



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2018-00269

**Keyword:** Finance

**Subject:** Storm Tec

### Request and Answer:

The Police Service of Northern Ireland (PSNI) is providing an NCND response and will explain this further in the response below.

### Request

Under the FOI Act 2000, I would like to know if the Police Service of Northern Ireland use Belfast-based company, STORM-TEC (also registered with Company House as STORMTEC MARINE LTD), or their subsidiary, POLARIS-STORMTEC, for provision of any items of equipment or any associated services and if so, could you please provide the details of any such business, including items/services provided and costs. The company was incorporated in June 2009, so I would request that any dealings be identified from that time until this date.

### Answer

In accordance with the Freedom of Information Act 2000 (FOIA) this letter represents a Refusal Notice for this particular request. The PSNI can neither confirm nor deny that it holds the information you have requested.

Section 1 of the 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 the 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 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 FOIA does not apply by virtue of the following exemptions:

Section 38(2) Health and Safety - The duty to confirm or deny does not arise if, or to the extent that, compliance with Section 1(1)(a) would or would be likely to (a) endanger the physical or mental health of any individual, or endanger the safety of any individual.

Section 40(5) (b) (i) Personal Information - The duty to confirm or deny does not apply if to do so would contravene any of the Data Protection Principles.

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).

The release of information under the FOIA is a release into the public domain and not just to the individual requesting the information. Once information is disclosed under the FOIA there is no control or limits as to who or how the information is shared with other individuals, therefore a release under the FOIA is considered a disclosure to the world in general.

To confirm or deny that the PSNI holds the requested information would in fact confirm information which is personal to an individual. This would amount to a release into the public domain of personal information about an individual. The individual would have no expectation that these details would be released into the public domain, therefore their data protection rights would be breached by release.

Section 38 is a prejudice based and qualified exemption, which means there is a requirement to articulate the harm caused by confirming or denying that the information is held as well as carrying out a public interest test.

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

### **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 FOIA 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.

The 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](https://ico.org.uk/media/for-organisations/documents/1166/when_to_refuse_to_confirm_or_deny_section_1_foia.pdf)

### **Harm in Confirming or Denying that the Information is held – Section 38**

The PSNI is currently under severe threat therefore to confirm or deny that a particular company does or does not supply goods or services to police could be used to the advantage of terrorists or criminal organisations. Individuals would be exposed to the risk of harm and PSNI would be failing in providing a duty of care to all members of the public.

### **Factors Favouring Confirming or Denying that the Information is held - Section 38**

The information requested relates directly to the accountability for public funds and where public funds are being spent and there is a public interest in accountability and justification. Confirmation or denial that Storm Tec provides goods or services to the PSNI would increase public knowledge

regarding where public funds are or are not being spent.

### **Factors Against Confirming or Denying that the Information is held - Section 38**

Confirmation or denial of information concerning individual companies providing goods or services to the PSNI, taken on its own, or with other information already available, could place individuals and those around them at risk of harm.

### **Decision**

The protection of life is of paramount importance and the PSNI will not confirm whether information is or is not held if to do so would place any individual at risk of harm.

Whilst there is a public interest in how public funds are being spent, the requirement to ensure the health and safety of individuals must take precedence over financial accountability.

The PSNI will not release any information which could put lives at risk and the public interest must therefore favour neither confirming nor denying that the information is held.

This should not be taken as conclusive evidence that the information you requested does 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](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.