



# FREEDOM OF INFORMATION REQUEST



**Request Number:** FOI-2022-01810

**Keyword:** Complaints/Discipline

**Subject:** PSNI Officers Under Investigation

**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 your request relates and this is being provided to you. In relation to Requests 5 and 6, a 'Neither Confirm Nor Deny' (NCND) response is being provided and we 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**

As per the date of this email (26th July 2022) please confirm:

**Request 1**

Number of officers currently suspended from duty.

**Answer**

There are currently 45 officers suspended from duty.

**Request 2**

The ranks of those suspended and the number of officers suspended at each rank.

**Answer**

The number of suspended officers is broken down by rank as follows:

Rank	No. of Officers
Inspector and Above	1
Sergeant	6
Constable	36
Police Officer – Part time	2

Please note that due to low level data, we have aggregated senior ranks under 'Inspector and Above'.

### Request 3

Please indicate the number of officers who are suspended as a result of being under criminal investigation, including their rank.

### Answer

There are currently 37 officers suspended as a result of being under criminal investigation, broken down by rank as follows:

Rank	No. of Officers
Sergeant	5
Constable	30
Police Officer – Part time	2

### Request 4

Please indicate the number of officers who are repositioned as a result of being under non - criminal, misconduct investigation, indicating the ranks involved and the numbers at each rank. Please distinguish between misconduct and gross misconduct.

### Answer

There are currently 12 officers repositioned as a result of non-criminal misconduct investigations, broken down by rank as follows. All of these investigations are graded as gross misconduct:

Rank	No. of Officers
Inspector and Above	1
Sergeant	2
Constable	9

Please note that due to low level data, we have aggregated senior ranks under 'Inspector and Above'.

### Request 5

Please indicate the number of officers under criminal investigation who have not been suspended or repositioned, indicating rank and the number of officers at each rank.

### Request 6

Please indicate the number of officers under non-criminal misconduct investigation who have not been suspended or repositioned, indicating rank and the number of officers at each rank. Please distinguish between misconduct and gross misconduct.

### Answers

This requested information may or may not include police officers currently under investigation for a criminal offence, who are not aware of it. Therefore, the Police Service of Northern Ireland can neither confirm nor deny that it holds the information you have requested in relation to Requests 5 and 6.

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** - 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)(a)(b)(i) Personal Information** - The duty to confirm or deny does not apply 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](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 31 is a qualified and prejudiced based exemption and this means it is the Public Authority's responsibility to evidence the harm and conduct a public interest test.

Section 40 is an absolute exemption; therefore it is not necessary to carry out a public interest test.

### **Section 31 (3)**

#### **Harm**

In considering whether or not PSNI can confirm (or deny) that this information is held, a harm test has been conducted. PSNI is charged with enforcing the law, detecting and preventing crime, and protecting the communities we serve. Confirming or denying whether we hold the requested information would impact on the effectiveness of police investigations, thereby hindering the prevention and detection of crime. This information could include police officers currently under investigation for a criminal offence, who are unaware that they are.

PSNI considered the following public interest factors:

#### **Public Interest Test**

##### Factors favouring confirmation or denial – Section 31

Confirming or denying that information relevant to these requests exists, may lead to better public awareness of how the PSNI is fulfilling its role of keeping people safe. Confirmation that information is held would also potentially provide transparency with regards to the public having a better understanding of the effectiveness of the Police Service.

##### Factors against confirmation or denial – Section 31

There is an inherently strong public interest in public authorities carrying out investigations to prevent and detect crime, internally and externally. PSNI need to be allowed to investigate crimes effectively and ensure that offenders are brought to justice. Confirmation or denial that any information is held relevant to the request would undermine and prejudice any investigative process and offenders could take evasive action to avoid detection and therefore any future possibility of bringing a prosecution. Where current or future law enforcement capabilities of the force may be compromised by the release of information, it is unlikely to be in the interest of the public.

### **Decision**

The PSNI will not divulge whether any information is or is not held if to do so could undermine or compromise its law enforcement role. To confirm or deny if this information is held may undermine any trust or confidence individuals have in us, therefore, at this moment in time it is our opinion that for these issues the decision favours neither confirming nor denying that information is held.

However, this should not be taken as conclusive evidence that the information you requested exists or does not exist.

### **Section 40 (5)**

Information disclosed under the FOIA is disclosed into the public domain, effectively to the world and not just to one individual. To confirm or deny whether personal information exists in response to your request could publicly reveal information about individuals, thereby breaching the right to protection of their personal information afforded to them under the Data Protection Act 2018. When confirming or denying that information is held would breach an individual's rights under the Data Protection Act legislation, Section 40 (5) becomes an absolute exemption, and there is no requirement to provide evidence of a prejudice occurring, or to conduct a public interest test. To confirm or deny that the PSNI hold or do not hold information would in fact confirm information about an individual including the fact it may or may not be held. This would amount to a release into the public domain of personal information about an individual. The individual would have no expectation that these details would be released into the public domain, therefore their data protection rights would be breached by release.

Individuals may try to use the FOI legislation to circumvent the law and may try to obtain information which they are not entitled to or to try and find out whether the police hold any information about them or others. To ensure this does not occur, police services use a 'neither confirm nor deny' approach and this has to be used consistently to ensure that we can protect this method of response and undermine the rationale for adopting the NCND response in the first place.

**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.**

However, this should not be taken as conclusive evidence that the information you requested exists or does not exist.

### **Request 7**

Please indicate the longest period of suspension currently experienced by a serving officer, including rank.

### **Answer**

The longest current suspension is 5 years and 8 months. However, PSNI will not disclose the rank of the officer, as this may be identifiable information, and as such it is exempt under Section 40 of the FOIA.

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 40(2)(a)(b) by virtue of Section 40(3)(a)(i) – 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](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 (2) of the FOIA is an absolute exemption which means there is no requirement on 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') Third party personal information constitutes '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. The PSNI has a duty to protect the personal data, which includes police officers, and release of this type of data into the public domain may be unfair. Police Officers, must have confidence that their information is treated sensitively and appropriately. We consider it would be extremely unfair to those individuals and therefore it would be a breach of the first principle of data protection legislation as we consider this individual would not have any reasonable expectation that PSNI would disclose information of this nature relating to them. 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 the information.

**The release of information under the Freedom of Information Act is considered 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 information is shared with other individuals, therefore a release under FOI is considered a release to the world.**

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).

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.