



## FREEDOM OF INFORMATION REQUEST



**Request Number:** FOI-2021-00900

**Keyword:** Organisational Information/Governance

**Subject:** Incident CC2020082500569

### Request and Answer:

In relation to your request the Police Service of Northern Ireland is providing an NCND response and will explain this further in the response below.

### Request

One of our units was raided by police unit Six 30 Rosneath Gardens BT16 1UN, reference CC2020082500569. As this is Council property the council would like to see the report to see if the tenant has breached the lease agreement?

### 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 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 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 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 40 (5B) (a) (i) – Personal Information - the duty to confirm or deny does not arise if to do so would contravene any of the data protection principles.**

**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).**

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

## **Exemptions explained**

Section 40 is a class-based exemption, therefore it is not necessary to evidence the harm caused by disclosure nor is it necessary to carry out a public interest test in this case.

Sections 31 is a prejudice-based and qualified exemption which means that the public authority must demonstrate the harm in confirming or denying that the information exists and carry out a public interest test.

### **Section 40(5B)(a)(i) - Personal Information**

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

To confirm or deny that PSNI hold or do not hold information would in fact confirm information about an individual. This would amount to a release into the public domain of personal information about an individual and likely to cause distress. The individual would have no expectation that these details would be released into the public domain; therefore PSNI would breach its data protection obligations and be unfair to individuals.

### **Harm for NCND**

Whilst there is a public interest in the transparency of policing, providing assurance that the Police Service is appropriately and effectively engaging with the threat from criminals, this should be countered against the need to protect policing operational activity. To confirm or deny that this information is held would potentially reveal police methodology and impact the law enforcement role of police, limiting PSNI's operational capabilities.

## **Public Interest Test**

### Factors Favouring Confirmation or Denial - Section 31(3)

Confirming or denying whether any information is held would provide an insight into the police service. This would enable the public to have a better understanding of the effectiveness of police investigations. It could promote public trust in providing transparency, demonstrating openness and accountability.

### Factors Against Confirmation or Denial - Section 31(3)

By confirming or denying whether information is held could compromise law enforcement tactics, which would hinder the prevention and detection of crime and impact on police intelligence. The PSNI take their responsibility to obtain and gather firm evidence as part of their investigative process seriously in that it is only ever obtained as per current legislative frameworks to aid the delivery of effective law enforcement and the harm to the law enforcement capability outweighs the need to confirm or deny.

## **Decision**

Confirmation or denial of whether PSNI hold information would amount to a release of information either on this occasion or on other occasions where a similar request is made. A disclosure of information under Freedom of Information is a release to the world in general and not just to the individual requesting the information. Once information is disclosed by FOI there is no control or limits as to who or how the information is shared with other individuals, therefore a release under FOI is considered a disclosure to the world in general.

Whilst there is a public interest in the transparency of policing operations and providing assurance that the police service is operating appropriately and effectively, there is a very strong public interest in safeguarding the integrity of police investigations.

Irrespective of what information is or is not 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. Any disclosure by PSNI, 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 decision favours neither confirming nor denying that the requested information is held.

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 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](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.psnipolice.uk](http://www.psnipolice.uk)

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