



FREEDOM OF INFORMATION REQUEST



Request Number: F-2014-00567

Keyword: Crime

Subject: Covert Human Intelligence Sources

Request and Answer:

Question 1

The number of police covert human intelligence sources from the following periods: financial years 2009-2010/ 2010-2011 / 2011-2012/2012-2013.

Question 2

The estimated amount of money spent on covert human intelligence sources from the following periods: financial years 2009-2010/ 2010-2011 / 2011-2012/2012-2013.

Question 3

Can the figures relating to covert human intelligence sources (request 1 and 2) be categorised into 'loyalist' or 'republican?'

Answer

Your request for information has now been considered and the decision has been taken to answer question 2 and fully exempt information in response to questions 1 and 3 pursuant to the provision of Sections 30(2)(b) and 38(1)(a)(b).

Answer to question 2

The crime figures paid to Covert Human Intelligence Sources (CHIS) for the financial years 2009 -13 is as follows:

2009/10 - £405,115.00
2010/11 - £395,800.00
2011/12 - £434,000.00
2012/13 - £422,000.00

Answer to questions 1 and 3

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:

Section 30(2)(b) - Investigations and Proceedings conducted by Public Authorities

Section 38(1)(a)(b) - Health and Safety

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.

Section 38 is a prejudice based qualified exemption 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.

The harm and public interest tests are detailed below.

Harm

Covert Human Intelligence Sources (CHIS), regardless of their motivation, provide information at particular personal risk to themselves and their families. As previous cases have shown, where a CHIS is identified it can result in substantial physical harm, or mental trauma resulting from the threat of physical harm. This problem is particularly acute in cases relating to serious crime and terrorism where the threat against individuals is substantial. Releasing information on CHIS could also result in investigations being adversely affected through less information being provided to the police and therefore an increase in crime.

Public Interest Test

Factors favouring disclosure for Section 30

It is widely acknowledged in the press that police use CHIS to assist them with investigations and the effective delivery of law enforcement. Disclosure 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 as well as the apprehension and prosecution of offenders.

Disclosure would also assist in stopping any incorrect rumours or falsehoods relating to how the police store and manage how CHIS assist the police.

Factors favouring non-disclosure for Section 30

Disclosure of the information requested could identify CHIS activity within a police area. Over a period of time if several disclosures were made, individuals could analyse the information and identify any sudden peaks or troughs in CHIS activity. This would hinder the prevention and detection of crime and also prejudice our ability to maintain confidential sources. Consequently, the PSNI's investigations would be affected as well as future law enforcement capabilities.

Factors favouring disclosure for Section 38

Release of the information would give the public more awareness regarding CHIS use by the police and allow for more informed public awareness and debate.

Factors favouring non-disclosure for Section 38

Public safety is of paramount importance to the PSNI and must always be considered as the PSNI would not wish to endanger the health and safety of any individual by causing them distress, anxiety or harm. Releasing the requested information could lead to individuals being distressed with their own and their family's safety endangered by persons involved in criminality/terrorism. The PSNI has a duty of care to the community we serve and to release information which could lead to an individual's safety being jeopardised would result in a loss of confidence in the way information is used.

The release of any information about payments of rewards would increase the risk to individuals, whether CHIS or not, that they might rightly or wrongly, be identified as CHIS. Dissident Republicans are active in Northern Ireland and the current threat level for Northern Ireland related terrorism is set separately for Northern Ireland and Great Britain. In Northern Ireland it is SEVERE and in Great Britain SUBSTANTIAL. Terrorist organisations have murdered individuals, both North and South of the border claiming, rightly or wrongly, the justification that they were 'informers'.

As well as concerns about the physical health of such individuals there is also the mental health aspect of releasing CHIS information. They are informed of the risks but the more information police release heightens the anxiety suffered by such individuals operating in an insecure, threatening environment. Release of information could be considered by CHIS as a breach of confidence in having their identities protected.

Decision

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. While there is a public interest argument in ensuring we are open and transparent with regard to policing investigations and operations there is a greater public interest in ensuring that investigations are not adversely impacted through lack of information.

