

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2022-00978

Keyword: Complaints/Discipline

Subject: PSNI Drug Tests

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 some information to which your request relates and this is being provided to you. We further consider the information you seek in Request 6 and Request 10 is exempt by virtue of Sections 31 and 40 of FOIA and have detailed our rationale as to why these exemptions apply. In relation to Requests 8 and 12, PSNI are issuing a Neither Confirm nor Deny (NCND) response and will explain this further below. 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

What is the PSNI policy surrounding drug testing of police officers currently serving within the PSNI and what date did this policy commence?

Answer

PSNI have had a Substance Misuse testing programme in place since 2008, which includes pre-employment testing, random testing, with cause testing and post incident testing. The current Service Instruction has been in place since 2017 and is publically available at [substance-misuse-191017.pdf](https://www.psnipolice.uk/substance-misuse-191017.pdf) ([psni.police.uk](https://www.psnipolice.uk))

Request 2

How many random drugs tests have been carried out on serving officers since this policy began?

Answer

1460 random drugs tests have been carried out on serving officers since the introduction of the policy.

Request 3

How many intelligence led drugs tests have been carried out on serving officers since this policy began?

Answer

122 intelligence led drugs tests have been carried out on serving officers since the introduction of the policy.

Request 4

How many random drugs tests have been carried out on serving officers in the year to date 31/3/22?

Answer

14 random tests have been carried out in the year to date 31/3/22.

Request 5

How many intelligence led drugs tests have been carried out on serving officers in the year to date 31/3/22?

Answer

4 intelligence led tests have been carried out in the year to date.

Request 6

How many of these tests carried out in the year to date 31/3/22 tested positive for banned substances (i.e. any substance listed under the misuse of drugs act, or any prescribed medication not prescribed to an officer) and what is the percentage random/intelligence led?

Answer

The information request is considered to be low level and identifiable information and therefore is exempt for the reasons articulated below.

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

Section 31 (1) (g) by virtue of Section 31(2)(a)(b)

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

Section 31(2)(a)(b)

(2) The purposes referred to in subsection (1)(g) to (i) are—

(a) the purpose of ascertaining whether any person has failed to comply with the law,

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper.

Section 40(2)(a)(b) by virtue of 40(3)(A)(a) Personal Information – Information constitutes personal data and disclosure would contravene any of the Data Protection principles.

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 40 (2) of the FOIA is an absolute exemption which means there is no requirement on the PSNI to consider whether there is a public interest in disclosure. It is an interface exemption and we must consider whether release of the information would breach the General Data Protection Regulations ('GDPR') or the Data Protection Act 2018 ('DPA'). Personal information in relation to a person, and therefore this information constitutes information which can identify an individual is 'personal data' under the GDPR (Article 4) and DPA (Part 1 s.3).

Under the Freedom of Information Act, PSNI must consider if information can be released into the public domain. We have therefore considered whether the disclosure of this personal data is subject to the exemption at Section 40(2) of the Freedom of Information Act 2000 by virtue of s40 (3)(A)(a).

As information is 'personal data', PSNI considered whether disclosure would contravene any of the six data protection principles contained within the GDPR or DPA.

The six data protection principles are good information handling standards which PSNI must comply with in relation to how it handles personal information, including deciding whether to disclose it or not. In particular, the first principle requires personal data to be processed in a lawful and fair manner. In considering whether it is 'fair' to any individual to release information about them, PSNI considered the likely expectations of those individuals and the nature of the information involved. Individuals must have confidence that their information is treated sensitively and appropriately by PSNI. We consider those individuals would not have any reasonable expectation PSNI would disclose such information of this nature about them. We consider it would be extremely unfair to those individuals and therefore a breach of the first principle of data protection legislation.

This information is therefore exempt under section 40 (2) of the FOIA as it contravenes data protection legislation to release it and the PSNI has made the decision to withhold that information

Section 31 is a qualified prejudice based exemption and evidence of harm and a public interest test must be applied.

