

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2020-02275

Keyword: Organisational Information/Governance

Subject: Calls and Crimes Mentioning Boris Johnson

Request and Answer:

Your request for information has now been considered. PSNI is issuing a Neither Confirm nor Deny (NCND) response by virtue of Section 40 & Section 31 of the FOI Act and we are neither confirming or denying whether we do or do not hold the information you seek. 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

How many calls received and crimes recorded since 2015, where the caller has mentioned the word "Boris Johnson" for any reason.

Answer

As previously mentioned, PSNI are issuing an NCND response for this request and the reasons are set out below.

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

'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

Exemptions explained

Section 31 is a prejudice based qualified exemption 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.

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

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.

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

(5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies -

(a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)

(i) would (apart from this Act) contravene any of the data protection principles

The release of information under FOIA is a release into the public domain and not just to the individual requesting the information. Once information is disclosed under this legislation there is no control or limits as to who or how the information is shared with other individuals, therefore a release under FOIA is considered a disclosure to the world at large.

To confirm or deny that PSNI hold or do not hold information would in fact confirm information about an individual including the fact such information may or may not be held. Confirming or denying information of the nature you have requested is held or not would be highly unfair to any individual

and would contravene the first data protection principle which states that personal information should be processed in a lawful and fair manner (s. 35 DPA 2018). Such individuals if the information was held or not would have no expectation that details as this would be released into the public domain, therefore PSNI's data protection obligations to those individuals would be contravened. PSNI also followed the Information Commissioner's '*Neither Confirm nor deny in relation to personal data*' guidance in this case to support our rationale. In particular paragraph 16 of this guidance states:

"There may be circumstances, for example requests for information about criminal investigations or disciplinary records, in which simply to confirm whether or not a public authority holds that personal data about an individual can itself reveal something about that individual. To either confirm or deny that the information is held could indicate that a person is or is not the subject of a criminal investigation or a disciplinary process. If to do so would contravene data protection principles, for example because it would be unfair, then the public authority is not obliged to confirm or deny that it holds the information." (available at www.ico.org.uk)

Harm in Confirming or Denying that Information is Held – Section 31

The public expect police forces and other law enforcement agencies to use all powers and tactics available to them in their endeavour to prevent and detect crime or disorder and maintain public safety. There are a number of tactics available for gathering intelligence including, as in this case, recording information that is provided by members of the public when they contact PSNI of their own volition.

Police Information refers to all information obtained, recorded or processed for a policing purpose and includes information which is processed (known as data, including personal data) and information which has been subject to a process of evaluation (known as intelligence).

It is a business process with an intention to provide focus to operational police and to achieve a disproportionately greater impact from the resources applied to any problem. It is dependent on a clear framework of analysis of information and intelligence allowing a problem solving approach to law enforcement and crime prevention techniques.

The Police Service would never confirm or deny whether information has been supplied by members of the public relating to a named individual or not, whoever that individual may be, unless there is genuine operational reason to do so. If PSNI reveals information, by confirming information is held (by citing an exemption) or, conversely, stating no information is held, that in itself reveals information about a named individual.

In addition, the flow of information (intelligence) to PSNI could be compromised which would have an impact on our ability to collect reliable and accurate intelligence resulting in more costly and time consuming methods of collecting information.

Public Interest Test

Section 31 - Factors Favouring Confirmation or Denial

Boris Johnson is the current Prime Minister of the United Kingdom and that in itself favours complying with s1(1)(a). Confirmation or denial could promote public trust in providing transparency, demonstrating openness and accountability.

Section 31 - Factors Against Confirmation or Denial

PSNI has a duty of care to the community at large and public safety is of paramount importance. If an FOI disclosure reveals information to the world by not adopting an NCND position, this action would compromise the effective delivery of operational law enforcement as detailed in the harm above.

PSNI relies on information being supplied by the public. Irrespective of what information is or is not held, by applying substantive exemptions would indicate that information is held and therefore

revealing sensitive personal information about an individual. Such action would act as a deterrent to the public to provide intelligence to the force.

Decision

The points above highlight the merits of confirming or denying that information pertinent to this request exists. The Police Service relies heavily on the public and other law enforcement agencies providing information. The public has an expectation that any information they provide will be treated with confidence. Anything which places that confidence at risk, no matter how generic, would undermine any trust or confidence other agencies and individuals have in the Police Service.

The effective delivery of operational law enforcement takes priority and it is at the forefront of PSNI to ensure the prevention and detection of crime is carried out and the effective apprehensive or prosecution of offenders is maintained.

Therefore, at this moment in time, it is our opinion that for these issues the balance test for Neither Confirming Nor Denying that information is held is appropriate in this case.

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.