



FREEDOM OF INFORMATION REQUEST



Request Number: F-2011-03630

Keyword: Organisational Information/Governance

Subject: Copy of a Report

Request and 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.

Question

As MLA for South Antrim I have been dealing with the above named gentleman regarding an incident that happened to his car dated the weekend of 20th August 2011. This matter was reported to the PSNI and I would request a copy of this report using the above reference number on behalf of David. Any help on this would be much appreciated.

Answer

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 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 conducted by Public Authorities
Section 40(5) - Personal Information

Section 30 is a classed 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 fall into the class of information covered by this exemption. If the information were held it would be held for the purposes of investigation to determine whether an offence has been committed and therefore clearly falls within the class of information provided by this exemption.

Although Section 40 is an absolute, class based exemption, a Public Interest Test is required for the purposes of NCND. The release of information under Freedom of Information is a release into the public domain and not just to an individual. To confirm that the PSNI hold the requested information would in fact amount to a release into the public domain of personal information about an individual. 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 – Section 30

Confirming the existence of the information would show that the PSNI conducted an investigation, which the public would expect.

Factors Against Confirmation or Denial – Section 30

Confirming or denying the existence of the requested information could hinder the prevention and detection of crime, as an investigation or the outcome of subsequent proceedings could be compromised.

Factors Favouring Confirmation or Denial – Section 40

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 – Section 40

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 so whether or not the information is held.

Decision

Confirmation or denial of whether the PSNI hold this information would amount to a release of information either on this occasion or on other occasions where a similar request is made. There is a strong public interest in maintaining confidence in the PSNI with regard to its handling of individuals' personal data. 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.

Whilst there is a public interest in the transparency of how the police deal with allegations which are reported to them and providing assurance that the PSNI is appropriately and effectively dealing with incidents of this nature, there is also a strong public interest in ensuring investigations are conducted properly.

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.

Insofar as Section 40(5) applies to any requested information under FOI, i.e. any information that

constitutes personal data of which the applicant is the data subject, if an individual wishes to see any information that may/may not be held by PSNI in relation to them, they may apply under the Data Protection Act. I have attached a link below to a Subject Access Form which should be completed by an individual who is seeking access to their own personal data. This can be submitted online or returned to Access to Information Unit, Corporate Development, PSNI Headquarters, 65 Knock Road, Belfast, BT5 6LE.

http://www.psni.police.uk/index/support/support_subject_access_requests.htm

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.