



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2013-05908

**Keyword:** Crime

**Subject:** Operation Eclat

### Request and Answer:

#### Question

My father, (named person and age), assisted the Police Service of Northern Ireland in a 2008 investigation that led to the conviction of an Irish gangster, (named person), in Belfast Crown Court in June 2010 (case name and reference given).

My father's Hong Kong ID number is (ID given). He was assisting the PSNI on an operation code-named Eclat. Operation Eclat was an initiative launched by PSNI and Japan Tobacco International, which had first detected (named person) efforts to buy counterfeit cigarettes in southern China for export to Ireland. The profits from this venture were used to fund (named person) purchases of weapons and drugs.

My father worked closely with PSNI officers (named officer 1), (named officer 2) and also an undercover known as "Neil" to fool (named person) into thinking he was dealing with an actual counterfeit cigarette ring in southern China. Named person was in fact on the receiving end of "controlled" shipments facilitated by a xxxxx.

However, one of the controlled shipments was intercepted by Chinese authorities who then imprisoned my father for ten years on counterfeit cigarette charges. To prove his innocence, my family requires any and all information, including e-mails that the PSNI, the UK Home Office, the Foreign Office and any other UK government departments have concerning my father and Operation Eclat.

In 2009, officers (named officer 1), (named officer 2) and others initially sought meetings with the Home Office and China's embassy in London to help my father, but those efforts were apparently abandoned and my father remains in prison in named city and Provence.

#### 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.

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 (NCND) 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 23(5) - Information supplied by, or concerning, certain security bodies listed at Section 23(3)  
Section 24(2) - National Security  
Section 27(4)(b) - International Relations  
Section 30(3) - Investigations  
Section 31(3) - Law Enforcement  
Section 40(5) - Personal Information

Section 23 is an absolute class-based exemption and therefore there is no requirement to conduct a harm or public interest test.

Section 40 is also an absolute class-based exemption and the PSNI are not required to conduct a Public Interest Test or show the harm in confirming or denying that any information is held. This is so because Section 40, personal data, is governed by other law (The Data Protection Act 1998).

The release of information under Freedom of Information is a release into the public domain, and not just to an individual. To confirm or deny that the PSNI hold the requested information would in fact amount to a release into the public domain of personal information about an individual or individuals therefore their data protection rights would be breached by confirming or denying the information requested.

Sections 24 and 31 are prejudice based qualified exemptions meaning that the legislators require the public authority to articulate the harm that would be caused in confirming or denying that any other information is held as well as carrying out a public interest test.

Sections 27 and 30 are qualified class based exemptions which means that the PSNI is required to carry out a public interest test.

## **Harm**

### Section 24

Confirming or denying that the requested information is or is not held would seriously jeopardise covert operations by confirming methods that may or may not be used by the PSNI in respect of evidence gathering for National Security.

### Section 31

PSNI believe that confirming or denying that it holds any information relevant to this request would adversely affect future law enforcement. Confirming whether or not any information is held would impact on the prevention and the detection of crime, as well as aiding offenders to avoid prosecution, as the information if held would reveal details on police tactics/methodology.

## **Public Interest Test**

### Factors favouring confirming or denying – Section 24

To confirm or deny that the PSNI holds the requested information would allow the public to gauge how appropriately public funds are being used by the PSNI in carrying out their national security

investigations. In addition it would provide appropriate transparency and reassurance that information received had been effectively and appropriately.

Confirming or denying what information is or is not held would lead to better informed public debate.

#### Factors against confirming or denying – Section 24

Confirmation or denial in this particular case would present a high risk in that those intent on committing similar acts would be able to use the information released thereby jeopardising the security or infrastructure of the United Kingdom. This is so whether information is held or not as criminals and terrorists would be able to assess the extent of information sharing, or otherwise, between police services and other agencies.

#### Factors favouring confirming or denying – Section 27

To confirm or deny that the requested information is held would show the extent to which the PSNI is co-operating with other countries, governments and law enforcement agencies to protect the interests of the UK. It would also show the extent to which PSNI is dealing with terrorism and crime on an international basis.

