



FREEDOM OF INFORMATION REQUEST



Request Number: F-2014-04405

Keyword: Operational Policing

Subject: Use Of RIPA To Obtain Journalists Phone Records 2004 - To Date

Request and Answer:

Question 1

Between 1 January 2004 and today's date (11 September 2014), on how many occasions has your police force used the Regulation of Investigatory Powers Act to obtain information from the telephone records of journalists, news organisations or any other news organisation employees? Please list all such cases, including: the date, the name of the person (and their position) /organisation concerned, when their records were obtained, what the purpose of obtaining the information was (i.e. what was the police force looking for) and whether the police force succeeded in obtaining the information.

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 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
- Section 24(2) – National Security
- Section 30(3) - Investigations
- Section 31(3) – Law Enforcement
- Section 40(5) – Personal Information

Section 23 is an absolute and class-based exemption which means that there is no requirement on the public authority to evidence the harm or conduct a public interest test.

Sections 24 and 31 are qualified and prejudice-based exemptions which means that the legislators have determined that there is a requirement to evidence the harm and to conduct a public interest test in neither confirming nor denying that any information exists.

Section 30 is a class based and qualified exemption which means the public interest must be considered but that it is not necessary to evidence the harm.

Section 40(5) is an absolute class-based exemption which means that there is no requirement to conduct a Public Interest Test.

Personal information – Section 40

The release of information under Freedom of Information is a release into the public domain, and not just to the individual requesting the information. Once information is disclosed by FOI there is no control or limits as to who or how the information is shared with other individuals, therefore a release under FOI is considered a disclosure to the world in general. To confirm that the PSNI hold the requested information would in fact amount to a release into the public domain, of personal information about individuals. The individuals would have no expectation that these details would be released into the public domain, therefore their data protection rights would be breached by release.

Harm For Sections 24 and 31

Every effort should be made to release information under FOI. However, to confirm or deny many of the police actions around RIPA and in particular specialist tactical areas would undermine ongoing investigations, reveal policing techniques, risk the identification of individuals, and undermine National Security. Revealing information that a RIPA application has or has not been submitted may in itself be all the information offenders want. This awareness would help subjects avoid detection, and inhibit the prevention and detection of crime. Confirmation or denial could lead to the identification of specific cases or confirm that activity has not been detected by the Police. In confirming or denying this level of information at individual police level is likely to result in identifying the resources available to the PSNI to covertly monitor groups or individuals, which may include journalists and news organisation employees, likely to be committing offences under their remit.

It is important that the Police Service discloses information regarding surveillance activity under RIPA where it is appropriate to do so but some authority information or specific covert law enforcement techniques are not disclosed for the above reasons. To do so would disclose tactical information to the detriment of those actual techniques.

In order to counter criminal and terrorist behaviour it is vital that the police and other agencies have the ability to work together, where necessary covertly, in order to obtain intelligence within current legislative frameworks to ensure the successful arrest and prosecution of those who commit or plan to commit acts of terrorism. In order to achieve this goal, it is vitally important that information sharing takes place with other police forces and security bodies within the UK and Internationally in order to support counter-terrorism measures in the fight to deprive international terrorist networks of their ability to commit crime.

It should be recognised that the international security landscape is increasingly complex and unpredictable. The UK faces a serious and sustained threat from violent extremists and this threat is greater in scale and ambition than any of the terrorist threats in the past. Since 2006, the UK Government have published the threat level, based upon current intelligence. The current security level for Northern Ireland is set at Severe, see below link:

<https://www.mi5.gov.uk/home/the-threats/terrorism/threat-levels.html>

The Police Service is committed to demonstrating proportionality and accountability regarding surveillance techniques to the appropriate authorities. However, if the Police Service were to either confirm or deny that information exists other covert surveillance tactics will either be compromised or significantly weakened. If the Police Service denies a tactic is used in one request but then exempts for another, requesters can determine the 'exempt' answer is in fact a technique used in policing. The impact could undermine national security, any on-going investigations and any future investigations, as it would enable targeted individuals/groups to become surveillance aware. This would help subjects avoid detection, and inhibit the prevention and detection of crime.

The prevention and detection of crime is the foundation upon which policing is built and the police have a clear responsibility to prevent crime and arrest those responsible for committing crime or those that plan to commit crime. To do this the police require evidence and that evidence can come from a number of sources, some of which is obtained through covert means. Having obtained sufficient evidence offenders are charged with offences and placed before the courts. By confirming or denying that information pertinent to this request exists could directly influence the stages of that process, and jeopardise current investigations or prejudice law enforcement.

