



FREEDOM OF INFORMATION REQUEST



Request Number: F-2014-00066

Keyword: Operational Policing

Subject: Informants In G District

Request and Answer:

Question 1

In G District, how much money has been paid to informers in the past two years? By this I mean anyone who offers information to the PSNI in return for a monetary payment.

Question 2

Can I get this broken down per station, i.e. Strabane PSNI station, Strand Road PSNI station?

Question 3

Can I also get the number of informers currently in the pay of each station?

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, 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 exemption/s, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

Section 30 (2)(b) - Investigations

Section 38 (1)(a) – Health & Safety

Section 40 (2)(a)(b) by virtue of s.40(3)(a)(i) – Personal Information

Section 40 Personal Information is an absolute exemption which means there is no requirement on the Public Authority to consider whether there is a public interest in disclosure. This is so because personal data is governed by other law (The Data Protection Act 1998). A disclosure under the Freedom of Information Act is a release of information to the world in general and not just to the individual applicant.

Section 40 (3) (a) (i) of FOIA provides an exemption from the right to know where the information requested is personal data and is protected by the Data Protection Act if its disclosure to a member of the public would contravene any of the Data Protection Principles (section 40(3)(a)(i)). This particular exemption is absolute, which means there is no requirement on the PSNI to consider an additional public interest test.

Taking into account all of the circumstances relating to your request PSNI considered whether any of the Data Protection Principles would be breached if this information was to be released. We specifically considered the first data protection principle which requires PSNI to only release information if it is 'fair and lawful' to do so. To provide this information broken down for G District increases the chances of identification. Taking into account the nature of the information and the consequences such a disclosure may have, we are of the view it would not be within their reasonable expectations that we would do this. PSNI have therefore determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached.

Section 38 Health and Safety is a prejudiced based exemption which means that the PSNI must demonstrate that it is satisfied that to release the information would be likely to endanger the safety of any individual. It is also a qualified exemption which means that the PSNI must consider the balance of the public interest in releasing the information against the public interest in withholding it.

Section 30 is a qualified and class-based exemption which means that the PSNI is required to carry out a public interest test but that a harm test is not necessary.

The harm for Section 38 and the Public Interest Tests (PITs) for sections 38 and 30 are outlined below.

Harm Test

Section 38 - Releasing details of the numbers of informants into the public domain and disclosing the number of informants paid by each station could put them at risk from individuals or groups intent on criminal activities.

Section 30 - There is considerable harm attributed to the disclosure of any information in relation to police receiving information from confidential sources and the remuneration provided by the police for the purpose of criminal investigations. Such information would not exist had covert human intelligence sources (CHIS) not been required to participate in the effective investigation of criminal matters. The information is only held because it is obtained and recorded by the service for the purpose of its functions in relation to criminal investigations.

Any disclosure that may reduce the flow of information to the Police Service and intelligence agencies would have a substantial prejudicial impact on the ability of such authorities to collect reliable and accurate intelligence. Furthermore, law enforcement bodies would become dependent on more costly and time consuming methods of collecting intelligence. Whilst it may not be seen by the public to be wholly acceptable to offer payments to individuals who are close to criminal activity, CHIS are often the most valuable sources of information and enable the police and other agencies to secure evidence and subsequent prosecutions.

In the High Court hearing *Van Colle v Chief Constable Hertfordshire Police* - the breakdown of financial information to lower levels such as district was referred to:

'... Disclosure on a force wide basis is already made and we are satisfied that meets the public interest in disclosure. In our opinion borough breakdown would not reveal anything further towards the public interest in accountability or transparency or enhancing public debate, but would have significant impact on the four areas as identified above (retention, recruitment, operational vulnerability and, to a lesser extent, identified ...'

Public Interest Test

Factors Favouring Release – Section 38

Releasing the information would promote openness and transparency and the public would be better informed about the level of information being received by the PSNI.

Factors Favouring Release – Section 30

There is much information already available in the public domain which confirms the police use of covert intelligence sources to assist them with their investigations and the effective delivery of law enforcement. Disclosure of the requested information would enhance the public's knowledge about how information relating to informants is used by the police service and how the intelligence received assists in day to day investigations and operations to assist the prevention and detection of crime; the apprehension and prosecution of offenders and the administration of justice.

Factors Favouring Retention – Section 38

Covert Human Intelligence Sources (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.

Factors Favouring Retention – Section 30

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

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. The Police Service is tasked with protecting the community we serve and solving crime and there is a public interest argument in ensuring we are open and transparent with regard to policing investigations and operations. There is no doubt that for the issues outlined above any disclosure relating to sensitive informant information would jeopardise those important roles.

As has been mentioned informants 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. The PSNI would never disclose information which would compromise our tactics and adversely impact on the role of informants. It is therefore our opinion that the balance lies in favour of non-disclosure of the information.

In addition the PSNI neither confirms nor denies that it holds any other information relevant to your request 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 30(3) by virtue of S30(2) – Investigations

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

Section 24 is a prejudice based qualified exemption and there is a requirement 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.

Section 30 is a qualified and class-based exemption which means that the PSNI is required to carry out a public interest test but that a harm test is not necessary.

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

Disclosure of an informants' data could impact on the recruitment and retention of Covert Human Intelligence Sources (CHIS) in general, due to the perception of (rather than the actual) risk of identification. In an 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 against confirming or denying that any other information is held for Section 24

Confirmation or denial that any other information exists relevant to your 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 against confirming or denying that any other information is held for Section 24

Other organisations outside the police service are also widely engaged in rewarding informants in a number of ways. Therefore by confirming or denying that any other information exists relevant to your 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 the 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.

Factors favouring confirmation or denial for S30

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. Confirming that information does or does not exist could promote public trust as well as providing transparency and demonstrating openness and accountability into how the investigation took place. It could also provide reassurance to the public that the police service takes all reports of a crime seriously and conducts investigations appropriately. Confirming or denying if other information does or does not exist could allow the public to have a better understanding of the effectiveness of the Police Service.

Factors against confirmation or denial for S30

However, by its very nature information held relating to informants is sensitive in nature. Under FOI there is a requirement to comply with S1(1)(a) and confirm what information is held. However, in some cases it is that confirmation, or not, which could disclose facts harmful to informants. The only methodology which will provide the required degree of protection to those individuals is if the PSNI takes advantage of its ability under FOI legislation to, when appropriate, neither confirm nor deny that the information requested, is or is not held. The Police Service will never disclose information which could identify investigative activity and therefore undermine their investigations as to do so would

hinder the prevention or detection of crime.

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 any other 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 investigations, 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.

These points were agreed by the Information tribunal in the case of ICO v Metropolitan Police, EA/2010/2006, where the request was for informant spend at borough level. Although the information in this case was subject to substantive exemptions, the key public interest balancing point, was highly persuasive.

'CHIS are given strong guarantees that their identities will be protected. In some instances, a prosecution may be stopped rather than risk the identity, or in some cases even the existence, of a CHIS being revealed. We accept the evidence of DI D as to the "paranoia" of those acting, or contemplating acting, as a CHIS and accept that they would view the disclosure of the disputed information as a breach of confidence that would significantly undermine their confidence in having their identities protected.'

It is therefore our opinion that for these issues the balancing test for confirming or not that information is held, is not made out

This should not be taken as an inference that there is or is not any further information to that which has been disclosed to you in responding to this request.

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.psnj.police.uk

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