



FREEDOM OF INFORMATION REQUEST



Request Number: F-2019-00110

Keyword: Operational Policing

Subject: Brexit Planning

Request and Answer:

In relation to your request no F-2019-00110 Police Service of Northern Ireland is providing a Neither Confirm Nor Deny ('NCND') response and will explain why we have done this in the response below. You requested the following information from us:

Request

Please provide all submissions to the Department of Justice on your day one delivery planning exercise for Brexit and no deal scenario plans.

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 a 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 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) state (if that would not otherwise be apparent) why the exemptions apply.

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 – further information on the bodies referred to can be found in the full text of exemptions and a link is provided below.

Section 24(2) - National Security – The duty to confirm or deny does not arise if exemption from section 1(1)(b) is required to protect national security.

Section 27(4) International Relations - The duty to confirm or deny does not arise if, or to the extent that, would or would be likely to, prejudice any of the matters.

Section 31(3) Law Enforcement - 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, prejudice any of the matters mentioned in subsection (1).

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, have either of the effects mentioned in subsection (1).

Section 23 is an absolute and class-based exemption which means that the legislators have determined that there is no requirement to evidence the harm in confirming or denying information is or is not held or to conduct a public interest test.

Sections 24(2), 27(4), 31(3) and 38(2) are prejudice based and qualified exemptions, the harm (prejudice) in confirming or denying should be evidenced, the public interest considered, and both articulated to the applicant.

Evidence of Harm

With the United Kingdom set to leave the European Union in March 2019, there is undoubtedly a period of uncertainty with unknown consequences for the entire country and public at large.

There is a lot of information published on the Gov.UK website to keep the general public up to speed on the ongoing negotiations for Brexit. Some of the publications include information about the Article 50 process; the policy paper on The Future Relationship between the United Kingdom and the European Union, to name but a few, see below link:

<https://www.gov.uk/government/publications/legislating-for-the-withdrawal-agreement-between-the-united-kingdom-and-the-european-union>

There is also a vast amount of media speculation and rumour surrounding potential fall-out should there be a no-deal Brexit. Examples can be found at the below links:

<https://www.independent.co.uk/news/uk/politics/brexit-latest-news-life-saving-drugs-access-catastrophic-effect-healthcare-treatment-expert-ema-mhra-a7810896.html>

<https://www.ft.com/content/883fc90c-46c9-11e7-8d27-59b4dd6296b8>

https://www.bbc.co.uk/news/uk-politics-45237152?intlink_from_url=https://www.bbc.co.uk/news/topics/cwlw3xz0lvvt/brexit&link_location=live-reporting-story

Although there is some information within the public domain about Brexit generally, any release under FOIA is a disclosure to the world, not just to the individual making the request. To confirm or deny whether information is or isn't held in respect of contingency/emergency planning, impact assessments, etc., in preparation for leaving the EU, would reveal which forces have plans in place and which forces do not.

This knowledge would enable criminals and terrorists to geographically map force areas which are 'vulnerable' thereby rendering them easy targets.

Police forces work in conjunction with other agencies and information is freely shared in line with information sharing protocols. Modern day policing is intelligence-led and this is particularly pertinent with regard to both law enforcement and national security. The public expect police forces to use all powers and tactics available to them to prevent and detect crime or disorder and maintain public safety.

The prevention and detection of crime is the foundation upon which policing is built and the threat from terrorism cannot be ignored. It is generally recognised that the international security landscape is increasingly complex and unpredictable. The current UK threat level from international terrorism, based on intelligence, is assessed as 'Severe' which means that a terrorist attack is highly likely, see below link:

<https://www.mi5.gov.uk/threat-levels>

In order to counter criminal and terrorist behaviour, it is vital that the police have the ability to work together, where necessary covertly, to obtain intelligence within current legislative frameworks to assist in the investigative process to ensure the successful arrest and prosecution of offenders who commit or plan to commit acts of terrorism.

To achieve this goal, it is vitally important that information sharing takes place between police officers, members of the public, police forces as well as other security law enforcement bodies within the United Kingdom. Such an action would support counter-terrorism measures in the fight to deprive terrorist networks of their ability to commit crime.

The impact of confirming or denying whether information is or isn't held under FOI which aids in identifying whether or not PSNI have plans in place to deal with any community/civil unrest following a no-deal agreement post Brexit, would provide those intent on committing criminal or terrorist acts with valuable information as to where the police believe civil unrest may and may not occur.

Furthermore, Brexit is currently subject of huge diplomatic negotiations between Governmental Heads of State within the United Kingdom and EU countries. Smooth relations between the UK and other States are reliant on upholding confidence and trust. Should the United Kingdom fail to preserve these qualities, by confirming or denying whether information is or isn't held, which in itself reveals information, the ability to protect and promote UK interests through international relations will be hindered.

