



FREEDOM OF INFORMATION REQUEST



Request Number: F-2018-02341

Keyword: Complaints/Discipline

Subject: Use Of Covert Human Intelligence Sources

Request and Answer:

Your request for information has now been considered. In respect of Section 1(1)(a) of the Act I can confirm that the Police Service of Northern Ireland does hold some information to which your request relates. Information in relation to Request 1, 2 & 3 is being provided. We further consider the information you seek in Request 4 is exempt by virtue of section 30(2) of FOIA and have detailed our rationale as to why this exemption applies. We have also provided you with links to guidance issued by the Information Commissioner's Office which we have followed in responding to your request.

Request 1

I am writing in regards to PSNI's use of Covert Human Intelligence Sources (AKA touts/informers). Please state the amount of money paid to covert human intelligence sources (CHIS)/informants in the last year (2017/18).

Answer

2017/2018 - £287,290

Request 2

Provide comparison figures for each of the last five years.

Answer

2012/2013 - £422,000
2013/2014 - £466,332
2014/2015 - £375,730
2015/2016 - £297,158
2016/2017 - £271,387

Request 3

Provide comparison figures for 2007/08

Answer

£194,677

Request 4

During the last year; please state the number of CHIS/informants on the PSNI payroll. Please state the amount paid to the highest CHIS/informant.

Answer

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)(a)(i)(b) – Investigations and Proceedings Conducted By Public Authority

The full text of exemptions can be found at www.legislation.gov.uk and further guidance on how they operate can be located on the Information Commissioners Office website www.ico.org.uk

Section 30 is a class based qualified exemption which means there is no requirement to articulate the harm that would be caused in releasing the requested information, however, the public interest must be considered to ensure that withholding the information is the appropriate response.

Public Interest Test

Section 30 - Factors Favouring Release

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. Disclosure would enhance the public's knowledge about how information relating to informants is used by PSNI 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. Disclosure would also assist in stopping any incorrect rumours or falsehoods relating to how the police store and manage how informants assist the police.

Section 30 - Factors Against Release

Disclosure of the information requested could identify informant activity within a force area. 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 force'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 is based very much on relationships built on trust and the expectation of complete confidentiality. PSNI would never disclose information which would compromise our tactics.

It is therefore our opinion that the balance lies in favour of non-disclosure of the information.

Partial Neither Confirm Nor Deny (NCND)

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

Section 23(5) - Information supplied by, or concerning, certain Security Bodies

Section 24 (2) National Security – the duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1) (a) is required for the purpose of safeguarding national security.

Section 30(3) - Investigations – the duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2)

Section 23 is a class based absolute exemption and there is no requirement to consider the public interest in this case.

Section 24 is a prejudice based qualified exemption and there is a requirement to consider the public interest in this case.

Section 30(3) is a class based and qualified exemption and there is a requirement to consider the public interest to ensure neither confirming nor denying any other information is held, is appropriate.

'Neither Confirm nor Deny' (NCND)

There may be occasions when complying with the duty to confirm or deny under section 1(1) (a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the Act allows a public authority to respond by refusing to confirm or deny whether it holds the requested information.

The decision to issue a 'neither confirm nor deny' response is not affected by whether we do or do not hold the information but relates to the consequences of confirming or denying the information is held. The starting point and main focus in most cases will be theoretical considerations about the consequences of confirming or denying that a particular type of information is held. The decision to neither confirm nor deny is separate from a decision not to disclose information and needs to be taken entirely on its own merits.

PSNI follow the Information Commissioner's Guidance in relation to 'NCND' and you may find it helpful to refer to this at the following link:

https://ico.org.uk/media/for-organisations/documents/1166/when_to_refuse_to_confirm_or_deny_section_1_foia.pdf

Section 1(1) (a) of the Act requires a public authority to confirm whether it holds the information that has been requested.

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

Section 23(5) provides an exemption from this duty. Section 23(5) of the FOIA states that "the duty confirm or deny does not arise if, or to the extent that, compliance with section 1(1) (a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3)."

The police service in its' fight against crime and terrorism may engage at times with the bodies listed at Section 23 of the FOIA and on occasions there may be information provided to police from one of these bodies. As advised above the decision to issue a NCND response is not affected by whether we do or do not hold the information but relates to the consequences of confirming or denying the information is held. The NCND response is used to avoid risks caused by providing inconsistent responses to a series of similar requests where the information may originate from a number of sources and not necessarily a security body.

Harm for Partial NCND

Disclosure of informants 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 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 the requested 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 confirming or denial held - Section 24

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 against confirming or denial - Section 24

Other organisations outside the police service are also widely engaged in rewarding informants 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.

Factors favouring confirming or denial - Section 30

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. Confirming that information exists could promote public trust in 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. To confirm could allow the public to have a better understanding of the effectiveness of the Police Service.

Factors against confirming or denial – Section 30

To confirm or deny whether PSNI hold any information is 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. In some cases it is that confirmation, or not, which could disclose facts harmful to informants. In some cases there mere existence can place individuals in grave danger. The only methodology which will provide the required degree of protection to those individuals is if the force takes advantage of its ability under FOI legislation to, when appropriate, not 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.

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 and compromise law enforcement. 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 posed by terrorist/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.

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.psnipolice.uk

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