Any information identifying the focus of policing activity could be used to the advantage of terrorists or criminal organisations. Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both national security and law enforcement.

Public Interest Considerations

Factors Favouring Confirming Or Denying – S24

The public are entitled to know how public funds are spent and resources distributed within an area of policing. To confirm whether information exists relating to a specific tactic would enable the public to hold the PSNI to account where RIPA applications are concerned. In the current climate of cuts and with the call for transparency of public spending this would enable improved public debate.

Factors Against Confirming Or Denying – S24

Security measures are put in place to protect the community we serve. As evidenced within the harm, to confirm or deny detail of specific types of RIPA applications would reveal covert investigative activity that may or may not have taken place. This would highlight to terrorists and individuals intent on carrying out criminal behaviour the level of covert policing activity. This would ultimately increase the risk of harm to the general public and significantly undermine any ongoing or future operations to protect the security or infrastructure of the United Kingdom.

Taking into account the current security climate within the United Kingdom, no information (such as the citing of an exemption which confirms information pertinent to this request is held, or conversely, stating 'no information is held') which may aid a terrorist should be disclosed. To what extent this information may aid a terrorist is unknown, but it is clear that it will have an impact on a force's ability to monitor terrorist activity.

Irrespective of what information is or isn't held, the public entrust the Police Service to make appropriate decisions with regard to their safety and protection and the only way of reducing risk is to be cautious with what is placed into the public domain.

The cumulative affect of terrorists gathering information has a greater impact when linked to other information gathered from various sources about terrorism. The more information disclosed over time will give a more detailed account of the tactical infrastructure of not only an individual policing area but also the country as a whole.

Any incident that results from such a disclosure would by default affect National Security.

In addition, other organisations outside the Police Service are widely engaged in submitting RIPA

applications and therefore by confirming or denying that information is held 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 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 a terrorist group(s) to take steps to avoid detection, and as such, confirmation or denial would be damaging to National Security and 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 Confirming Or Denying – S30

Confirming or denying that information exists relevant to this request would lead to a better informed public improving their knowledge and understanding of how the Police Service adhere to the Regulation of Investigatory Powers Act 2000 for specific cases and the acquisition and disclosure of communications data under Part 1 Chapter 2 of RIPA generally.

Factors Against Confirming Or Denying – S30

By its very nature, information held relating to covert policing and tactics is sensitive in nature. Under FOI there is a requirement to comply with Section 1(1)(a) and confirm what information is held. In some cases it is that confirmation, or denial, which could disclose facts harmful to covert policing and in such cases the PSNI takes advantage of its ability under FOI legislation, to, where appropriate, neither confirm or 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. To do so would hinder the prevention or detection of crime.

Confirmation or denial that information is held would prejudice how investigations are carried out in the future by revealing covert investigative activity. This would hinder the prevention and detection of crime and affect the PSNI's law enforcement capabilities and would also undermine the partnership approach to investigations.

Factors Favouring Confirming Or Denying – S31

By confirming or denying that information relevant to the request exists, would lead to better public awareness into the intricacies of RIPA legislation and applications submitted under Part 1 Chapter 2 of RIPA. This may lead to more information (intelligence) being submitted from the public which may culminate in a reduction of crime.

Factors Against Confirming Or Denying – S31

By confirming or denying that information exists would compromise the effective delivery of operational law enforcement. Tactics could be compromised which could hinder the prevention and detection of crime. More crime could be committed and individuals placed at risk.

Balancing Test

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 could undermine National Security, compromise law enforcement or hamper investigations. Whilst there is a public interest in the transparency of policing operations, and in this case providing assurance that the police service is appropriately and effectively engaging with the threat posed by the criminal fraternity, there is a very strong public interest in safeguarding both national security and the integrity of police investigations and operations in this area.

As much as there is public interest in knowing that policing activity, particularly applications under RIPA legislation, is appropriate and balanced in matters of national security, this will only be overridden in exceptional circumstances.

In this case there is also no requirement to satisfy any public concern over the legality of police operations and the tactics we may or may not use. The force is already held to account by independent bodies such as The Office of the Surveillance Commissioner and The Interception of Communications Commissioners Office. These inspections assess each constabulary's compliance with the legislation and a full report is submitted to the Prime Minister and Scottish Ministers containing statistical information. Our accountability is therefore not enhanced by confirming or denying that information pertinent to this request is held.

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.