



FREEDOM OF INFORMATION REQUEST



Request Number: F-2021-02315

Keyword: Complaints/Discipline

Subject: Officers Disciplined for Conduct on WhatsApp and Social Media

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 some information to which your request relates and this is being provided to you. We further consider the information you seek in request numbers 1(b), 1(c), 2(b) and 2(c) is exempt by virtue of sections 30(1), 31(1)(g), 31(2)(a)(b) and 40 of FOIA and have detailed our rationale as to why these exemptions apply. 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.

For the years 2018, 2019, 2020 and available information for 2021, I would like to be provided with the following information:

Request 1

Please indicate the number of police officers that were disciplined for their conduct on WhatsApp and/or other social media sites.

(a) For each disciplined police officer, please describe briefly what happened.

(c) If the police officer was sharing offensive posts, please disclose copies of these posts.

Clarification to you the Requester

By 'disciplined', do you wish to only have cases where an officer has received a formal sanction (Written Warning etc.), or do you also wish to include informal sanctions e.g. management advice?

Clarification received from Requester

I wish to include informal sanctions as well.

Answer 1

The following number of police officers have been disciplined for conduct on social media:

2018 – 4 officers
2019 – 15 officers
2020 – 15 officers
2021 – 3 officers

Answer 1(a)

The following is a summary of the misconduct of the officers broken down by each year:

2018

Inappropriate Facebook post of a sexual nature.
Circulation of inappropriate sexual video via WhatsApp.
Inappropriate Facebook message constituting harassment.
Inappropriate Facebook posts.

2019

Offensive Twitter posts.
Circulation of sectarian video via WhatsApp.
Circulation of inappropriate video via WhatsApp.
Inappropriate WhatsApp post.
Inappropriate Facebook posts.
Inappropriate Facebook posts.
Inappropriate Facebook posts.
Inappropriate Facebook posts.
Inappropriate Facebook posts.
Inappropriate Facebook posts.
Circulation of inappropriate video via WhatsApp.
Circulation of inappropriate video via WhatsApp.
Inappropriate Facebook posts.
Inappropriate Facebook posts.
Unsolicited Facebook messages causing anxiety.

2020

Offensive Facebook comments.
Inappropriate video posted on Facebook.
Inappropriate sharing of police information via WhatsApp.
Inappropriate Twitter posts and sharing of police information via Twitter.
Inappropriate Facebook posts.
Inappropriate Twitter posts.
Inappropriate Twitter posts.
Circulation of police information (video) on social media websites.
Circulation of police information (video) on social media websites.
Circulation of police information (video) on social media websites.
Circulation of police information (video) on social media websites.
Inappropriate Twitter posts.
Inappropriate sexual and sectarian WhatsApp messages.
Inappropriate sexual and sectarian WhatsApp messages.
Circulation of inappropriate video via WhatsApp.

2021

Sexual communication with a child via social media.
Inappropriate Facebook post.
Inappropriate TikTok video.

Request 2

Please indicate the number of police officers that were dismissed for their conduct on WhatsApp and/or other social media sites.

(a) For each dismissed police officer, please describe briefly what happened.

Answer 2

The following number of police officers have been dismissed for conduct on social media:

2018 – 0 officers

2019 – 0 officers

2020 – 2 officers

2021 – 1 officer

Answer 2(a)

The following is a summary of the misconduct of the officers:-

2020

Inappropriate Twitter posts and sharing of police information via Twitter.

Inappropriate Twitter posts.

2021

Sexual communication with a child via social media.

Request 1 (b)

(b) If the police officer was writing offensive messages/posts, please disclose copies of these messages/posts.

Requests 2 (b) and (c)

(b) If the police officer was writing offensive messages/posts, please disclose copies of these messages/posts.

(c) If the police officer was sharing offensive posts, please disclose copies of these posts.

Answers to 1(b), 1(c), 2(b), 2(c)

PSNI has made the decision to exempt the information requested for these request numbers and we have articulated the rationale below.

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 30 (1)

Section 30 (1) Investigations and Proceedings Conducted by Public Authorities - Information held by a public authority is exempt information if it has been held at any time by the authority for the purposes of:

(a) Any investigation which the public authority has a duty to conduct with a view to it being Ascertained:

(i) whether a person should be charged with an offence.

Section 31 (1) (g) by virtue of Section 31(2)(a)(b)

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

Section 31(2)(a)(b)

(2) The purposes referred to in subsection (1)(g) to (i) are—

(a) the purpose of ascertaining whether any person has failed to comply with the law,

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper.

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

Personal Information- Information constitutes personal data and disclosure would contravene any of the Data Protection principles.

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'). The requested information 'copies of these messages and posts', constitutes information which can identify individuals. Therefore this is 'personal data' under the GDPR (Article 4) and DPA (Part 1 s.3).

