



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2020-00963

**Keyword:** Organisational Information/Governance

**Subject:** Coronavirus (Covid 19) Related Offences

### 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 information to which your request relates. The decision has been taken to disclose the following.

#### Request 1

Are you able to let me know how many Covid-19 related arrests your force has processed so far for breaches of the Covid-19 lockdown rules between March 1st and May 11<sup>th</sup>?

#### Answer

There have been two arrests for Covid-19 related offences in the time period specified.

#### Request 2

Please tell me what was the age of the youngest and oldest persons arrested?

#### Answer

The age of youngest person arrested was 28, and the age of the oldest person was 44.

#### Request 3

Please tell me how many COVID-19 related formal complaints have been made against officers?

#### Answer

PSNI conducted searches which failed to locate any records or documents relevant to your request based on the information you have provided.

Complaints against police officers are dealt with by the Police Ombudsman for Northern Ireland (PONI). As of 8<sup>th</sup> June 2020, PSNI has not been provided with the information for PONI to answer Request 3.

Accordingly, I have determined that the Police Service of Northern Ireland does not hold the information to which you seek access.

#### Request 4

Please also confirm how many people, if any, have been detained because they were suspected of being infected.

**Answer**

None. This power only comes into force in the event that a 'Transmission Control Period' is declared, and to date this has not happened in Northern Ireland.

**Request 5**

Please confirm if your police force has used drone surveillance in the policing of Covid-19.

**Answer**

PSNI have not used overtly drones/Small Unmanned Aircraft (SUA) to police the regulations relating to the current Covid-19 situation.

**Partial NCND**

In addition, in regard to any information relating to the covert use of drones/SUA, PSNI neither confirms nor denies that it holds any other information relevant to the request by virtue of the following exemptions:

Section 23(5) – Information supplied by, or concerning, certain security bodies – confirmation or denial would likely prejudice information directly or indirectly supplied by, or relates to, any specified bodies.

Section 24(2) – National Security – confirmation or denial would likely prejudice safeguarding national security.

Section 31(3) – Law Enforcement – confirmation or denial would likely prejudice the prevention or detection of crime and the apprehension or prosecution of offenders.

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.

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.

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.

There will be occasions when police services do not want to confirm information into the public

domain, therefore police services must consistently use 'neither confirm nor deny' in FOI responses to protect occasions where they may hold information in such matters and to place this fact into the public domain would undermine PSNI i.e. an NCND response is used both where:

- (i) there is no recorded information held which falls within the scope of a FOI request.
- (ii) there is recorded information held.

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(5) – Information supplied by, or relating to, bodies dealing with security matters

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 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 by, or relates to, any of the bodies specified in subsection (3)."

The police service in its' fight against crime and terrorism may engage at times with the bodies listed at Section 23 of the FOIA and on occasions there may be information provided to police from one of these bodies. As advised above the decision to issue a NCND 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 NCND response is used to avoid risks caused by providing inconsistent responses to a series of similar requests where the information may originate from a number of sources and not necessarily a security body.

### **Harm for the partial NCND**

As you may 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 this specialist equipment for covert use, 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 SUA, 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. It is generally recognised that the international security landscape is increasingly complex and unpredictable. Since 2006, the UK Government have published the threat level, based upon current intelligence and that threat has remained at the second highest level, 'severe', except for two short periods during August 2006 and June and July 2007, when it was raised to the highest threat, 'critical', and in July 2009, when it was reduced to 'substantial'. Nevertheless, the UK continues to face a sustained threat from violent extremists and terrorists and the current UK threat level is set at 'severe'. In Northern Ireland this threat level remains at SEVERE.

It is well established that police forces use covert tactics and surveillance to gain intelligence in order to counteract criminal behaviour. 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 any other information is held in relation to the covert use of SUA would limit operational capabilities as criminals/terrorists would gain a greater understanding of the police's 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**

### Factors Favouring Confirmation or Denial -Section 24

The 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 SUA is held, would lead to a better-informed public.

### Factors Against Confirmation or Denial -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 Confirmation or Denial -Section 31

Confirming or denying whether any other information is held regarding the covert use of SUA would provide an insight into the police service. 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 Confirmation or Denial - Section 31

Confirming or denying that any other information is held regarding the covert use of SUA 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 covert use of SUA would hinder the prevention or detection of crime. The Police Service 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 other information is held, may reveal the relative vulnerability of what we may be trying to protect.

## **Decision**

The security of the country is of paramount importance and the Police service will not divulge whether any other information is or is not held regarding the covert use of SUA 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 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 much as there is public interest in knowing that policing activity is appropriate and balanced this will only be overridden in exceptional circumstances. The areas of police interest discussed above are sensitive issues that reveal local intelligence and therefore it is our opinion that for these issues the balancing test for confirming or denying whether any other information is held regarding the covert use of SUA, is not made out.

However, this should not be taken as necessarily indicating that any information that would meet your 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](mailto: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](http://www.psni.police.uk)

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