



FREEDOM OF INFORMATION REQUEST



Request Number: F 2011 01622

Keyword: Crime

Subject: Office of the Surveillance Commissioner PSNI Inspection report

Request and Answer:

Question

Please disclose the most recent inspection report of the Department by the Office of the Surveillance Commissioner.

I would prefer to receive the information in electronic format, to the enclosed email address. However, if it is more convenient, I would be happy to receive the information in hard copy format.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material.

I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Answer

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

Section 31 (1) (a) (b) (c) 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 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 Data Protection Act 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 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.

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 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 Considerations

The public interest test is as follows: -

Section 30 (1) (a) (b) (c) 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 RIPA legislation particularly in relation to investigations.

Section 30 (1) (a) (b) (c) 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.

In this case, the 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) (c) 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.

Section 31 (1) (a) (b) (c) 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.

Section 38 (1) (b) 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.

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 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) and 24(2) 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 Exemption

Section 24 (2) National Security

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

However, it is required that PSNI articulate the public interest considerations for the use of NCND within the section 24 exemption. To the extent that Section 24 applies, PSNI have determined that in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether PSNI holds any further information.

No inference can be taken from this refusal that any relevant section 23(5) or section 24(2) information you have requested does or does not exist.

In so far as Section 24(2) applies, 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.

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 centered. 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.

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.

If you have any queries regarding your request or the decision please do not hesitate to contact 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.