

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2020-00536

Keyword: Operational Policing

Subject: Overtime And Terror Suspects

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. PSNI are providing a NCND response in relation to request number 2 and 3. 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

I am requesting the following under the 2000 FOI Act: The number of hours of overtime worked in the last three years by police officers in your employ?

Answer

The total number of hours' overtime worked by PSNI officers in each of the last three years, is as follows:

1/4/2016 – 31/3/2017	1,787,764.35 hours
1/4/2017 – 31/3/2018	1,592,178.92 hours
1/4/2018 – 31/3/2019	1,457,640.08 hours

Request 2

The number of hours and estimated cost of those hours spent by your officer's surveillancing terror suspects who have been released from prison?

Request 3

The number of the above hours that have been overtime hours?

Answer to 2 and 3

In accordance with the Act, this represents a Refusal Notice for request numbers 2 and 3. 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).

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.

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

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 not that the information is held as well as carrying out a public interest test.

Overall Harm in Confirming or Denying Information is Held

Revealing information regarding officer surveillance of terrorists, would release information regarding the PSNI's activities in the area. To confirm officers in the PSNI have spent time on surveillance of terror suspects released from prison, or equally to state 'No Information Held' would highlight tactical and operational information. It would also help criminals or those with a criminal intent to build up a picture of where police resources are deployed in the fight against terrorism which would compromise ongoing operations and investigations, some of which may be covert. Confirmation or denial of this information would also reveal which areas have recently released terror suspects into the community. This could result in community unrest and public disorder making it necessary for the police to detour resources away from other operations and investigations. The prevention and

detection of crime is the foundation upon which policing is built. The Police Service has a clear responsibility to prevent crime and arrest those responsible for crime or those that plan to commit crime. By confirming whether or not any information is held relevant to this request could directly influence the effective delivery of operational law enforcement.

The threat from terrorism cannot be ignored and it is generally recognised that the international security landscape is increasingly complex and unpredictable. The current NI threat level from I terrorism, based on intelligence, is Severe, which means that a terrorist attack is highly likely, see below link: -

<https://www.mi5.gov.uk/threat-levels>

In order to counter criminal and terrorist behaviour it is vital that the police have the ability to work together, 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 security law enforcement bodies within the United Kingdom and internationally if appropriate. This information sharing supports counter-terrorism measures in the fight to deprive terrorist networks of the ability to commit crime.

To confirm or deny whether information is held relevant to this case would be extremely useful to those involved in criminal activities and also terrorists as it would enable them to identify whether Police techniques are being used in specific areas.

In addition, any disclosure no matter how generic, which may assist a criminal, terrorist or terrorist organisation, will adversely affect public safety.

The Police Service is committed to demonstrating proportionality and accountability regarding surveillance techniques to the appropriate authorities. However, if the Police Service were to either confirm or deny that information exists; other tactics will either be compromised or significantly weakened. If the PSNI denies information is held in one request but then exempts for another, requesters can determine the exempt answer is in fact a technique used in policing. The impact could undermine national security, any on-going investigations and any future investigations, as it would enable targeted individuals/groups to become surveillance aware. This would help subjects avoid detection, and inhibit the prevention and detection of crime.

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 that information is held Section 24 (2)

The public are entitled to know how public funds are spent and how resources are distributed within an area of policing. To confirm whether officers have deployed in surveillance of terrorists released from prison, would also give confidence that resources are being deployed to protect the public. In the current financial climate of cuts and with the call for transparency of public spending this would enable improved public debate and give reassurance to the public.

Factors against confirming or denying that information is held Section 24 (2)

Security measures are put in place to protect the community we serve. As evidenced within the harm to confirm where terrorists are monitored would highlight to terrorists, and individuals intent on carrying out criminal activity, vulnerabilities within forces.

Taking into account the current security climate within the United Kingdom, no information (such as the citing of an exemption which confirms terrorists are monitored within a specific jurisdiction or conversely, stating no information is held), 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.

Irrespective of what information is or isn't held, 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 what is placed into the public domain.

The cumulative effect of terrorists gathering information from various sources would be even more impactful when linked to other information gathered from various sources about terrorism. The more information disclosed over time will give a more detailed account of the tactical infrastructure of not only a force area but also the country as a whole. Any incident that results from such a disclosure would, by default, affect National Security.

To confirm or deny whether the PSNI hold information would allow inferences to be made about the nature and extent of national security related activities which may or may not take place in a given area. This could enable a terrorist group(s) to take steps to avoid detection, and as such, confirmation or denial would be damaging to National Security.

By confirming or denying any policing arrangements of this nature would render national 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 that information is held Section 31 (3)

Confirming that any other information exists relating to terrorists would lead to a better informed public which may encourage individuals to provide intelligence in order to reduce offences.

Factors against confirming or denying that information is held Section 31 (3)

Confirmation or denial that information relating to the monitoring of terrorists is held in this case would suggest that the PSNI takes its responsibility to protect information dismissively and inappropriately.

The 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 that would undermine the security of the national infrastructure, offenders, including terrorist organisations, could use this to their advantage which would compromise public safety and more worryingly encourage offenders to carry out further crimes.

By its very nature, information relating to whether or not terrorists are surveyed within a specific force area undoubtedly undermines the effective delivery of operational law enforcement. Under FOI there is a requirement to comply with Section 1(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.

Decision

The PSNI has a clear responsibility to prevent crime and arrest those responsible for crime or those that plan to commit crime. By confirming whether or not any information is held relevant to request numbers 2 and 3 could directly influence the effective delivery of operational law enforcement, consequently the PSNI is providing a NCND response.

Weakening the mechanisms used to monitor any type of criminal activity, and specifically terrorist activity would place the security of the country at an increased level of danger.

In addition anything that places that confidence at risk, no matter how generic, would undermine any trust or confidence individuals have in the Police Service. Therefore, at this moment in time, it is our opinion that for these issues the balance test 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.

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 were to remain dissatisfied in any way with the handling of the request you may make a complaint, under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office 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. 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 his 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.