

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2021-03065

Keyword: Operational Policing

Subject: Non-Crime Hate Incidents

Request and Answer:

Your request for information below has now been considered. In respect of Section 1(1) (a) of the Freedom of Information Act 2000 (FOIA) we can confirm that the Police Service of Northern Ireland does hold the information you have requested however it is estimated that the cost of complying with your request for information would exceed the "appropriate costs limit" under Section 12(1) of the Freedom of Information Act 2000.

We have explained to you below that when PSNI estimates whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if certain conditions are met. In this case those conditions are met and complying with all of your requests would in our estimation exceed that appropriate limit set out in Regulation. We have explained this further below but also we followed the Information Commissioner's Office guidance '*Requests where the cost of compliance exceeds the appropriate limit*' in relation to this request, which also provides further detail on the application of Section 12 (1) of the FOIA. This guidance is available on the ICO website at the following link:

https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

You requested the following information from PSNI:

Request 1

Could you please provide total numbers of "non-crime hate incidents" recorded in NI since that category was created until the present, breaking them down by (perceived) motivation?

Request 2

For each (perceived) motivation total count, could you please provide numbers for how many of these perceived "non-crime hate incidents" were disclosed on an "enhanced criminal record certificate" which may be requested by employers from the Disclosure & Barring Service?

Request 3

Following today's judgement in the England and Wales Court of Appeal in *Miller v The College of Policing* (that the recording of "non-crime hate incidents" is an unlawful breach of Article 10 ECHR rights and creates a "chilling effect" on public debate), could you please share any relevant PSNI communications about how the PSNI should now address the unlawful practice of recording non-

crime hate incidents? Eg expunging "non-crime hate incidents" from records, updating police training, public statements about the change, etc.

Answer

Section 17(5) of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland, when refusing to provide such information (because the cost of compliance exceeds the appropriate limit) to provide you the applicant with a notice which states that fact.

It is estimated that the cost of complying with your request for information would exceed the "appropriate costs limit" under Section 12(1) of the Freedom of Information Act 2000. Section 12 of FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to either comply with the request in its entirety or confirm or deny whether the requested information is held. The estimate must be reasonable in the circumstances of the case. The 'appropriate limit' is currently £600 for central government and £450 for all other public authorities including PSNI. The relevant Regulations which define the appropriate limit for section 12 purposes are The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004 SI 2004 No 3244. These are known as the 'Fees Regulations' for brevity.

Regulation 4(3) of the Fees Regulations states that a public authority can take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request:

- (i) determining whether the information is held;
- (ii) locating the information, or a document containing it;
- (iii) retrieving the information, or a document containing it; and
- (iv) extracting the information from a document containing it.

Under those regulations PSNI can calculate the time spent on each of these permitted activities at £25 per hour (thus if the activity(s) takes more than 18 hours PSNI will be in excess of the 'appropriate limit').

In relation to part 2 of the request, PSNI can advise that during the last financial year there have been approximately 950 incidents recorded in relation to 'non-crime hate incidents'. To identify if a recorded incident involved a submitted application for an 'enhanced criminal record certificate', would require the manual trawl of each individual incident to establish this. It is estimated that to examine each record at approximately 5-10 minutes would take between 79 and 158 hours, grossly exceeding the legislative timescale of 18 hours.

In accordance with the Freedom of Information Act 2000, this letter should be considered as a Refusal Notice, and the request has therefore been closed.

Advice and Assistance

You may wish to submit a refined request in order that the cost of complying with your request may be facilitated within the 'appropriate limit'. In compliance with Section 16 of the Act, PSNI have considered how your request may be refined to bring it under the appropriate limit.

Unfortunately in relation to part 2 of the request, PSNI are unable to offer any form of refinement.

However to assist, for part 1 of the request, PSNI can provide the total number of hate incidents which did not result in a hate motivated crime (non-crime hate incidents) for each strand, from April 2004 – September 2021 within the legislative timescale of 18 hours (Please note that some strands were first recorded later than 2004).

For part 3 of the request, PSNI can confirm that all police guidance is kept under regular review and is adapted to keep pace with the complex and changing demands of protecting potential victims of Hate Abuse whilst at the same time, protecting the freedoms enshrined with the Human Rights Act.

We will carefully review and reflect upon this recent Court of Appeal judgement and make any changes that are necessary, giving full consideration to the current guidance from the National Police Chiefs Council and College of Policing. At this time no changes have been made to our processes as we are still reviewing the guidance and National practice around the recording of non-crime hate incidents.

Submission of a refined request would be treated as a new request, and considered in accordance with the Freedom of Information Act 2000, including consideration of relevant Part II exemptions.

If you have any queries regarding your request or this 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.psni.police.uk

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