

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2022-00380

Keyword: Crime

Subject: Digital Forensics

Request and Answer:

Your request for information has now been considered. In respect of Section 1(1)(a) of the Act we can confirm that the Police Service of Northern Ireland does hold information to which your request relates and this is being provided to you. However we further consider the information you seek in Request Numbers 1b, 1c, 2b, 2c and 3 which are partially exempt by virtue of Section 31 of FOIA. We have detailed our rationale as to why these exemptions apply.

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

a) How many phones are currently being kept as evidence and are awaiting digital forensic examination by your force?

Answer

There are currently 637 phones awaiting digital forensic examination.

b) Please provide a breakdown of how long the phones have been waiting for examination as follows:

Length time phone has waited for examination	Number of phones
Up to and including 3 months	
More than 3 months, up to and including 6 months	
More than 6 months, up to and including 12 months	
More than 12 months	
Total	

c) What is the longest a phone has been waiting for examination?

Request 2

a) How many phones are currently being kept as evidence in sexual offence cases and are awaiting digital forensic examination by your force?

Please skip question 2 if it will exceed the cost limit.

Answer

There are currently 62 phones being kept as evidence in sexual offence cases and are awaiting digital forensic examination.

b) Please provide a breakdown of how long the phones (specified in 2a) have been waiting for examination as follows:

Length time phone has waited for examination	Number of phones
Up to and including 3 months	
More than 3 months, up to and including 6 months	
More than 6 months, up to and including 12 months	
More than 12 months	
Total	

c) What is the longest a phone (specified in 2a) has been waiting for examination?

Request 3

Does your force have the capability to download material from phones and return them to victims of crimes (such as rape) within 24 hours? If so, please specify what resources you use to do this - e.g. digital forensic kiosks. If not, please explain why not and provide details of any plans you have to introduce this capability. Please skip this question if it will exceed the cost limit.

Answer Request 1b, Request 1c Request 2b, Request 2c and Request 3

PSNI has applied the following exemption.

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, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

Section 31(1)(a)(b) – Law Enforcement – The prevention or detection of crime and the apprehension or prosecution of offenders.

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 31

Section 31 is a prejudice based qualified exemption and there is a requirement to articulate the harm that would be caused in releasing the requested information as well as considering the public interest to ensure that withholding the information is the appropriate response

Harm

Modern day policing is intelligence led and law enforcement depends upon the development of intelligence and the gathering and security of evidence in order to disrupt criminal behaviour and

bring offenders to justice. As criminals adapt and exploit new technology, the police need to respond by overcoming hi-tech barriers in order to meet their responsibilities. In this case the information relates to the extraction of data from digital media devices. Revealing the tactical level at which devices are examined at would identify operational complexity in the examination of some devices and would undermine the processes involved in preventing or detecting crime and the apprehension of prosecution of offenders.

It is widely known that the criminal fraternity analyse FOI requests to gain information on how and where they can adapt their methods to undertake illegal activity with the maximum chance of evading detection and apprehension. Although it is not considered harmful to provide very high level data on the overall number of devices awaiting examination, providing any further breakdown of this information presents potential to undermine outstanding current intelligence and investigations and offers up information to the public at large which could be used by criminals to evade capture, ultimately disrupting the forces ability to prevent and detect crime effectively.

Public Interest Test

Factors Favouring Release - Section 31

Disclosure of the information would be in keeping with the overall need for forces to be open and transparent about their capability to undertake thorough and timely investigations in order to bring offenders to justice. Disclosure would raise the general public's awareness that the police are effectively and appropriately investigating all lines of enquiry and where this is less evident, promote public debate to bring relevant forces to account.

Factors Favouring Retention – Section 31

When the current or future law enforcement role of the force may be compromised by the release of information, the effectivity of the force will be reduced. In this case, for the reasons outlined in the evidenced harm, the effectiveness of current and future strategies when gathering evidence may be compromised.

The personal safety of individuals is of paramount importance to the Police Service and must be considered in response of every release. A disclosure under Freedom of Information is a release to the world and, in this case, if an investigation is compromised by disclosing tactical information relating to the extraction of data from digital devices, the impact of a case failing to reach court would no doubt have an impact on any victim's confidence in the forces ability.

Decision

As always the Freedom of Information Act has a presumption of disclosure, unless when balancing the competing public interest factors the prejudice to the community outweighs the benefits. In this case, there is an argument for disclosure, inasmuch as the public have a right to know that every effort is made to gather all relevant evidence, including extracting data from digital devices, but this must be balanced against the negative impact these disclosures can make.

Law Enforcement is reliant on community engagement, intelligence and evidence gathering and when it is appropriate, information is given to the public. What has been established in this case is the fact that disclosure of the levels used when extracting data would have an adverse effect on the investigative process and on the public prevention or detection of crime and the apprehension or prosecution of offenders. This places the victims of such offending at a greater risk and is not an action the Police Service would be willing to take. These negatives outweigh any tangible community benefit and therefore the balance does not favour disclosure at this time.

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 Corporate Information Branch, 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 Corporate Information Branch, 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 remain dissatisfied with the handling of your request, you may make a complaint to the Information Commissioner's Office, under Section 50 of the Freedom of Information Act, 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', or use the ICO self-service portal available at www.ico.org.uk/make-a-complaint/officialinformation-concerns-report/official-information-concern/

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 their 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.