PSNI considered whether disclosure would contravene any of the six data protection principles contained within the GDPR. 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 'fairly and lawfully'. 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. PSNI consider that any persons including the officers / ex-officers involved would not expect the force to disclose this information and it would be unfair to the individuals concerned. The PSNI must treat all personal information sensitively and appropriately. Therefore to release information of this nature would be 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 and the PSNI has made the decision to withhold that information.

Section 30 is a class based and qualified exemption which means that there is no requirement to evidence the Harm in release but that it is necessary to conduct a Public Interest Test. This exemption has been applied to data relating to criminal investigations.

Public Interest Test

Factors Favouring Release – Section 30

Disclosure would assist in demonstrating that PSNI are conducting thorough investigations. There is much public interest in ensuring that this and any other investigation is undertaken professionally and rigorously and release of the requested information could promote public trust in providing transparency, openness and accountability into how investigations take place.

Releasing the information may better inform the public and encourage others to come forward to report criminal offences if they know a proper investigation will be undertaken. All police investigations will involve the use of public funds and where this is the case there is always a public interest in ensuring that those funds are not used unnecessarily or unwisely.

Factors Favouring Retention – Section 30

The information requested is held for the purposes of investigations and therefore if the PSNI were to release the requested information, it could seriously undermine and compromise investigations. There is a strong public interest in maintaining the Section 30 exemption in order to protect witnesses

and victims, and in not deterring these persons from making statements for fear that their evidence might not be treated in confidence.

It would not be usual police practice that information relating to an investigation would be disclosed into the public domain. Whilst information may be released if it provides a tangible community benefit, for example to prevent or detect crime or to protect life or property, PSNI does not consider the specific information you have requested would assist with that aim.

It would therefore not be in the public interest to release information which would in turn impact on police resources, place individuals at risk and an investigation or the outcome of subsequent proceedings could be compromised

Decision

Although there is a public interest in the transparency of investigations, the police service has a greater duty of care to all individuals involved in any investigation. The police service will not disclose information which could prejudice any future evidential opportunities. Therefore, the public interest, in this instance, is best served by not releasing the information to which you seek access.

The release of information under 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 how the information is shared with other individuals therefore a disclosure under FOI is considered a release to the world in general.

Section 31 is a prejudice based qualified exemption and there is a requirement to articulate the harm that would be caused in releasing the requested information as well as considering the public interest to ensure that withholding the information is the appropriate response. This exemption has been applied to data relating to misconduct investigations.

Harm

Any disclosure of a police investigation would likely cause harm and affect PSNI's ability to fulfil its law enforcement role. In this case this relates to PSNI's Professional Standards Department investigating complaints and carrying out investigations into police officer misconduct or breaches of the PSNI Code of Ethics issued under section 52 of the Police (Northern Ireland) Act 2000. It could also undermine the effectiveness of the investigation. Disclosure of the information requested which is not in the public domain, would cause prejudice to the interest that the exemption protect. PSNI considers the disclosure of this evidence as harmful to disclose as its release may compromise the effective exercise of police functions in ascertaining whether internal members have failed to comply with the law or are guilty of misconduct by virtue of their improper conduct.

Factors Favouring Release – Section 31

The information requested relates to allegations made against police officers and there is a strong argument for increased transparency in the way misconduct investigations into police officers are handled. Disclosure of the information may improve public debate into this subject and would provide a better awareness and provide transparency and satisfaction to the public that such investigations are conducted properly and that any allegations against police are investigated appropriately and in line with current legislation.

Factors Favouring Retention – Section 31

The release of this information could compromise the PSNI's law enforcement functions, in ensuring that PSNI officers comply with the law, and are held accountable for improper conduct.

Decision

While there is a public interest in releasing the information requested, the PSNI must ensure that their functions are not prejudiced or compromised. The PSNI will not release information which will hinder the effectiveness of its ability to conduct thorough investigations as to whether internal

members are guilty of misconduct.

On balance the requirement to withhold the information relating to any investigation carried out by PSNI in conjunction with personal information must take precedence. The Police Service is charged with enforcing the law, which is the core function of the Police Service in conjunction with preventing and detecting crime and protecting the communities we serve. There is a public interest in the transparency of the law enforcement role of the Police Service by providing assurance that the PSNI appropriately and effectively investigated any person / officer failing to comply with the law or who falls below those standards of conduct PSNI expects of its officers and staff. There is a strong public interest in safeguarding the integrity of the police service and its approach to law enforcement. The PSNI has a duty to fulfil within its law enforcement role and whilst there is a public interest in the transparency of policing activities in Policing, the delivery of effective law enforcement is a priority. Furthermore, disclosure would deter individuals from providing information to assist such investigations.

To provide the information requested within these requests would undermine the investigative process stipulated undertaken by PSNI within the Conduct Regulations thereby hindering the effective delivery of law enforcement (the purpose of ascertaining whether any person is responsible for any conduct which is improper).

In this case PSNI are satisfied that the exemptions outlined above are applicable to this information.

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 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/

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.psnipolice.uk

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