



FREEDOM OF INFORMATION REQUEST



Request Number: F-2018-02402

Keyword: Human Resources

Subject: Equality Assessments

Request and Answer:

In relation to these requests Police Service of Northern Ireland is providing a Neither Confirm Nor Deny Response ('NCND') response by virtue of Section 42(2) of the Freedom of Information Act ('FOIA') and will explain this further in the response below.

You have made the following requests:

Request 1

The following request relates to an employment tribunal decision held on public record under the reference 04119/17IT. It is concerned with a flawed equality assessment. Point 42 of ETDN highlights admitted assessment flaws by PSNI HR staff member in completing equality screening which was assessed as "low risk" for the grouping of age, was in error and if not for the assessment flaws should have been "high risk".

Can I ask for any correspondence or anything at all to show action has taken to negate the "high risk" impact on the Equality grouping of age now that PSNI have acknowledged these flaws in the tribunal.

Request 2

How many candidates were affected by this flawed assessment and the perceived impact on the Equality grouping of age being assessed as low but should have been high?

Request 3

Has communication been put in place to advise these candidates that they were subject to a flawed screening?

Request 4

What other S75 groupings have been affected by these acknowledged assessment flaws by PSNI HR staff member responsible for the assessment.

Request 5

Please advise assessed impact for candidates assessed as having a disability, did the assessment flaws impact on assessment outcome for this grouping? How many candidates were affected by this flawed assessment.

Request 6

Was an equality profiling completed as part of this equality assessment? Can I request a copy of it?

Request 7

Please outline what the acknowledged assessment flaws referred to by Judge Bell were and if SPEB has been

appraised of this flawed assessment?, please provide documentation to evidence same.

Request 8

Can I ask for copy of the flawed assessment referred to by Judge Bell?

Request 9

What training in the completion of equality screenings had been provided to the HR staff who completed the flawed assessment? (Both prior to and following the assessment).

Request 10

Can you provide any documentation evidencing learning from this flawed assessment to ensure that going forward staff aren't discriminated against?

Answer

In accordance with the Act, this letter represents a Refusal Notice for these requests. The Police Service of Northern Ireland can neither confirm nor deny that it holds the information you have requested owing to an exemption designed to protect legal professional privilege. Section 42 (2) of the FOIA states:

(2) The duty to 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) in respect of which such a claim could be maintained in legal proceedings.

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 1(1)(a) FOIA requires PSNI to confirm or deny whether or not it holds information. Section 42(2) removes the duty to confirm or deny, if to do so would involve the disclosure of any legally privileged information. It is subject to a public interest test. In your requests to PSNI, you have asked for information stemming from dictum you have extracted from an Industrial Tribunal judgement (*Case Refs: 4119/17, 4120/17 where the respondent was the Chief Constable of the Police Service of Northern Ireland*). Specifically, you reference Paragraph 42 of this judgement where you state; *'The following request relates to an employment tribunal decision held on public record under the reference 04119/17IT. It is concerned with a flawed equality assessment. Point 42 of ETDN highlights admitted assessment flaws by PSNI HR staff member in completing equality screening which was assessed as "low risk" for the grouping of age, was in error and if not for the assessment flaws should have been "high risk"'*.

Can I ask for any correspondence or anything at all to show action has taken to negate the "high risk" impact on the Equality grouping of age now that PSNI have acknowledged these flaws in the tribunal?

Your further requests also ask for information on or relating to what you set out as a 'flawed assessment'.

The Industrial Tribunal case referenced in your request above is currently subject to appeal therefore PSNI cannot confirm nor deny that it holds information in relation to a 'flawed assessment' which you are seeking. PSNI considers very strongly that Legal Professional Privilege protects the confidentiality of communications between a client and their legal adviser, but what it specifically protects is the substance of those communications. This interpretation is supported by the comment of Mr Justice Mann in *USP Strategies v London General Holdings Ltd* [2004] EWHC 373 (Ch), that *"The proper analysis, consistent with Three Rivers, is to continue to afford privilege to material which evidences or reveals the substance of legal advice"* (paragraph 20). The fact of whether a public authority has sought or received legal advice is not itself legally privileged, unless disclosing that fact would reveal the substance of those communications.

You have asked PSNI for very specific information which whether if held or not by PSNI could be seen as revealing that PSNI has received specific advice either confirming or advising to the contrary that PSNI had carried out a 'flawed assessment' to which your requests refer. This confirmation or denial that information is held would in and of itself disclosure legally privileged information.

There is no requirement to demonstrate any prejudice or adverse effect when applying s42, since it is a class-based exemption: i.e. there is no need to show that any harm would occur from disclosure of the information. However, Section 42 (2) carries a public interest test. PSNI must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure. The general public interest inherent in

this exemption will always be strong due to the importance of the principle being Legal Professional Privilege.

Public Interest Test

Factors Favouring Confirmation or Denial

Public authorities should be accountable for the quality of their decision making process and there is a public interest in confirming or denying in the interests of transparency and informing the public.

Factors Against Confirmation or Denial

Decisions by public authorities should be made in a fully informed legal context. There is a strong public interest in protecting communications if held or not between a lawyer and a client which PSNI would suppose to be confidential and to protect the ability for PSNI to be able to seek out legal advice. Without recourse to such advice a public authority's decision making may be compromised because it will not be fully informed.

Decision

The decision to issue a 'neither confirm nor deny' response is not affected by whether PSNI does or does 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. In this case PSNI considers the balance of the public interest favours maintaining its NCND position. The ability for PSNI to be able to take legal advice in future could be adversely affected by revealing whether we have or have not sought legal advice previously or providing information which could reveal the specific nature of legal advice whether held or not.

However, nothing in this response should 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.psnipolice.uk

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