Harm

Whilst there is a public interest in the transparency of investigations carried out by PSNI to ensure they are being conducted appropriately, the Police Service also has a duty of care to all individuals involved in any investigation. Disclosure of the information requested which is not in the public domain, would cause prejudice to the interest that the exemption protect. PSNI considers the disclosure of this evidence as harmful to disclose as its release may compromise the effective exercise of police functions in ascertaining whether internal members have failed to comply with the law or are guilty of misconduct by virtue of their improper conduct.

Public Interest Test

Factors favouring disclosure - Section 31

The information requested relates to police officers and there is a strong argument for increased transparency in the way misconduct investigations into police officers are handled. Disclosure of the information may improve public debate into this subject and would provide a better awareness and provide transparency and satisfaction to the public that such investigations are conducted properly and that any misconduct by police is investigated appropriately and in line with current legislation.

Factors Favouring Retention Factors favouring non-disclosure - Section 31

The release of this information could compromise the PSNI's law enforcement functions, in ensuring that PSNI officers comply with the law, and are held accountable for improper conduct.

Decision

While there is a public interest in releasing the information requested, the PSNI must ensure that their functions are not prejudiced or compromised. The PSNI will not release information which will hinder the effectiveness of its ability to conduct thorough investigations as to whether internal members are guilty of misconduct.

On balance the requirement to withhold the information relating to any investigation carried out by PSNI in conjunction with personal information must take precedence. The Police Service is charged with enforcing the law, which is the core function of the Police Service in conjunction with preventing and detecting crime and protecting the communities we serve. There is a public interest in the transparency of the law enforcement role of the Police Service by providing assurance that the PSNI appropriately and effectively investigated any person / officer failing to comply with the law or who falls below those standards of conduct PSNI expects of its officers and staff. There is a strong public interest in safeguarding the integrity of the police service and its approach to law enforcement. The PSNI has a duty to fulfil within its law enforcement role and whilst there is a public interest in the

transparency of policing activities in Policing, the delivery of effective law enforcement is a priority. Furthermore, disclosure would deter individuals from providing information to assist such investigations.

To provide the information requested would undermine the investigative process stipulated undertaken by PSNI within the Conduct Regulations thereby hindering the effective delivery of law enforcement (the purpose of ascertaining whether any person is responsible for any conduct which is improper).

In this case PSNI are satisfied that the exemptions outlined above are applicable to this information.

Request 7

How many random tests were carried out in the last 12 months to 31/3/22 were an officer was on long term sick leave i.e. in excess of 14 days?

Answer

Random tests are not carried out on officers on long term sick leave, as random visits would not be able to select an officer who was on sick leave.

Request 8

How many intelligence led tests were carried out in the last 12 months to 31/3/22 were an officer was on long term sick leave i.e. in excess of 14 days?

Answer

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 31(3) – Law Enforcement – confirmation or denial would likely prejudice the prevention or detection of crime and the apprehension or prosecution of offenders.

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.

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.

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

Section 40 (5B) (a) (i) is an absolute exemption; therefore it is not necessary to carry out a public interest test.

S 40(5B)(a)(i) - Personal Information

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

To confirm or deny that the PSNI hold or do not hold information would in fact confirm information about individuals including the fact such information may or may not be held. Confirming or denying information of the nature you have requested is held or not would be highly unfair to any individuals and would contravene the first data protection principle which states that personal information should be processed in a lawful and fair manner (s. 35 DPA 2018). Such individuals if the information was held or not would have no expectation that details as this would be released into the public domain, therefore PSNI's data protection obligations to those individuals would be contravened. PSNI also followed the Information Commissioner's '*Neither Confirm nor deny in relation to personal data*' guidance in this case to support our rationale. In particular paragraph 16 of this guidance states:

"There may be circumstances, for example requests for information about criminal investigations or disciplinary records, in which simply to confirm whether or not a public authority holds that personal data about an individual can in itself reveal something about that individual. To either confirm or deny that the information is held could indicate that a person is or is not the subject of a criminal investigation or a disciplinary process. If to do so would contravene data protection principles, for example because it would be unfair, then the public authority is not obliged to confirm or deny that it holds the information." (available at www.ico.org.uk)

Section 31 is a qualified class based exemption and a public interest test is required.

