



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2021-01207

**Keyword:** Crime

**Subject:** Staff placed under Investigation re Operation Venetic

### Request and Answer:

In relation to the below requests, the Police Service of Northern Ireland ('PSNI') is providing a Neither Confirm nor Deny (NCND) response. This means we can neither confirm nor deny that we hold the information you have requested. We will explain the exemptions we are relying upon in more detail in our response below.

#### Request 1

I am seeking information about the number of police officers and/or staff [both serving and former] who have been placed under investigation for any alleged criminal offences or misconduct matters arising out of Operation Venetic.

If possible can you please give any details such as the nature of the alleged offence and the time period it was committed.

#### Request 2

Please disclose the number of police officers and/or staff [serving and former] who have been charged with offences arising from his operation and give details.

For the avoidance of doubt I'm seeking information about the NCA's Operation Venetic and any spin-off operation resulting from the Encrochat evidence [I know some forces have allocated different operation names for Venetic, but I am seeking information about anything that is Encrochat-linked]

#### Answer

In accordance with the Act, this letter represents a Refusal Notice for this particular request. 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 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 27(4) – International Relations:** The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a):

(a) would, or would likely to, prejudice any of the matters mentioned in subsection (1) or

(b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a state other than the United Kingdom or from an international organisation or international court.

**Section 30(3) – Investigations and proceedings conducted by public authorities -** confirmation or denial would likely prejudice investigations and proceedings conducted by public authorities.

**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(5B)(a)(i) - Personal Information -** the duty to confirm or deny does not arise 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->

Section 23 is a class based absolute exemption and there is no requirement to consider the public interest in this case. 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, 27 and 31 are qualified exemptions and as such there is a requirement to articulate the harm and conduct a test of the public interest in confirmation or denial.

Section 30 is a class based exemption and consideration must be given as to whether there is a public interest in neither confirming nor denying the information exists is the appropriate response.

Section 40 is a class based absolute exemption and there is no requirement to consider the public interest in this case.

### **Harm – Section 24(2) National Security**

Providing any notice that confirms or denies the existence of specific policing operations would make these security measures less effective. This would lead to the compromise of ongoing or future operations to protect the security or infrastructure of the UK and increase the risk of harm to the public.

### **Public Interest Test**

#### **Factors favouring confirmation or denial – S24**

Providing confirmation or denial as to the extent of operational tactics that might be used by the police service to effectively safeguard matters of national security would improve public confidence in the work of the police and reassure them that the services and equipment available to the police are appropriate, fit for purpose and robust.

#### **Factors against confirmation or denial – S24**

If PSNI were to confirm or deny that such information was or was not held, this could prejudice the Government's ability to maintain national security. It is not in the public interest to disclose the capabilities of the police service and other UK authorities and the techniques and operations that they may or may not use to safeguard the country. This would allow determined individuals the ability to, over time, identify which public authorities hold certain types of national security information and which do not, thereby allowing inferences to be drawn about what authorities or bodies might have an interest in certain matters of national security.

Any response that has the potential to undermine ongoing and future operations to protect the security of the United Kingdom would significantly increase the risk of harm to the community at large. Such actions would obviously not be in the best interest of the public.

### **Harm- Section 27(4) International Relations**

In considering whether or not PSNI can confirm (or deny) that this information is held, a Prejudice Test has been conducted to establish any potential harm.

PSNI has a duty of care to the community at large and public safety is of paramount importance. The effective conduct of international relations depends upon maintaining trust and confidence between overseas government states. Confirming or denying whether any other information is or isn't held relevant to Operation Venetic would destroy that trust and confidence, which in turn would hamper international relations affecting the United Kingdom's ability to protect and promote the country's interests.

## **Public Interest Test**

### Factors favouring confirmation or denial – S27

Irrespective of what other information may or may not be held, confirming any other information is held would provide openness and transparency by highlighting that PSNI is proactively engaging with Governmental Departments and other law enforcement agencies both at home and abroad as part of global crime prevention initiatives.

### Factors against confirmation or denial – S27

The importance of building and maintaining goodwill within international relations cannot be underestimated. By confirming or denying that PSNI holds any other information, would undermine the relationship and trust built up between police services and international agencies.

## **Public Interest Test - Section 30(3) Investigations**

### Factors favouring confirmation or denial – S30

Disclosing additional information about investigations would provide a greater transparency in the investigating process and the actions of a public authority. It is clear that there is a public interest in public authorities operating in as transparent a manner as possible, as this should ensure they operate effectively and efficiently. Confirming further involvement within an investigation could help to ensure that authorities do not overlook issues which they should investigate or that they have good reasons for not investigating.

There is a clear public interest in ensuring that public authorities do not act outside their authority by investigating matters which fall outside their remit. By making certain that public authorities confirm or deny whether any other information is held in relation to investigations, this should provide the necessary safeguards and satisfy the public interest in this matter.

### Factors against confirmation or denial – S30

There is an inherently strong public interest in public authorities carrying out investigations to prevent and detect crime. This ensures that offenders are brought to justice and that the necessary checks and balances are in place to safeguard public funds and resources. To allow the effectiveness of investigations to be reduced, as described in the harm above, is not in the public interest. PSNI need to be allowed to carry out investigations effectively away from public scrutiny until such times as the details need to be made public, otherwise it will be difficult for accurate, thorough and objective investigations to be carried out.

## **Harm- Section 31(3) Law Enforcement**

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 any other information is held would impact on the effectiveness of police investigations, thereby hindering the prevention and detection of crime.

## **Public Interest Test**

### Factors favouring confirmation or denial – S31

This FOIA request relates to the involvement of PSNI in multi-agency, cross-border operations concerning organised criminality, and there is likely to be a public interest into what specific involvement each agency had within such an investigation. Therefore this in itself favours confirming whether the information is held.

### Factors against confirmation or denial – S31

There is an inherently strong public interest in public authorities carrying out investigations to prevent and detect crime. PSNI need to be allowed to investigate crime effectively and ensure that offenders

are brought to justice. To confirm or deny that any other information is held could compromise law enforcement tactics in the area of organised criminality, which would hinder the UK Police service's ability to prevent and detect criminality in this area.

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.

### **Section 40(5) – Personal Information**

Consideration on applying this exemption is subject to whether the disclosure of any other information would lead to identifying individuals and place information pertaining to them into the public domain. This constitutes personal data which would, if released, be in breach of the rights provided by the Data Protection Act 2018 and General Data Protection Regulations; namely the first data protection principle, which states that personal data will be processed *lawfully, fairly and transparently*. It is our view that the request runs counter to the three requirements prescribed by law and that there is no lawful basis to provide this information. This is an absolute exemption and no public interest test is required.

### **Decision**

The security of the country is of paramount importance and the Police service will not divulge whether any information is or is not held if to do so would undermine law enforcement and therefore compromise the work of the Police Service. Whilst there is a public interest in the transparency of policing and any impact to the threat of widespread organised crime, there is a very strong public interest in safeguarding the integrity of law enforcement methods in this very sensitive area.

The strongest reason to confirm or deny whether any other information is held, is that it is recognised that there is a genuine public interest in information relating to any investigations conducted between PSNI and wider UK and International agencies. The strongest reasons against confirmation or denial of any other information being held, is to ensure that policing and security measures are not rendered less effective through disclosure, therefore hindering the effective delivery of operational law enforcement.

Therefore, for these issues the PSNI's decision for confirming or denying whether we hold any further information is not made out.

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.psni.police.uk](http://www.psni.police.uk)

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