



FREEDOM OF INFORMATION REQUEST



Request Number: F-2014-01524

Keyword: Organisational Information/Governance

Subject: Procedure For The Recruitment Of Informants/CHIS

Request and Answer:

Question 1

What is the current PSNI procedure for the recruitment of informants/CHIS?

Question 2

Does a procedure/code of practice document outlining same exist?

Question 3

A copy of the document referred to at point number 2.

Question 4

What other considerations are given by the PSNI when carrying out the above procedure?

Question 5

Is there a specific authority requirement within the PSNI hierarchy for authorising same?

Question 6

What is the legal authority to which the PSNI refer to when carrying out this procedure?

Question 7

A copy of any internal emails/notifications/newsletters outlining the procedure for PSNI officers

Answer

I am writing to confirm that the Police Service of Northern Ireland has now completed its search for the information.

I have today decided to:

- disclose information in response to question 5 and 6 in full; and
- fully exempt information in response to questions 1- 4 and 7 pursuant to the provisions of Sections 24, 31, 38 and 44 of the Act.

Answer 1- 4 and 7

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 24(1) – National Security
Section 31(a)(b) – Law Enforcement
Section 38(1)(b) – Health and Safety
Section 44(1)(a) – Information covered by Prohibitions on Disclosure

Sections 24, 31 and 38 are prejudice based qualified exemptions which means that the legislators have identified that the harm in disclosure as well as the public interest considerations need to be evidenced and articulated to the applicant.

Section 44 (1)(a) is a class-based absolute exemption and there is no requirement to consider the harm or public interest test in this area. It is exempt information where disclosure is prohibited by or under any enactment, including section 6 of the Human Rights Act 1998, which incorporates Article 2 of The European Convention of Human Rights into domestic law.

Harm for Sections 24, 31 and 38

The essence of the work undertaken by the PSNI is to protect both individuals and society as a whole. The requested information held regarding procedure/code of practice in relation to Covert Human Intelligence Sources (CHIS) relates directly to law enforcement, health and safety and national security. It contains detail about operational methodology, methods of law enforcement and intelligence assessment. PSNI officers could be put at risk by the release of such detail and PSNI's ability to enforce the law within an Article 2 framework could be hindered i.e. maximising risk to officers. Release of the requested information would also have an adverse impact on the ability of the PSNI to protect the community, who are at risk from the current terrorist threat.

Public Interest Test

Factors favouring disclosure S24

The release of the requested information could provide a better understanding of how the PSNI use CHIS in relation to national security and could enable the public to make more informed judgements on this important area.

Factors favouring non-disclosure S24

Releasing the information could impact on national security at a time when the threat level from terrorism is set as SEVERE as well as increasing the risk of harm to the public as already outlined in the Harm above. Disclosure would reveal important information on methodology in the use of CHIS which may aid those involved in terrorism to adopt methods that may reduce the amount and quality of information/intelligence the PSNI receives. Divulging methodology used by the PSNI and others in protecting National Security would therefore reduce the ability of the PSNI to effectively protect the safety and well being of the people it serves.

Factors favouring disclosure S31

Disclosure could promote public trust in providing transparency, and demonstrate openness and accountability. This could also satisfy the public that public funds were being used effectively and appropriately particularly in relation to the detection of crime.

Factors favouring non-disclosure S31

The Police Service has a duty to deliver effective law enforcement ensuring the prevention and detection of crime and that the apprehension or prosecution of offenders of justice is carried out appropriately. Release of the requested information would compromise effective law enforcement issues by revealing methodology with particular reference to the use of CHIS. Those intent on terrorist and criminal activity would be able to use the information to avoid detection.

Factors favouring disclosure S38

The public are entitled to know what areas of criminal activity the police service allocate public funds to, therefore by disclosing this information it would lead to better informed public awareness and debate. Disclosure of the information would also assist communities to be more aware of the level of protection afforded to them.

Factors favouring non-disclosure S38

Public safety is of paramount importance to the PSNI and must always be considered when releasing information into the public domain. The PSNI would not wish to endanger the health and safety of any individual by causing them distress or anxiety and has a duty of care to the community we serve. Releasing any information which could jeopardise the safety of an individual would result in a loss of confidence in the way information is used.