The Police Service has a duty of care to all individuals, including members of the public, police officers and police staff members. As the whole of the UK is affected by the impending exit from the European Union, and irrespective of whether forces are or are not currently compiling contingency/emergency plans, the health and safety of the community at large would be compromised by highlighting where there are no plans which would enable offenders to target their offending at vulnerable force areas which could lead to the public receiving injuries and suffering with stress and anxiety.

Public Interest Considerations

Section 24(2) National Security

Factors favouring complying with Section 1(1)(1) confirming that information is held

The public are entitled to know how public funds are spent and resources distributed within an area of policing, particularly in relation to contingency planning. Confirmation or denial of whether contingency plans including for a non-deal Brexit are held by PSNI would improve public debate. In addition, by confirming or denying PSNI would be held to account where large scale policing may be required to combat community unrest and terrorist activity.

Factors against complying with Section 1(1)(a) confirming or denying that information is held

Security measures are put in place to protect the community that we serve. As evidenced within the harm to confirm detail of specific contingency/emergency plans within individual force areas, would highlight to terrorists and individuals intent on carrying out criminal behaviour, planned policing tactics with regard to security and crime prevention techniques. 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 citing 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 effect of terrorists gathering information from various sources would have a huge impact when linked to information gathered from various sources about terrorism. Information disclosed over time will give a more detailed account of the tactical infrastructure of not only a force area but also the country as a whole.

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

Other organisations outside the Police Service are also widely engaged in targeting terrorism, see below links:

<http://www.nationalcrimeagency.gov.uk/news/news-listings/362-nca-unveils-campaign-to-disrupt-the-use-of-airfields-and-light-aircraft-by-organised-criminals>

<https://www.mi5.gov.uk/terrorism>

Therefore by confirming or denying that information exists relevant to contingency/emergency plans assessment for a no deal Brexit would harm the close relationship that exists within such organisations, where trust and confidence in this specific area has been built up.

To confirm or deny whether 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 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 infrastructure of the United Kingdom and increase the risk of harm to the public.

Section 27(4) International Relations

Factors favouring complying with Section 1(1)(a) confirming that information is held

Irrespective of what information may or may not be held, confirming information is held would provide openness and transparency by highlighting that PSNI is proactively engaging with Governmental Departments and other law enforcement agencies both at home and abroad as part of global crime prevention initiatives.

Factors against complying with Section 1(1)(a) confirming or denying that information is held

The importance of building and maintaining goodwill within international relations cannot be underestimated. By confirming or denying that PSNI has received communications from other global law enforcement agencies relating to contingency plans for a no deal Brexit, would undermine the relationship and trust built up between police forces and international agencies.

Section 31(3) Law Enforcement

Factors favouring complying with Section 1(1)(a) confirming that information is held

By confirming or denying whether PSNI have contingency/emergency plans to target community unrest and disorder following a no deal Brexit would lead to better public awareness and reassurance which would assist public debate on this subject.

Factors against complying with Section 1(1)(a) confirming or denying that information is held

The Police Service will not confirm whether or not it is involved in future policing plans following a no deal Brexit. To do so would suggest that PSNI takes its responsibility to protect the safety of individuals seriously. Public safety is of paramount importance and although the Civil Contingencies Act stipulates that the public should be advised of any impending danger, to do so at a time when the planning may or may not be in progress would undermine the tactical options available and compromise the effective delivery of operational law enforcement.

Section 38(2)

Factors favouring complying with Section 1(1)(a) confirming that information is held

Irrespective of what information is or isn't held, confirmation would provide reassurance to the general public that PSNI robustly research and plan policing events in association with Governmental Departments both within the United Kingdom and abroad to safeguard their wellbeing. This awareness could be used to improve any public consultations/debates in relation to leaving the EU following a no deal. Furthermore, the public would be able to take steps to protect themselves.

Factors against complying with Section 1(1)(a) confirming or denying that information is held

Confirming or denying that information exists could lead to the loss of public confidence in PSNI's ability to protect the wellbeing of the community.

Balancing Test

The points above highlight the merits of confirming or denying whether information pertinent to this request exists. The security of Northern Ireland and the UK is of paramount importance and the Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. As part of that policing purpose, various contingency plans for a no deal Brexit may or may not have been compiled.

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. Whilst there is a public interest in the transparency of policing operations and investigations, providing assurance that the Police Service is appropriately and effectively engaging with the threat from criminals, there is a very strong public interest in safeguarding both national security and the integrity of police operations when delivering effective operational law enforcement to ensure the prevention and detection of crime is carried out and the effective apprehension or prosecution of offenders is maintained.

This is also relevant in relation to information sharing among Governmental Departments and other law enforcement agencies both within the UK and abroad. Anything which places that confidence at risk would undermine the trust members of the public, as well as other agencies have in the Police Service.

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.

In addition any disclosure by PSNI that places the security of the UK at risk, no matter how generic, would undermine any trust or confidence individuals have in us. Therefore, at this moment in time, it is our opinion that for these issues the balance test favours neither confirming nor denying that information exists.

No inference can be drawn from this refusal that information is or isn't held.

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

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.