

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2022-02328

Keyword: Organisational Information Police/Staff Misconduct and Complaints

Subject: Professional Standards Investigation

Request and Answer:

In relation to request no F-2022-02328 the Police Service of Northern Ireland is providing an NCND response and will explain this further in the response below.

Request 1

The number of police officers and support staff engaged on the Professional Standards dept. investigation of <Named Officers>.

Request 2

The number of man (and/or woman) hours of, respectively, (i) police officer time and (ii) support staff time expended in carrying out the said investigation and including court appearances.

Request 3

The financial cost to PSNI of the investigation.

Request 4

How this cost has been or will be financed (i.e. under what budgetary provision).

Request 5

What other operational activities were officers involved in the investigation diverted from carrying out

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 30(3) Investigations and Proceedings Conducted by a Public Authority: The duty to confirm or deny does not arise in relation to information which is (or if were held by the public authority would be) exempt information by virtue of subsection (1) or (2).

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 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 30 is a qualified class based exemption and evidence of harm and a public interest test must be conducted.

Section 31 is a qualified prejudice based exemption and evidence of harm and a public interest test must be conducted.

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

40(5)(B)(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.

(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 the PSNI hold or do not hold information would in fact confirm information about individuals 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 individuals 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

Any release under the Freedom of Information Act is a disclosure to the world, not just to the individual making the request. Whilst not questioning the motives of the applicant, confirming or denying that information is held relevant to this Request would compromise the law enforcement responsibilities of the PSNI.

Factors Favouring Confirming or Denying for Section 30 (3)

There is a public interest in the transparency of policing and to provide assurance that the PSNI is appropriately and effectively dealing with crime. Confirming or denying that information exists relevant to this request would lead to a better informed public demonstrating that PSNI undertake evidence gathering appropriately and in line with current legislation in order to assist criminal investigations.

Factors Against Confirming or Denying for Section 30 (3)

Whilst there is a public interest in the transparency of policing investigations and providing assurance that the PSNI is appropriately and effectively dealing with crime. There is a strong public interest in safeguarding the integrity of investigations in maintaining confidence in the Police Service and confirmation or denial that any information is held relevant to the request would undermine any investigative process.

Factors Favouring Confirming or Denying for Section 31 (3)

Confirming or denying whether information is held would provide an insight into the Police Service. It would greatly assist in the quality and accuracy of public debate, which could otherwise be steeped in rumour and speculation. Where public funds are being spent, there is a public interest in accountability and justifying the use of public money.

Factors Against Confirming or Denying for Section 31 (3)

The public would not expect the PSNI to compromise law enforcement by confirming or denying if relevant information is held through an FOI release.

Decision

PSNI can Neither Confirm or Deny that any information relevant to your requests is held. To confirm or deny information is held would, in itself, reveal sensitive investigative information on intelligence and lines of inquiry pursued (or not) in relation to this named individuals.

Confirmation or denial of whether the PSNI hold any other information would amount to a release of information either on this occasion or on other occasions where a similar request is made.

PSNI considers the information you have requested is exempt by virtue of Neither confirm nor deny exemptions which PSNI is entitled to rely upon.

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 Corporate Information Manager, Corporate Information Branch, PSNI Headquarters, 65 Knock Road, Belfast, BT5 6LE or by emailing foi@psni.police.uk.

If, following an Internal Review carried out by an independent decision maker, you remain unhappy about how your request has been handled you have the right to apply in writing to the Information Commissioner, under Section 50 of the Freedom of Information Act, at 'Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. There are a number of other platforms you can use to contact the ICO and these can be found on the ICO's website at the following link: [Make a complaint | ICO \(https://ico.org.uk/make-a-complaint/\)](https://ico.org.uk/make-a-complaint/).

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

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