

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2020-02024

Keyword: Human Resources

Subject: Promoting Staff Data

Request and Answer:

Your request for information has now been considered. In respect of Section 1(1)(a) of the Act we can confirm that the Police Service of Northern Ireland does hold information to which your request relates and this is being provided to you. We further consider that some of the information you seek in Request 1 & 2, is exempt by virtue of Section 31, 36, 40 and 42. This is because a small amount of information you have requested contains personal information of staff and officers who would not have an expectation their information would be released into the public domain. The remaining relates to ongoing matters raised within the minutes and information privy to legal advices. We have set out why we consider these exemptions apply and 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

Can you please provide all minutes of meetings/other data which evidences a collaborative decision making process was undertaken with regards agreeing pass marks for law exams in the 2019 process.

Request 2

Also requesting all minutes of promotion group/board meetings since start 2018.

Answer

SPEB is the governance board where collaborative decisions are made regarding promotion processes and promotion examinations.

In relation to Request 1 & 2, please see documents attached separately to this correspondence. As advised, some information has been deemed exempt from release and the reasons are outlined below, however we are providing to you, the majority of the information held.

Section 17(1) of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which:

- (a) states that fact,
- (b) specifies the exemption in question and

(c) states (if not otherwise apparent) why the exemption applies.

The exemptions, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

Section 40(2)(a)(b) by virtue of Section 40(3)(A)(a) – Personal Information

Section 36(2)(b)(i)(ii) & (c) – Disclosure Prejudicing The Effective Conduct of Public Affairs

Section 42(1) – Legal Professional Privilege

Section 31(1)(a)(b) – Law Enforcement – the prevention or detection of crime and the apprehension or prosecution of offenders.

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.

Section 40 – Personal Information

Section 40 (2) of the FOIA is an absolute exemption which means there is no requirement on the PSNI to consider whether there is a public interest in disclosure. It is an interface exemption and we must consider whether release of the information would breach the General Data Protection Regulations ('GDPR') or the Data Protection Act 2018 ('DPA'). There is information within the minutes which can identify individuals including members of staff. This information is 'personal data' under the GDPR (Article 4) and DPA (Part 1 s.3).

As this information is 'personal data', PSNI considered whether disclosure would contravene any of the six data protection principles contained within the GDPR or DPA.

The six data protection principles are good information handling standards which PSNI must comply with in relation to how it handles personal information, including deciding whether to disclose it or not. In particular, the first principle requires personal data to be processed in a lawful and fair manner. In considering whether it is 'fair' to any individual to release information about them, PSNI considered the likely expectations of those individuals and the nature of the information involved. Those staff members, including those more junior members of staff would not have any reasonable expectation PSNI would disclose such information of this nature about them. We consider it would be extremely unfair to those individuals and therefore a breach of the first principle of data protection legislation. This information is therefore exempt under section 40 (2) of the FOIA as it contravenes data protection legislation to release it.

Section 36 (2) (b) (i) (ii) and(c)

The small amount of information being withheld under this exemption relates to human resource matters which are still live for PSNI. Those matters relate mainly to potential future recruitment processes which are still under discussion and those processes concerning them under development. They will be further discussed, considered and deliberated over. As a result of such evaluation it is likely strategic organisational decisions will be taken on the basis of these ongoing discussions. As these are live issues PSNI require the safe space and candour to discuss and explore options both internally and to take into account any external advices as appropriate. Such consideration would be prejudiced if this material which is key to such an evaluation were to be made available at this time.

These matter(s) are live issues and therefore given the timing of this request the qualified person, in this case the A/ACC Operational Support Department has viewed the material and considers the exemption engaged in that prejudice would occur in relation to the ability of PSNI to continue and effectively engage in deliberation on this subject, both internally and with the relevant stakeholders. As we set out below PSNI do recognise the timing of this request and we fully acknowledge that there will be a time in the future when PSNI have concluded its evaluation and lessons learned and will therefore not require such 'safe space' to be protected. Matters contained within the minutes which are completed and which no longer attract an exemption in the FOIA are being released to you.

Public Interest Test

This exemption is not absolute and when considering whether to apply it in response to a request for information there is a public interest test. The qualified person considered whether the public interest favours withholding or disclosing the information. In this case the qualified person considered the following factors.

Factors Favouring Release – Section 36 (2) (b) (i) (ii)

There is a public interest in making this information available in order to increase transparency in the advice and deliberation undertaken by the PSNI.

Factors Favouring Retention – Section 36 (2) (b) (i) (ii)

(i) There is a public interest in PSNI being able to discuss its position, seek advice and further information and as well explore options as a part of the process of deliberation. Making information available prematurely could affect PSNI's ability to seek and or provide advice and exchange views with its own staff and external stakeholders as part of the process of deliberation. This in turn could impair the quality of PSNI's decision making ability and would not allow for views and options to be fully explored and candidly considered.

(ii) Premature disclosure of any information may end up closing off better and more fully developed considerations and arguments in relation to this subject area. PSNI considers the purpose of this exemption(s) relates to the processes that may be inhibited, rather than what is in the information. The issue is whether disclosure would inhibit the processes of providing advice or exchanging views.

Section 36 (2) (c)

This limb of the exemption refers to the prejudice to the effective conduct of public affairs which we consider could refer to an adverse effect on PSNI's ability to offer an effective public service or to meet our wider objectives. A part of PSNI's objectives is to deliver an efficient police service, ensuring best value for money is achieved as well maintaining public confidence in those officers being promoted to higher ranks with more responsibility and decision making. A key part of this is to ensure that recruitment, selection and HR processes are robust and all learning is properly evaluated, taken forward and embedded into future good practice. The ability for PSNI to carry out such an evaluation, develop future processes would be prejudiced by premature release of material. This exemption also carries a public interest test. PSNI considered the following public interest factors.