#### Factors against confirming or denying – Section 27

Relationships between sovereign states is a highly sensitive area and the PSNI will not confirm or deny whether information is held if to do so would adversely prejudice the relations between the UK and any other country. Any information which may or may not be shared between international countries and organisations is provided to assist in fighting crime and to confirm what is or is not held may adversely prejudice relations with any country who may or may not have provided it.

It is the view of the PSNI that to confirm whether or not information is held would reveal the extent of any co-operation between international countries and would prejudice relations between the United Kingdom and that country or countries.

#### Factors favouring confirming or denying - Section 30

There is high public interest in the transparency and accountability of police investigations and in ensuring that investigations are properly conducted. Confirming or denying what information may or may not be held in respect of this request would enable the public to see how effectively the PSNI are engaging with their investigative duties.

All police investigations will involve the use of public funds and where this is the case there is always a public interest in ensuring that those funds are not used unnecessarily or unwisely.

#### Factors against confirming or denying – Section 30

Confirming or denying that any information is or is not held relevant to this request would adversely affect investigations. In some cases it would alert individuals involved as to whether or not the police may be investigating them and therefore the police may not always wish to confirm this is the case. The concept of 'Neither confirm nor deny' has therefore to be used consistently by police services in relation to FOI requests, where the police have not already placed information in the public domain about an investigation, to remain effective.

#### Factors favouring confirming or denying - Section 31

Confirming or denying what information is held would satisfy public interest in transparency in relation to how PSNI performs its functions and utilises any intelligence it may have received to perform those functions. There is a high public interest in knowing that the PSNI are not only detecting crime but also preventing it and confirming or denying what information may be held in respect of this request may reassure the public that the PSNI is effectively using any intelligence it may have received to prevent criminal activity and protect the public.

Public debate may be better informed by confirming or denying that it holds the information requested.

### Factors against confirming or denying - Section 31

It is well documented that police services use CHIS as an important and vital resource in evidence gathering as part of their law enforcement duties. PSNI consider there is a strong public interest in maintaining the integrity of this human resource in order to protect society from the impact of crime. We consider that to confirm or deny that the information exists would make it extremely difficult for us to refuse future requests for similar information on investigations which would adversely impact on the prevention and detection of crime as well as on the administration of justice.

Once information is disclosed, either by confirming or denying, under FOI there is no control or limits as to how or with whom the information is shared. Therefore a release under FOI is considered a disclosure to the world in general. PSNI has a duty to fulfil its law enforcement role and whilst there is a public interest in the transparency of policing activities, the delivery of effective law enforcement is also a priority for PSNI. The PSNI therefore consider there is a strong public interest in neither confirming nor denying the existence of any information relevant to this request.

### Decision

The investigative role is of paramount importance and the Police Service will not confirm or deny that it holds any information if to do so could undermine the detection and apprehension of offenders and compromise the rights of a suspect to a fair trial. Whilst there is a public interest in the transparency of policing operations and in knowing that the PSNI are using appropriate resources to detect and prevent criminal activity there is also a very strong public interest in safeguarding the integrity of police investigations and operations.

The concept of 'Neither confirm nor deny' has to be used consistently by police services in relation to FOI requests, where the police have not already placed information in the public domain about an investigation, to remain effective. In seeking to protect the integrity of investigations and the safety of the people whom it serves the PSNI cannot confirm or deny that it holds any information if to do so would adversely affect National Security or prejudice International Relations. The PSNI must do this with appropriate use of exemptions and I am satisfied that in this case the public interest factors favour neither confirming nor denying that any information relevant to this request is held.

However, this should not be taken as conclusive evidence that the information you requested exists or does not exist.

Section 16 of the Freedom of Information Act imposes a duty to provide advice and assistance on public authorities. Accordingly, we consider it appropriate to inform you of your right to make a complaint to the Investigatory Powers Tribunal. The Tribunal is a judicial body established under the Regulation of Investigatory Powers Act 2000 and may be contacted at the following address:

The Investigatory Powers Tribunal  
PO Box 33220  
London  
SW1H 9ZQ

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](mailto: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](http://www.psni.police.uk)

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