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 information if to do so would place the safety of an individual at risk or undermine national security. Therefore, although there is public interest in knowing that policing activity is appropriate and balanced when dealing with CHIS there is a greater public interest in protecting the security of the country and safeguarding the lives of its citizens.

The public have an interest in the transparency of policing operations and knowing that the police service is appropriately and effectively engaging with the threat from criminals. However, there is also a very strong public interest in safeguarding both national security and the integrity of police investigations and operations in this highly sensitive area. Operational procedures, methodology and tactics must be protected by the correct application of exemptions. This is because the release of this type of information would rarely be in the public interest and may reduce the PSNI's capability to perform its overall functions.

It is therefore our opinion that in this case and for the reasons outlined above the information requested should not be released.

Question 5

Is there a specific authority requirement within the PSNI hierarchy for authorising same?

Answer

The Home Office Code of Practice for CHIS. Please see link.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97958/code-practice-human-intel.pdf

Question 6

What is the legal authority to which the PSNI refer to when carrying out this procedure?

Answer

The legal authority for the recruitment of CHIS is contained in the Regulation of Investigatory Powers Act 2000 (RIPA).

In addition the PSNI can neither confirm nor deny that it holds any other information relevant to your request by virtue of the exemptions below:

Section 23(5) – Information relating to security bodies listed at Section 23(3)

Section 24(2) – National Security

Section 30(3) – Investigations

Section 23 is an absolute exemption and there is no requirement to conduct a public interest test or to show the harm in release.

Section 24 is a qualified and prejudice-based exemption which means that the PSNI is required to evidence the harm and conduct a public interest test.

Section 30 is a qualified and class-based exemption and the PSNI is required to carry out a public interest test.

The Harm and Public Interest Tests are detailed below.

Harm

Under the Freedom of Information Act (2000) any information released under FOI is released into the public domain, not just to the individual requesting the information. Whilst there is a public interest in the transparency of policing operations, there is a very strong public interest in safeguarding any information in relation to methodology and recruitment of CHIS as well as ensuring investigations are not compromised.

Additionally a public authority is exempt from the duty to communicate information where that information has, at any time been held for the purposes of any investigation, which the public authority has a duty to conduct.

Revealing the methodology would enable criminals to use this knowledge to adversely affect the recruitment of CHIS and as has already been shown above this would lead to a reduction in both the quality and amount of information PSNI would receive. This would have a negative impact on investigations both present and future and could also increase the danger to individuals. Policing operations, which could have been successful, will be compromised and any individual could potentially be affected and made a victim

As has been addressed above, the release of this material would seriously jeopardise the prevention and detection of crime for the Police Service as a whole.

Public Interest Test

Factors favouring NCND for S24

National Security is an important issue to the public and confirming or denying what other information may or may not be held would reassure the public that the PSNI is effectively engaging with its role to ensure National Security and protect the people it serves.

Confirming what other information is or is not held would also lead to a better informed public debate.

Factors against NCND for S24

Confirming or denying that any other information relevant to the request is held would adversely affect the service's ability to undertake its National Security role. Any other information, whether held or not, would inform those intent on criminal/terrorist activity of the strength and any potential weakness of the PSNI in this important area of Covert Human Intelligence Sources.

Factors favouring NCND for S30

Disclosure could promote public trust in providing transparency, demonstrating openness and

accountability. It could allow the public to be satisfied that the investigation has been conducted effectively and efficiently. Disclosure would also show that public funds were being used effectively and appropriately.

Factors against NCND for S30

Information released into the public domain could undermine current investigations. It would therefore not be in the public interest to release information that may still be of assistance to the PSNI in relation to any unresolved investigations. Offenders could be alerted by the release of information and thus jeopardise investigations.

Decision

PSNI is entrusted with a considerable amount of confidential information and it has an important role in countering the many threats against society.

Although there may be a public interest in confirming or denying what information is held there is also a high public interest in ensuring that law enforcement is not compromised and that individuals are not put at risk through the release of information, whether or not it is held. The PSNI will not confirm or deny that it holds any other information if to do so would adversely affect National Security, increase the risk of harm to the public, prevent the detection of crime or the apprehension of offenders and adversely impact on the administration of justice.

To the extent that section 24(2) applies, it has been determined that in all the circumstances of the case the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether or not the information is held.

Therefore the case for confirming or denying that any other information exists relevant to this request is not made out.

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.psnj.police.uk

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