Factors Favouring Release – Section 36 (2) (c)

There is a public interest in making available to the public information which highlights how PSNI delivers its service, how the needs of the community we serve are met and how PSNI makes decisions in relation to the delivery of its service and use of resource.

Factors Favouring Retention - Section 36 (2) (c)

There is a public interest in PSNI being able to explore a range of options and take advice as it develops a position in response to information it has reviewed and discussed to ensure it is achieving its service delivery obligations. It is the view of PSNI that at this time there is a strong public interest in preserving the ability for PSNI to candidly take account of these considerations and have regard for all the options being explored.

Decision

On consideration of the balance of the public interest, the PSNI considers that the factors favouring withholding the information are stronger than those in favour of disclosing the requested information. It is important to the PSNI that we exchange free and frank views and be given space to explore a range of options both internally and externally. PSNI considers this issue to be live at present and therefore the balance of the public interest favours withholding the information you have requested.

Taking into account all of the circumstances in this instance we consider the public interest favours withholding the information to which the exemptions relate. For further information on the application of this exemption, please find a link to the guidance issued by the Information Commissioner's Office and available on their website at the following link:

https://ico.org.uk/media/for-organisations/documents/1175/section_36_prejudice_to_effective_conduct_of_public_affairs.pdf

Timing of the Request

It is important to note however that PSNI recognises that once decisions are made and outcomes evaluated on the issues raised, a safe space for deliberation would no longer be required. However PSNI recognises that if the same or similar request was received within the coming months circumstances may well have changed and PSNI would consider disclosure of this material subject to the facts of the case and the timing. At present in this case timing is important and for that reason and those outlined above PSNI has considered it cannot release this information to you. PSNI has however made available that information within the minutes which has been decided upon and those matters completed.

Section 42(1) – Legal Professional Privilege

The information you have requested also contains details of legal advice provided by a PSNI legal advisor during the course of these meetings. PSNI considers legal privilege can be maintained in relation to this information and the exemption at Section 42 of the Act is engaged. As this is a qualified exemption PSNI has considered the Public Interest Test in this case and has taken into account the following factors.

Public Interest Test

Factors Favouring Release - Section 42

There is a public interest in public authorities being accountable for the quality of their decision making process and the release of this information could provide increased transparency to the public about this process.

Factors Favouring Retention - Section 42

The material requested includes details of legal advice which has been sought and provided. PSNI's ability to consider that advice and to determine its position could be compromised if this information were to be released. The ability for PSNI to seek legal advice freely and frankly in relation to an ongoing issue is imperative, and PSNI sought that advice in confidence with the expectation that it would not be further disclosed.

Decision

In terms of the public interest, the ability of PSNI officers and staff to seek and obtain legal advice requires that the exemption be maintained. Legal professional privilege is a long established principle which is fundamental to the administration of justice. The factors in favour of disclosing legal advice on this occasion is outweighed by the need to maintain Legal Professional Privilege (LPP) and therefore the requested information should not be released in this case. Taking into account all the circumstances we consider the public interest favours withholding the information to which the exemption relates.

Section 31

Section 31 is a prejudiced based exemption and this means it is the Public Authority's responsibility to evidence the harm. It is also a qualified exemption and therefore a Public Interest Test must be carried out.

Harm

PSNI considers the disclosure of aspects of the police estate and those who engage with recruitment delivery which are not in the public domain could compromise the PSNI's law enforcement abilities by creating a possibility that individuals could be placed at risk thereby impacting on police resources.

PSNI considered the following public interest factors.

Public Interest Test

Factors Favouring Release – Section 31

Release of this information could increase transparency of PSNI's use of resourcing and expenditure of public monies.

Factors Favouring Retention – Section 31

Release of information of this type which could compromise PSNI's law enforcement abilities will not be in the public interest. Details which can assist those who could target the police estate will not be in the public interest. Neither will it be in the public interest for PSNI to tie up its resources or provide a means for individuals to hinder policing resource.

Decision

A disclosure under FOI is considered a release to the world in general and not just to the applicant 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.

The PSNI considers that the factors favouring withholding the information are stronger than those in favour of disclosing the requested information. In this case the public interest favours withholding the information as such this information has been redacted throughout the minutes of the meetings.

Request 3

Finally, I note from your spreadsheets on "Promoting Staff response" that 44% of Protestants who applied to become inspectors in 2019 passed however over 54% of RC passed. Please Provide any data on discussions regards this very high difference in success rates at interview for catholic and Protestant candidates. Or if you have none can you please indicate PSNI stance/ policy on ranges of acceptable outcomes for candidates?

Clarification sought: Can you please clarify the spreadsheet you are referring to, or provide a copy of the information to assist in providing an accurate response to your request.

Clarification received: 01134

Answer

The spreadsheet provided in FOI response F-2020- 01134 illustrates that 59% Protestants and 38% Roman Catholics were successful in the Sergeant to Inspector promotion process. Please see table below.

	Protestant		Roman Catholic	
	No.	%	No.	%
Sgt to Insp success at interview	59	59.00	38	38.00

There is no adverse Section 75 impact consideration with regard to Community background as the percentage broadly aligns to workforce composition.

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.psnj.police.uk

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