

Keeping People Safe



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2021-01725

**Keyword:** Organisational Information/Governance

**Subject:** Covert Human Intelligence Sources in Protest Movements

### Request and Answer:

In relation to request no 1, 3, 4, and 6 the Police Service of Northern Ireland is providing an NCND response and will explain this further in the response below. We do not hold information in relation to request numbers 2 or 5. 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

How much money has the force paid to Covert Human Intelligence Sources (CHIS) providing information about Extinction Rebellion since the start of 2019?

### Request 3

How many Covert Human Intelligence Sources (CHIS) have provided information about Extinction Rebellion since the start of 2019?

### Request 4

How much money has the force paid to Covert Human Intelligence Sources (CHIS) providing information about Black Lives Matter (protests and organisations) since the start of 2020?

### Request 6

How many Covert Human Intelligence Sources (CHIS) have provided information about Black Lives Matter since the start of 2020?

### Answer to Requests 1, 3, 4 and 6

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 23(5) Information supplied by or concerning certain Security Bodies**

**Section 24(2) National Security**

**Section 30(3) Investigations by virtue of s30(2) *It relates to the obtaining of information from confidential sources***

**Section 31(3) Law Enforcement**

**Section 38(2) Health and Safety**

**Section 40(5) Personal Information**

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)

Section 23 is a class based absolute exemption and there is no requirement to consider the public interest. Confirming or denying the existence of whether any other information is held would contravene the constrictions laid out within Section 23 of the Freedom of Information Act 2000 in that this stipulates a generic bar on disclosure of any information applied by, or concerning, certain Security Bodies.

Section 24 is a qualified prejudice based exemption and evidence of harm and a public interest test must be conducted.

Section 30 is a qualified class based exemption and a public interest test must be conducted.

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

Section 38 is a qualified prejudice based exemption and evidence of harm and a public interest test must be conducted

### **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 in complying with s1(1)(a) – to confirm or not whether information is held**

Any release under FOIA is a disclosure to the world, not just to the individual making the request. To confirm or not that information is held pertinent to this request would reveal whether or not PSNI has received intelligence on a specific subject area from Covert Human Intelligence Sources (CHIS) as well as confirming whether or not these CHIS have received monetary gain for their intelligence.

Police forces work in conjunction with other agencies and information is freely shared in line with information sharing protocols. Modern-day policing is intelligence led and this is particularly pertinent with regard to both law enforcement and national security. The public expect police forces to use all powers and tactics available to them to prevent and detect crime or disorder and maintain public safety. In this case the use of CHIS with regard to Extinction Rebellion and Black Lives Matter.

The prevention and detection of crime is the foundation upon which policing is built and the threat from terrorism cannot be ignored. It is generally recognised that the international security landscape is increasingly complex and unpredictable. The current [UK threat level](#) from international terrorism, based on intelligence, is assessed as substantial which means that a terrorist attack is likely.

### **The threat level in Northern Ireland remains at “severe” which means that an attack is highly likely.**

In order to counter criminal and terrorist behaviour, it is vital that the police have the ability to work together, where necessary covertly, to obtain intelligence within current legislative frameworks to assist in the investigative process to ensure the successful arrest and prosecution of offenders who commit or plan to commit acts of terrorism.

To achieve this goal, it is vitally important that information sharing takes place between police officers, members of the public, police forces as well as other law enforcement bodies within the United Kingdom. Such action would support counter-terrorism measures in the fight to deprive terrorist networks of their ability to commit crime.

The impact of providing information under FOI which aids in identifying whether or not PSNI has received intelligence from CHIS relating to Extinction Rebellion and BLM, as well as confirming whether payment was received for the intelligence, would provide those intent on committing criminal or terrorists acts with valuable information as to where the police are targeting their investigations.

In addition, to confirm or deny whether information is held in this case has the potential to undermine the flow of information (intelligence) received from CHIS as well as members of the public into the Police Service relating to these types of offenders thereby undermining National Security and leaving the United Kingdom at risk of more terrorist attack.

## **Public Interest Considerations**

### **Section 24(2) National Security**

#### **Factors favouring complying with s(1)(1)(a) confirming that information is held**

The public are entitled to know how public funds are spent and resources distributed within an area of policing, particularly with regard to how the police investigate terrorist offending. To confirm whether

or not information exists would enable the general public to hold PSNI to account in relation to how they gather intelligence within areas of policing.

Furthermore, confirming or denying may improve public debate and assist the community to take steps to protect themselves.

### **Factors against complying with s1(1)(a) neither confirming nor denying that information is held**

Taking into account the current security climate within the United Kingdom, no information which may aid a terrorist should be disclosed. To what extent this information may aid a terrorist is unknown, but it is clear that it will have an impact on a force's ability to monitor terrorist activity.