Public Interest Test

Factors Favouring Confirmation or Denial – Section 31 (3)

There is a public interest in the transparency of policing and to provide reassurance that the Police Service is/was appropriately and effectively dealing with crime, however there is a strong public interest in safeguarding the integrity of the Police Service to fulfil its core function of law enforcement. Confirming or denying that information exists relevant to this request would lead to a better informed public demonstrating that PSNI evidence gathering appropriately and in line with current legislation in order to assist in criminal investigations.

Factors Against Confirmation or Denial – Section 31 (3)

Whilst there is a public interest in the transparency of policing and providing assurance that the Police Service is/was appropriately and effectively dealing with crime, there is a strong public interest in safeguarding the integrity of police investigations and operations and in maintaining confidence in the Police Service. As this is a specific area and relates to criminal investigations a confirmation or denial would identify police focus and could better inform criminals of investigations. There is a public interest in preserving this evidential material so that the functions of any possible future reviews are not compromised.

Decision

Confirmation or denial of whether the PSNI hold any other information would amount to a release of information either on this occasion or on other occasions where a similar request is made. Irrespective of what information is or is not held, individuals 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.

Whilst there is a public interest of transparency into policing operations and reassurance that the PSNI is effectively and appropriately dealing with crime, there is a strong public interest in safeguarding the integrity of police investigations. As much as there is a public interest in knowing that policing activity is appropriate and effective, this will only be overridden in exceptional circumstances. Release of information linked to any investigation could potentially compromise any possible future reviews and evidence gathering opportunities, therefore evidential material must be preserved.

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 this request 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.

Request 9

How many random drugs tests were carried out in the month March 2022?

Answer

14 random drugs tests were carried out during March 2022.

Request 10

How many intelligence led drugs tests were carried out in the month March 2022?

Answer

The information requested is considered to be low level and identifiable information and therefore is exempt. The rationale has been articulated in our response to request number 6.

Request 11

How many random drugs tests were carried out in the 12 months to 31/3/2022 where an officer had submitted an application to leave the PSNI on the grounds of ill health?

Answer

Random tests are not carried out on officers on long term sick leave, as random visits would not be able to select an officer who was on sick leave.

Request 12

How many intelligence led drugs tests were carried out in the 12 months to 31/3/2022 where an officer had submitted an application to leave the PSNI on the grounds of ill health?

Answer

The Police Service of Northern Ireland can neither confirm nor deny that it holds the information you have requested. The rationale has been articulated in our response to request number 8.

Request 13

How many pieces of intelligence need to be received prior to an intelligence led test being authorised?

Answer

The Detective Superintendent in Anti-Corruption Unit/Service Vetting Unit is responsible for assessing intelligence and authorising a with cause drugs test. All intelligence will be assessed on its own merits.

Request 14

How is this intelligence evaluated?

Answer

Intelligence is first of all evaluated on whether there is any indication that the intelligence received is false and/or malicious which would then negate the requirement for a with cause drugs test.

Request 15

What PSNI rank authorises an intelligence led drug test?

Answer

The Detective Superintendent in Anti-Corruption Unit/Service Vetting Unit is responsible for authorising all with cause drugs tests in the PSNI.

Request 16

Regarding Q12 above, what is the rationale for an intelligence led drug test on an officer on long term sick absence, with no access to a firearm and a pending application for an Ill Health Retirement?

Answer

The rationale for conducting with cause drugs tests for all serving officers is:

- To protect the organisation from the vulnerabilities associated with drugs misuse.
- To reassure the public and the police service that staff are not involved in criminality and/or breaching the code of ethics.
- To build public confidence in the integrity of the police service.

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.psni.police.uk

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