



FREEDOM OF INFORMATION REQUEST



Request Number: F-2013-05624

Keyword: Operational Policing

Subject: Correspondence Reference Holding of Vehicle

Request and Answer:

Question 1

Copy of contract between the PSNI and (named company)

Answer

Searches were conducted which failed to locate any records or documents to the level of detail outlined in your request and based on the information you have provided. Accordingly I have determined that PSNI does not hold the information to which you seek access.

There is no contract between the PSNI and the company you mention.

Question 2

Copy of Statue or Common Law that states the PSNI have the right to take property without due process

Answer

I have attached at the end of this correspondence a copy of the relevant Road Traffic (Northern Ireland) Order 1981.

It can also be accessed on the Legislation Government website and for your convenience I have provided a link below:

<http://www.legislation.gov.uk/nisi/1981/154>

Question 3

Copy of search report and officers' notebook

Question 4

Copies of all passengers' witness reports

Question 5

Copy of all correspondence including emails, memos, statements and letters etc. that have been sent or received within the PSNI that pertain to our family

Question 6

Address the fees imposed concerning the theft / holding of car (named car)

We will accept redacted documents where appropriate

You have yet to address our correspondence (refer to letters October 8 and 24 2013), please now be honourable and comply with these requests.

Answers 3 - 6

In accordance with the Act, this letter represents a Refusal Notice for the questions 3-6 of 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(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 40(5)(a) - Personal Information

The first element of this exemption is engaged if the information requested constitutes personal data and the request is made by the data subject. The information will be covered by Section 40(5)(a) of the Freedom of Information Act, and the request should be dealt with under Section 7 of the Data Protection Act 1998, rights of access.

A disclosure under Freedom of Information is a release of information to the world in general and not to an individual applicant. Therefore, simply confirming or not that such information were held would disclose personal information about an individual thereby breaching the Data Protection Act and could in itself disclose sensitive or damaging information.

Personal data if held by a police service should not be disclosed into the public domain and privacy must be respected. Any information released under the Freedom of Information Act in response to requests is deemed to be **released into the public domain**.

Although Section 40 is an absolute class-based exemption, a Public Interest Test is required for the purposes of NCND.

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 action was or was not taken by police in relation to particular offences.

Factors Against Confirmation or Denial

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, because if the PSNI refused to confirm or deny only in

cases where information is held then it may be reasonably concluded that information is held when NCND is used.

Decision

Confirmation or denial of whether the PSNI hold information of this nature would amount to a release of information whether on this occasion or on other occasions where a similar request is made. 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. The Public Interest therefore must favour neither confirming nor denying that the 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 provided a link to a DAT1 subject access form which should be completed when an individual seeks access to his or her own personal data.

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

It should be noted however that the provision of this form 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.

However, this should not be taken as conclusive evidence that the information you requested

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.