

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2021-01323

Keyword: Complaints/Discipline

Subject: Negligent Discharge

Request and Answer:

In relation to request no F-2021-01323 Police Service of Northern Ireland is providing an NCND response and will explain this further in the response below.

Request 1

What sanction did Named Person receive for his ND?

Request 2

Have PONI ever been informed? If so, on what date?

Request 3

Has the CH. Firearms Officer been informed? If so, on what date?

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 31(3) – Law Enforcement – confirmation or denial would likely prejudice the prevention or

detection of crime and the apprehension or prosecution of offenders.

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 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

Section 40 (5B) (a) (i) is an absolute exemption; therefore it is not necessary to carry out a public interest test.

Sections 31 is a prejudice based qualified exemptions and there is a requirement to evidence the prejudice (harm) in disclosure and consider the public interest to ensure neither confirming or denying that information is held is appropriate.

40(5B) (a) (i) - Personal Information

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 individual police officer/s, 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.

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.

Harm

By confirming or denying that the PSNI has Officer(s) under investigation would in itself disclose exempt information. Stating information is held would confirm there is/was an investigation and the opposite if there is no such information.

Any disclosure under FOIA is a disclosure to the world at large, and confirming or denying that Officer(s) are currently under investigation for a gun incident, which may or may not be true, and (should it be true) the police service would prejudice law enforcement.

If the requested information were held by PSNI, confirmation of this fact would reveal that there are Officer(s) under investigation. This would be damaging as it would limit operational capabilities as this could be in relation to covert policing and criminals would gain a greater understanding of the police's methods and techniques, enabling them to take steps to counter them; and provide an indication to any individual who may be undertaking criminal/terrorist activities that the police service may be aware of their presence and are taking counter terrorist measures.

Conversely, if information was not held by the force, and a denial was issued, this would reveal to same individuals that their activities are unlikely to have been detected by the police. It may also suggest (whether correctly or not) the limitations of police capabilities in this area, which may further encourage criminal/terrorist activity by exposing a potential vulnerability. Disclosure of the information could confirm to those involved in criminality or terrorism that they are or have been the subject of such activity, allowing them to gauge the frequency of its use and to take measures to circumvent its use. Any compromise of policing capability would substantially prejudice the ability of forces to police their areas which would lead to a greater risk to the public.

This could have the likelihood of identifying location-specific operations, enabling individuals to become aware of whether their activities have been detected. This in turn could lead to them moving their operations, destroying evidence, or avoiding those areas, ultimately compromising police tactics, operations and future prosecutions.

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 denial for Section 31

Better awareness may reduce crime or lead to more information from the public, and the public would be able to take steps to protect themselves.

Factors against confirming or denial for Section 31

By confirming or denying whether an Officer is under investigation would compromise law enforcement tactics. This would impact on police resources, more crime would then be committed and individuals placed at risk.

Decision

The security of the country is of paramount importance and the police service will not divulge whether information is or is not held if to do so could undermine or compromise law enforcement. Whilst there is a public interest in the transparency of policing and engaging with the threat posed by the criminal fraternity, there is a very strong public interest in safeguarding both the integrity of police investigations and operations.

As much as there is public interest in knowing that policing activity is appropriate and balanced in matters of law enforcement, this will only be overridden in exceptional circumstances.

The PSNI is charged with enforcing the law, preventing and detecting crime and protecting the community we serve. The protection of life is of paramount importance and PSNI will not divulge whether information is or is not held if to do so would place any individual at risk of harm. Irrespective of what information is or is not 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 PSNI will not divulge whether any information is or is not held if to do so could undermine or compromise its law enforcement role. Taking into account the current security climate within the United Kingdom, information which may aid criminal elements should not be disclosed. To what extent information may aid criminals/terrorists is unknown, but it is clear that it would impact on a force's ability to monitor criminal/terrorist activity.

There is also no requirement to satisfy any public concern over the legality of police operations and the tactics we may or may not use. Forces are already held to account by statute, for example the Police and Criminal Evidence Act and the Regulation of Investigatory Powers Act and independent bodies such as Her Majesty's Inspectorate of Constabulary, the N Ireland Police Ombudsman and the Office of the Surveillance Commissioner. Our accountability is therefore not enhanced by confirming or denying whether any information is held.

Therefore it is our opinion that for these issues the decision for confirming or denying whether any information is held regarding this request is not made out. This argument is obviously transferable to all police tactics.

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.psnipolice.uk

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