



FREEDOM OF INFORMATION REQUEST



Request Number: F-2022-01584

Keyword: Organisational Information/Governance

Subject: Sex Offenders

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 (PSNI) does hold some information to which you seek for Requests 3 and 4, and this is being provided to you. However, your Request is being responded to with a partial Neither Confirm Nor Deny (NCND) in relation to Requests 1, 2, 5 and 6 by virtue of Sections 31, 38, 40 and 44 of the Freedom of Information Act 2000 (FOIA). PSNI are neither confirming nor denying whether we do or do not hold the information you seek. We will explain how the exemptions we are relying upon in our response below.

Request 1

How many registered sex offenders are located in the Ardvanagh area?

Request 2

How many registered sex offenders are located in Conlig?

Request 5

How many registered sex offenders are located in Ballywater?

Request 6

Can I have the approximate locations of these people, as in their neighbourhoods?

Answers 1, 2, 5 & 6

In accordance with the Act, this letter represents a Refusal Notice for Requests 1, 2, 5 and 6. 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) and (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 38(2) - Health & 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 likely endanger the safety of an individual.

Section 44(2) Prohibitions On Disclosure – The duty to confirm or deny does not arise if the confirmation or denial would have to be given to comply with Section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of Subsection (1)

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 30(3) - Investigations and Proceedings conducted by Public Authorities

We have explained below in our response why these exemptions are engaged and the full text of exemptions can be found at www.legislation.gov.uk. Further guidance on how they operate can be located on the Information Commissioners Office website www.ico.org.uk.

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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 31 and 38 are prejudice-based, qualified exemptions which means the public authority must demonstrate the harm in confirming or denying that the information exists and carry out a Public Interest Test.

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.

Section 44 is an absolute exemption which means there is no requirement on PSNI to consider

whether there is a public interest in disclosure.

Exemptions Explained

Section 40 (5)(a) and 40(5)(b)(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, as this information relates to a specific geographical location. This would amount to a release into the public domain and may identify personal information about an individual and would be 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.

Section 44 – Prohibitions on Disclosure

The Freedom of Information Act does not override other laws that prevent the disclosure of information, referred to as 'statutory bars', and section 44 of the FOIA makes it clear that information is considered to be exempt from disclosure if as stated in Section 44(1):

“(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any obligation, or
- (c) would constitute or be punishable as a contempt of court.”

Section 44 creates an absolute exemption so as to ensure that where information is subject to some prohibition on disclosure it will be exempt under the Freedom of Information Act. In this case PSNI consider that the information you have requested is exempt under section 44 of the Freedom of Information Act by virtue of the Public Protection Arrangements in Northern Ireland (PPANI).

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 vulnerable areas, and ongoing Policing operational activity. To confirm or deny that this information is held may endanger the safety of residents living in this area. If PSNI confirm that information is held and an individual who lives in or near this specific area is suspected to be on the sex offenders register then there is a likelihood of reprisals from members of the local community.

Public Interest Test

Factors Favouring Confirmation or Denial – Section 38 (2)

Confirmation or denial of the existence of the information would allow for better informed public awareness and debate and would assist the public in deciding whether they should take steps to protect themselves.

Factors Against Confirmation or Denial – Section 38 (2)

Confirmation or denial of this information would create a significant risk to residents in the area who may be suspected of being sex offenders. Potentially there is a likelihood of reprisals/attacks against those suspected of being on the sex offenders register.

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 the police. It would greatly assist in the quality and accuracy of public debate, which could otherwise be

steeped in rumour and speculation. Where public funds are being spent, there is a public interest in accountability and justifying the use of public money.

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 resources which may need to be increased to reassure the public and protect the surrounding community. This would result in more risk to the public and consequently require the use of more police resources. Vulnerable areas could be identified by disclosure leading to more criminal activity placing the public in harm's way.

Decision

Confirmation or denial of whether the PSNI hold this information would amount to a release of information whether on this occasion or on other occasions where a similar request is made for details of registered sex offenders residing in a certain area. Whilst the PSNI would always wish to be transparent and accountable, no release under FOI should be made where an individual's data protection rights would be breached. Not only would this be a breach of Data Protection legislation by the PSNI, but it would also leave the PSNI open to action against it by any individuals concerned.

In addition, the PSNI will not confirm or deny the existence of any information if this would be likely to endanger the physical or mental health of any individual or the safety of any individual. The Public Interest therefore must favour neither confirming nor denying that the information is held.

However, none of this should be taken as conclusive evidence that any information relating to registered sex offenders who live in or near this area exists or does not exist.

Request 3

How many registered sex offenders are located in Bangor?

Answer

46 registered sex offenders are located in Bangor

Request 4

How many registered sex offenders are located in Newtownards?

Answer

16 registered sex offenders are located in Newtownards

Please note: The information provided above in response to Requests 3 & 4 is only valid for this current request as the information is dynamic and will change as arrests are made or new cases come to light.

Request 7

Can you tell me if one of my neighbours was a sex offender?

Answer 7

For information, PSNI can advise that under Section 8 (1)(c) of FOIA, Request 7 does not constitute a valid request as it is not adequately describing information sought:

"Information is defined in section 84 of the Act as 'information recorded in any form'. The Act therefore only extends to requests for recorded information. It does not require public authorities to answer questions generally; only if they already hold the answers in recorded form. The Act does not extend to requests for information about policies or their implementation, or the merits or demerits of any proposal or action - unless, of course, the answer to any such request is already held in recorded form." (Day vs ICO & DWP – EA/2006/0069 Final Decision)

As such, the information to which you seek access in relation to Request 3 is not deemed to be seeking recorded information. Subsequently it is not considered to be a valid request under Section 8 of the FOIA. Please note that public authorities are not required to comply with requests that do not meet the requirements set out in Section 8.

However, for assistance, there is a process under the Public Protection arrangements Child Protection Disclosure scheme where disclosure can be made if an application is submitted and it is deemed necessary.

Information can be found at www.psnipolice.uk/advice_information/child-protection/child-protection-disclosure-arrangements/

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.