The public entrust the Police Service to make appropriate decisions with regard to their safety and protection. The only way of reducing risk is to be cautious with what is placed into the public domain.

The cumulative effect of terrorists gathering information from various sources would build a picture of vulnerabilities within certain scenarios, as in this case which forces have received intelligence from CHIS' relating to this subject area. The more information disclosed over time will provide a more detailed account of the intelligence received into the force relating to these types of protests.

### **Section 30(3) Investigations**

#### **Factors favouring complying with s1(1)(a) confirming information is held**

Confirming or denying whether information exists relevant to this request would lead to a better informed general public by identifying that (force name) robustly gather intelligence received into their force from confidential sources, relating to protests. This fact alone may encourage individuals to provide intelligence in order to assist with investigations and would also promote public trust in providing transparency and demonstrating openness and accountability into where the police are currently focusing their investigations.

The public are also entitled to know how public funds are spent.

#### **Factors against complying with s1(1)(a) neither confirming nor denying that information is held**

Modern-day policing is intelligence led. To confirm or not whether PSNI has received intelligence from a confidential source (CHIS) relating to Extinction Rebellion/BLM could hinder the prevention and detection of crime and undermine any ongoing investigations, by restricting the flow of information into the force.

### **Section 31(3) Law Enforcement**

#### **Factors favouring complying with s1(1)(a) confirming information is held**

The fact that the [Police Service use CHIS](#) to assist in the delivery of effective operational law enforcement is published and that in itself favours disclosure.

#### **Factors against complying with s1(1)(a) neither confirming nor denying that information is held**

PSNI has a duty of care to the community at large and public safety is of paramount importance. If an FOI disclosure revealed information to the world (by citing an exemption or stating no information held) that would assist an offender, such an action would undermine the security of the national infrastructure, by revealing our 'intelligence' thereby highlighting vulnerabilities force by force.

By its very nature, by confirming or denying this information is held would undermine the effective delivery of operational law enforcement. Under FOI there is a requirement to comply with s1(1)(a) and confirm what information is held. In some cases it is that confirmation, or not, which could

disclose facts harmful to members of the public, police officers, other law enforcement agencies and their employees.

## **Section 38 Health and Safety**

### **Factors favouring complying with Section 1(1)(a) confirming information is held**

Confirming whether information is or isn't held would provide reassurance to the general public that PSNI use tactical options with regard to the use of Covert Human Intelligence Sources as a means of acquiring intelligence. This awareness could be used to improve any public consultations; debates in relation to this subject and also allow the public to take steps to protect themselves.

### **Factors against complying with Section 1(1)(a) confirming or denying that information is held**

Confirming or denying that information exists could lead to the loss of public confidence in PSNI ability to protect the wellbeing of individuals recruited as CHIS as well as members of the community at large.

PSNI has a duty of care towards any individual who has been recruited as a CHIS. To reveal information via an FOI request which would place the safety of individuals in grave danger, is not in the public interest.

### **Balance Test**

The points above highlight the merits of confirming, or denying, whether information pertinent to this request exists. The security of the country is of paramount importance and the Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. As part of that policing purpose, various operations with other law enforcement bodies may or may not be ongoing. The Police Service will never divulge whether or not information is held if to do so would place the safety of individual(s) at risk or undermine National Security.

Whilst there is a public interest in appropriately and effectively engaging with the threat from criminals, there is a very strong public interest in safeguarding National Security. As much as there is a public interest in knowing that policing activity is appropriate and balanced in matters of National Security, this will only be overridden in exceptional circumstances.

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 any information that is released. Confirming or denying whether information is or isn't held would definitely reveal policing activity and would assist those intent on causing harm. Any incident that results from confirmation or denial would, by default, affect National Security.

Therefore, at this moment in time, it is our opinion that for these issues the balance test for confirming, nor denying, that information is held with regard to questions 1, 3, 4 and 6 is made out.

No inference can be taken from this refusal that information does or does not exist.

### **Request 2**

How many messages - including phone calls, emails and letters – have your most senior officers received from the Home Secretary mentioning Extinction Rebellion since the start of 2019?

### **Request 5**

How many messages - including phone calls, emails and letters – have your most senior officers received from the Home Secretary regarding Black Lives Matter since the start of 2020?

### **Answer to Request 2 and 5**

We have interpreted your meaning of senior officers to mean Assistant Chief Constable level and above. Reasonable searches have been conducted and we can advise no such communication has been received from the Home Secretary by any senior officers within the PSNI.

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.