As has been mentioned, CHIS play a vital role in assisting the police and this is based very much on relationships built on trust and the expectation of complete confidentiality. It may be viewed by those not involved in the management of CHIS that a statistical number in itself is unlikely to cause any such adverse effects however the subject has to be viewed more as a whole.

Those determined to identify CHIS have the ability to use small pieces of information in order to build a more complete picture and it is the cumulative effect of information disclosures that the police service feel will lead to this prejudice being realised.

The use of CHIS is regulated by the Regulation of Investigatory Powers Act which requires authorities to take into account the provisions of the Human Rights Act when using CHIS (and other covert techniques). Police are reminded of their obligation under Article 2 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998) which requires them to protect human life. This is further supported by a recent European Court Of Human Rights decision in *Van Colle v United Kingdom*. In this case it was alleged that the local police force concerned failed to provide adequate protection to an individual whose life was at risk because of the criminal acts of a third party. The witness was murdered by a person whom he was about to give evidence against in a criminal trial.

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 Health and Safety.

The risk of identification or misidentification of CHIS has to be balanced with the "duty of care" to the individual. Intimidation and the threat of harm are within the capabilities of criminals/terrorists and the PSNI will not release any information which would endanger any individual. It is therefore our opinion that the balance lies in favour of non-disclosure of the information.

Additionally, the PSNI can neither confirm nor deny that they hold any other information relevant to the whole of your request by virtue of the following exemptions:

Section 23(5) Information relating to security bodies listed at Section 23(3)
Section 24(2) National Security

Section 23 is an absolute exemption and I am therefore not required to complete a public interest test or conduct a harm test.

The above quoted total payments to CHIS does not include any payments made to CHIS where funding may have been supplied by exempt bodies.

Section 24(2) is a qualified exemption and as such there is a requirement to complete a public interest in confirmation or denial.

The police service works in partnership with other agencies in order to combat issues such as terrorism and organised crime. As such, information may sometimes be provided by bodies listed at section 23(3). In this case, I am unable to confirm or deny whether the PSNI hold any other information relevant to your request and sections 23 (5) and 24(2) are cited to protect the involvement or non-involvement of bodies listed at section 23(3), and national security.

Harm for neither confirming nor denying that any other information is held for Section 24

Disclosure of CHIS data could impact on the recruitment and retention of CHIS in general, due to the perception of (rather than the actual) risk of identification. In a recent Information Tribunal case relating to the payments made to CHIS in Croydon (EA/2010/0006), it was accepted that this argument applied as much to CHIS providing intelligence in relation to national security concerns as to CHIS engaged in countering more traditional criminal threats. In this way, the disclosure of payment information would damage national security through discouraging current national security CHIS from cooperating with the police service in other geographical areas, or preventing the recruitment of national security CHIS in the future – regardless of whether the area in question actually currently runs CHIS reporting on serious crime, terrorist or other threats.

Public Interest test

Factors favouring disclosure

Confirmation or denial that any other information exists relevant to the request would lead to a better informed public and the public are entitled to know how public funds are spent. The information simply relates to national security and disclosure would not actually harm it.

Factors favouring Non-Disclosure

Other organisations outside the police service are also widely engaged in rewarding CHIS in a number of ways and therefore by confirming or denying that any other information exists relevant to the request would harm the close relationship that exists with such organisations, where trust and confidence in this specific area has been built up in the exchange of information and financial assistance during the Criminal Justice process.

To confirm or deny whether PSNI hold any additional information would allow inferences to be made about the nature and extent of national security related activities which may or may not take place in a given area. This could enable terrorist groups to take steps to avoid detection, and as such, confirmation or denial would be damaging to national security.

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

Decision

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. The security of the country is of paramount importance and the Police Service will not divulge whether information is or is not held if to do so would place the safety of an individual at risk or undermine National Security. Whilst there is a public interest in the transparency of policing operations and providing assurance that the police service is appropriately and effectively engaging with the threat from criminals, there is a very strong public interest in safeguarding both

national security and the integrity of police investigations and operations in this highly sensitive area. 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 therefore our opinion that for these issues the balancing test for confirming or not that information is held is not made out.

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.