



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2022-01641

**Keyword:** Organisational Information/Governance

**Subject:** Contractual Agreements

### Request and Answer:

In relation to your Request the Police Service of Northern Ireland (PSNI) is providing a Neither Confirm Nor Deny (NCND) response by virtue of Section 24, 31 and 40 of the Freedom of Information Act 2000 (FOIA) and are neither confirming nor denying whether we do or do not hold the information you seek. We will explain how the exemption we are relying upon in our response below.

### Request 1

Do you have any current or past agreement(s)/contract(s) with the following companies: AREA S.P.A. (VAT IT03320220126) and AREA SYSTEMS UK LIMITED (company number 08525223)? If yes please provide contracts of each of those.

### Request 2

Please provide any communications (in particular emails and slides/presentations) between the aforementioned companies and your police in the period between 1 January 2019 to 1 January 2022.

### Answers

In accordance with the Act, this response 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 24(2) – National Security:** The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

**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 40(5) (B) (a) (i) - Personal Information:** The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies - (a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) (i) would (apart from this Act) contravene any of the data protection principles. (i) would (apart from this Act) contravene any of the data protection principles

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).

Section 40 is a class based absolute exemption, and there is no requirement to evidence harm or consider the public interest test.

Section 24 and Section 31 are qualified prejudice based exemptions, and evidence of harm and a public interest test must be conducted.

#### **‘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)

#### **Harm**

Disclosure under FOIA is a release to the public at large. Whilst not questioning the motives of the applicant, confirming or denying that information is held regarding business with Area S.P.A or Area Systems UK Limited, would show criminals the capacity, tactical abilities and capabilities of the force, allowing them to conduct their criminality and avoid detection. Confirming or denying any information is held relevant to this request, would lead to an increase of harm to investigations and compromise law enforcement. This would be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public.

The threat from terrorism cannot be ignored. It is generally recognised that the international security landscape is increasingly complex and unpredictable. Since 2006, the UK Government has published the threat level based upon current intelligence, and that threat is currently judged as “[SUBSTANTIAL](#)”, meaning that an attack on the UK is likely. It is well established that police forces

use tactics and technology to gain intelligence in order to counteract criminal behaviour, and it has been previously documented in the media that many terrorist incidents have been thwarted due to intelligence gained by these means.

Confirming or denying that business has been conducted with either of the named companies would limit operational capabilities as criminals/terrorists would gain a greater understanding of the police forces' methods and techniques, enabling them to take steps to counter them. It may also suggest the limitations of police capabilities in this area, which may further encourage criminal/terrorist activity by exposing potential vulnerabilities. This detrimental effect is increased if the request is made to several different law enforcement bodies. In addition to the local criminal fraternity now being better informed, those intent on organised crime throughout the UK will be able to 'map' where the use of certain tactics are or are not deployed. This can be useful information to those committing crimes. It would have the likelihood of identifying location-specific operations which would ultimately compromise police tactics, operations and future prosecutions as criminals could counteract the measures used against them.

Any information identifying the focus of policing activity could be used to the advantage of terrorists or criminal organisations. Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both national security and law enforcement.

## **Public Interest Test**

### Factors favouring Confirming or Denying for Section 24

The information, if held, only relates to national security and confirming or denying whether it is held would not actually harm it. The public are entitled to know what public funds are spent on and what security measures are in place, and by confirming or denying if business is conducted with either of the companies named would lead to a better informed public.

### Factors against Confirming or Denying for Section 24

By confirming or denying whether any information is held would render Security measures less effective. This would lead to the compromise of ongoing or future operations to protect the security or infra-structure of the UK and increase the risk of harm to the public.

### Factors favouring Neither Confirming or Denying for Section 31

Confirming or denying whether business is conducted with either of the named companies would provide an insight into the Police Service. This would enable the public to have a better understanding of the effectiveness of the police and about how the police gather intelligence. 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.

It is well known that the police use hi-tech specialist equipment and confirming or denying whether any information is held would ensure transparency and accountability and enable the public to see what tactics are deployed by the Police Service to detect crime.

### Factors against Confirming or Denying for Section 31

Confirming or denying that any information is held regarding business with either of the named companies would have the effect of compromising law enforcement tactics and would also hinder any future investigations. In addition, confirming or denying methods used to gather intelligence for an investigation would prejudice that investigation and any possible future proceedings.

It has been recorded that FOIA releases are monitored by criminals and terrorists and so to confirm or deny information is held concerning specialist covert tactics would lead to law enforcement being undermined. The Police Service is reliant upon all manner of techniques during operations and the public release of any modus operandi employed, if held, would prejudice the ability of the Police

Service to conduct similar investigations.

By confirming or denying that a business interest exists would hinder the prevention or detection of crime. The Police Service would not wish to reveal what tactics may or may not have been used to gain intelligence as this would clearly undermine the law enforcement and investigative process. This would impact on police resources and more crime and terrorist incidents would be committed, placing individuals at risk. It can be argued that there are significant risks associated with providing information, if held, in relation to any aspect of investigations or of any nation's security arrangements so confirming or denying that information is held, may reveal the relative vulnerability of what we may be trying to protect.

### **Balance Test**

The security of the country is of paramount importance and PSNI will not divulge whether any information is or is not held regarding business with either of these companies, if to do so would place the safety of an individual at risk, undermine National Security or compromise law enforcement.

Whilst there is a public interest in the transparency of policing operations and providing assurance that the PSNI are appropriately and effectively engaging with the threat posed by various groups or individuals, there is a very strong public interest in safeguarding the integrity of police investigations and all areas of operations carried out by police forces throughout the UK.

As much as there is public interest in knowing that policing activity is appropriate and balanced this will only be overridden in exceptional circumstances. The use of technology can be a sensitive issue that would reveal police tactics and therefore it is our opinion that for these issues the balancing test for confirming or denying whether any information is held regarding the police and any of the three named companies is not made out.

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

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