

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2021-01777

Keyword: Organisational Information/Governance

Subject: Use Of UAVs

Request and Answer:

Your request for information has now been considered. In respect of Section 1(1)(a) of the Act I 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 that some information you seek in request number 1(a) is exempt by virtue of section 31 of FOIA and have detailed our rationale as to why this exemption applies. 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(a)

I am seeking information into the use of drones (also known as unmanned aerial vehicle or UAV) by the police force and specifically the following:

Drone Make/Manufacturer

Drone Model

Approximate quantity of each make/model of drone

Supplier of drone

Answer

The PSNI has a total of eight unmanned aerial vehicles (UAVs), however in relation to Make/Manufacturer, Model and Supplier PSNI is exempting this and any other requested information and the rationale for this is explained under.

Section 17(1) of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which:

- (a) states that fact,
- (b) specifies the exemption in question and
- (c) states (if not otherwise apparent) why the exemption applies.

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

Section 31 Law Enforcement: Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would likely to prejudice (a) the

prevention or detection of crime, (b) the apprehension or prosecution of offenders

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 31 is prejudice based qualified exemption and there is a requirement to articulate the harm that would be caused in releasing the requested information as well as considering the public interest to ensure that withholding the information is the appropriate response.

Harm

The release of information requested into the Make/Manufacturer, Model and Supplier of UAVs used by PSNI could reveal the capabilities and methodologies of these assets and give important information to terrorists and criminals. The release of this information combined with detailed information readily available on the internet would allow terrorists and other criminals to identify the strengths and weaknesses of the aircraft and they would be able to use information in planning terrorist and criminal acts. This would therefore both directly and indirectly impact on the prevention and detection of crime, the apprehension of terrorists and criminals and increase the fear of crime in the community the police service seeks to serve.

Factors favouring disclosure - Section 31

In times of public expenditure cuts the public have an interest in knowing how public money is being spent in ensuring value for money both at the point of purchase and also in respect of what those resources are to be used for.

Factors favouring non-disclosure - Section 31

Disclosure of the make/type of PSNI UAVs would mean that individuals could research details about them and their capabilities. To disclose the strengths and any possible weaknesses of the equipment would compromise law enforcement tactics which could lead to more crime being committed and individuals being placed at risk. It may also be used by criminals/terrorists in combination with other information they have gathered to try and prejudice law enforcement. .

Decision

Whilst there is a public interest in the transparency of policing operations and providing assurance that the police service is 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 operations in the highly sensitive areas such as extremism, crime prevention, public disorder and terrorism prevention.

As release of information will highlight operational methodology that in turn will provided terrorists / criminals with counter measures the decision must be made not to release the information sought regarding make/manufacturer, model and supplier of UAVs in service with PSNI.

Partial NCND

In addition to the above responses the PSNI can neither confirm nor deny that it holds any other information regarding covert UAV use by PSNI relevant to the information 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: The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)

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).

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 23 is an absolute class-based exemption and there is no requirement to conduct a harm or public interest test.

Sections 24 and 31 are prejudice based qualified exemptions and there is a requirement to articulate the harm that would be caused in confirming or denying that any other information is held as well as carrying out a public interest test.

‘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 1(1) (a) of the Act requires a public authority to confirm whether it holds the information that has been requested. Section 23(5) provides an exemption from this duty. Section 23(5) of the FOIA states that “the duty confirm or deny does not arise if, or to the extent that, compliance with section 1(1) (a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3).”

Evidence of Harm:

As you will be aware, disclosure under FOIA is a release to the public at large. Whilst not questioning the motives of the applicant, confirming or denying that any other information is held regarding the use of drones for covert purposes, would show criminals what the capacity, tactical abilities and capabilities of the force are, allowing them to target specific areas of the UK to conduct their criminal/terrorist activities. Confirming or denying the specific circumstances in which the police service may or may not deploy drones, would lead to an increase of harm to covert 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, and it is well established that police forces use covert tactics and surveillance to gain intelligence in order to counteract criminal behaviour. As such, 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 PSNI hold any other information in relation to covert use of drones, or unmanned aerial devices, 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

Any further information, if held simply 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 whether any other information regarding the covert use of drones is held, would lead to a better informed public.

Factors favouring Neither Confirming Nor Denying for Section 24

By confirming or denying whether any other 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 Confirming or Denying for Section 31

Confirming or denying whether any other information is held regarding the covert use of drones would provide an insight into PSNI. 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.

Some information is already in the public domain regarding the police use of this type of specialist equipment and confirming or denying whether any other 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 other information is held regarding the covert use of drones 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 any other 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 whether any other information is held in relation to the use of drones would hinder the prevention or detection of crime. PSNI 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 any 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 the use of drones 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 PSNI is 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 drones in any covert capacity is 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 use of drones is not made out.

However, this should not be taken as necessarily indicating that any information that would meet any future request 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.

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.