenced within the harm, could compromise any current or future criminal proceedings. This could result in an individual not being brought to justice and made responsible for his actions through the courts, or even cause more crime as suspects begin re-offending.

There may be occasions where the release of information relating to public safety may not be in the public interest. Public safety is of paramount importance to the police service and must be considered in respect of every release. In this case, information that potentially thwarts an investigation or causes more crime will adversely affect public safety.

Section 31 (1) (a) (b)

Factors favouring disclosure

Disclosure of this information would provide the public with an awareness of how the PSNI adhere to the RIPA legislation. It will also make the public aware of the fact that police have regular inspections undertaken by the OSC and that any issues which are documented within the Inspection Report, with recommendations on how police can improve, are actioned.

Factors favouring non disclosure

Where current or future law enforcement of the PSNI may be compromised by the release of information. In this case, for the reasons outlined in the evidenced harm, the effectiveness of current and future strategies for dealing with persons who are subject of RIPA surveillance may be compromised and undermine the prevention and detection of crime.

By releasing this information to the world under FOI could potentially act as a deterrent to the public who provide information to the police to assist in the apprehension and prosecution of offenders. This would jeopardise the effectiveness of gathering intelligence and compromise the confidence the public has in the police service that their information will be treated sensitively and appropriately.

Section 38 (1) (b)

Factors favouring disclosure

Release of the requested information would lead to better informed public awareness and debate in relation to the requested information.

Factors favouring non disclosure

Although the request does not ask for personal data the interests of third parties, i.e. police officers in a covert role, could still be jeopardised by the release of information that could lead to their identification.

The Service is currently under threat from dissident republicans and releasing names of personnel could assist terrorists in targeting individuals.

The threat level in Northern Ireland is set separately and is considered SEVERE and the rest of Great Britain is SUBSTANTIAL.

The release of information would be useful to terrorists planning to carry out further attacks on police, which have in the past been known to be indiscriminate in nature, therefore endangering unsuspecting bystanders in addition to the intended target.

The PSNI will not disclose information that will put officers' lives at risk as the safety of individuals is of paramount importance.

Disclosure is not favoured if it would or would be likely to endanger the physical or mental health or the safety of any individual (for example by means of shock or distress).

Balancing Test

When balancing the Public Interest Test (PIT) PSNI have to consider whether the information should be released into the public domain. Arguments need to be weighed against each other. The most persuasive reason for disclosure is accountability which needs to be compared to the strongest negative reason, which in this case is public safety. The police service cannot and will not disclose information which will place the public at risk or undermine law enforcement thereby assisting those intent on committing crime.

Also, as was firmly established at an Information Tribunal case of the Guardian Newspaper versus the Information Commissioner and the Avon and Somerset Constabulary, the public interest in disclosure of information which is exempt by virtue of a qualified exemption, is not justified just because it is what interests the public. Information released under FOIA, where exemptions apply, will only be done where there is a tangible community benefit which is more powerful than the harm that could be done. This does not apply in this case.

On balance, and from the harm evidenced above, the information should not be disclosed and should be protected and exemptions applied.

Furthermore, PSNI can neither confirm nor deny any further information under Sections 23(5), 24(2) 30(3) and 31(3) as the duty in Section 1(1) (a) of the Freedom of Information 2000 by virtue of the following exemptions:

Absolute Exemption

Section 23(5) Information Supplied by or relating to Security Bodies

Qualified Exemptions

Section 24 (2) National Security

Section 30 (3) Investigations

Section 31 (3) Law Enforcement

Section 23 is a classed based absolute exemption and therefore there is no need to explain the public interest considerations in this area.

There is a requirement that PSNI articulate the public interest considerations for the use of NCND within the section 24, 30 and 31 exemptions.

Harm

There is information within the public domain confirming that police use covert human intelligence sources to assist them with investigations and the effective delivery of law enforcement. Any disclosure of information would enhance the public's knowledge about how information relating to CHIS is used by the PSNI and how the intelligence received assists in day to day investigations and operations to assist with the prevention and detection of crime; the apprehension or prosecution of offenders.

The OSC as the regulators for covert surveillance activity have a legal obligation to ensure appropriate use and recording of this activity. As necessary they can report directly to closed prime-ministerial and governmental security committees on this activity. These regulatory regimes provide a secure accountability framework for police to ensure they are engaged in appropriate activity even in matters concerning National Security. This means the police service is already accountable and will be no more so by disclosures under FOIA. These established regulation processes further weaken the public interest argument on disclosure as police services activity is closely and independently monitored.

Public interest factors in relation to confirmation/denial that information is held.

Section 24 (2) National Security

Factors favouring confirmation or denial

The public are entitled to know how public funds are spent. It would also enable the public to be better aware of the scope of intelligence held.

Factors not favouring confirmation or denial

By confirming or denying any policing arrangements of this nature would render 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.

Section 30 (3) Investigations and Proceedings

Factors favouring confirmation or denial

The release of such information would provide an insight into the police service and enable the public to have better understanding of effectiveness of the police. The release of information could allow the public to make informed decisions about police procedures and the money spent in this business area. This would greatly assist in the quality and accuracy of public debate, which would otherwise likely be steeped in rumour and speculation.

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 these cases 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.

Factors not favouring confirmation or denial

By confirming or denying whether there are individuals or groups that are of interest would hinder the prevention or detection of crime. This would impact on police resources and more crime would be committed, placing individuals at risk. It would be damaging to its Law Enforcement activities if the PSNI confirmed the focus of any of their investigations which may or may not be ongoing in a particular area.

Routine confirmation or denial about the level of information/evidence held in any police investigation could seriously undermine the investigation and prejudice the detection of crime and prosecution of offenders.

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.

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.

Balance

In so far as Sections 24(2), 30(3) and 31(3) apply, I am satisfied that the balance of public interest lies in maintaining the exclusion of the duty to confirm whether information is held by the PSNI.

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 outweighed by the potential risk to national security, investigations and effective law enforcement.

Whilst there is a public interest in the transparency of policing operations and in this case providing assurance that appropriate surveillance techniques are used, there is a very strong public interest in safeguarding national security and covert surveillance strategies. To confirm or deny that this level of policing activity has or has not occurred in any specific area would indicate to those engaged in criminal or terrorist activity where operations may be centred. Any information identifying the focus of covert policing activity could be used to the advantage of terrorists or criminal organisations. In turn this would undermine the operational integrity of these activities and have a negative impact on both National Security and law enforcement. It may be the case that some police are not engaged in these specific National Security operations and as such would not hold any information, to reveal this information would again identify the focus of policing activity across the UK.

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 our opinion that for these issues the balancing test for disclosure is not made out.

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.

No inference can be taken from this refusal that any relevant Section 23(5), Section 24(2), Section 30(3) or Section 31(3) 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.psnipolice.uk

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