



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2023-00307

**Keyword:** Organisational Information Police/Staff Misconduct and Complaints

**Subject:** PSD & Anti-Corruption Units: Complaints and Offences

### Request and Answer:

Thank you for your request and we apologise for the delay in issuing a reply to you. You sought the following information under the Freedom of Information Act 2000 ('FOIA') from PSNI:

#### Request 1

Between 1st January 2020 and 31st December 2022, how many staff or officers working for a) professional standards and b) anti-corruption units (if the force has one) have been subject of complaints for;

- a. Sexual harassment
- b. Sexual assault

Please could this be broken down by year as well as the type of allegations (e.g. sexual harassment, indecent exposure, rape)? If possible please state whether the complainant was from the force or external in each case.

#### Request 2

Please could I have details of the outcomes of these allegations e.g. management advice, written warning, misconduct, and criminal investigation?

#### Request 3

Between 1st January 2020 and 31st December 2022, how many staff or officers working for a) professional standards and b) anti-corruption units (if the force has one) have been arrested for criminal offences? Please could this be broken down by year as well as the type of offences?

#### Request 4

Please could I have details of the outcomes of these allegations e.g., management advice, written warning, misconduct, criminal investigation.

### Answers 1- 4

In accordance with the FOIA, this letter represents a Refusal Notice for the information you have requested.

The general right of access under section 1(1) of the FOIA comprises two separate kinds of right to information. Section 1(1)(a) requires PSNI to inform a requester in writing whether or not we hold the information described in the request. This is called the 'duty to confirm or deny'. Separate to this, and

arising only if the first right applies, section 1(1)(b) requires you to communicate that information to the applicant.

Both rights are qualified and can be disapplied if an exemption is engaged. In this case PSNI is applying the following Neither Confirm Nor Deny ('NCND') exemptions and set out our rationale for the application of each below:

**Section 30(3) - Investigations Conducted by Public Authorities** – The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exemption information by virtue of subsection (1) or (2).

**Section 31(3) – Law Enforcement** – The duty to confirm or deny does not arise if compliance with section 1(1)(a) would prejudice prevention or detection of crime.

**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](http://www.legislation.gov.uk) and further guidance on how they operate can be located on the Information Commissioners Office website [www.ico.org.uk](http://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 FOIA allows a public authority to respond by refusing to confirm or deny whether it holds the requested information.

The decision to issue a 'NCND' 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 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](https://ico.org.uk/media/for-organisations/documents/1166/when_to_refuse_to_confirm_or_deny_section_1_foia.pdf)

### **Exemptions Explained**

Section 30 is a qualified class based exemption and there is a requirement to conduct a public interest test.

Section 31 is prejudice based and qualified which means that there is a requirement to articulate the harm in confirming or not whether information is held as well as carrying out a public interest test.

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

### **Section 30 and 31**

Sexual offending carried out by police officers and staff members who hold a position of trust within the community is completely unacceptable and demands the highest accountability when dealing with such offending. Professional Standards Department ('PSD') is in place to carry out an important role in the maintenance of trust and confidence the public have in the PSNI.

This topic is a very emotive subject and the PSNI strive to deal with all aspects of it, which includes dealing with police officers and police staff members who commit these types of offences. The College of Policing publish their [Authorised Professional Practice on Professional Standards](#) which provides an insight into the responsibilities of PSDs. Should an officer/police staff member be party to allegations of this nature, misconduct or potentially criminal proceedings would likely ensue should formal charges be made. However, we also need to consider that not all allegations are proven and may not lead to a formal charge. To confirm or deny that information is held would highlight that officers/staff based within a PSD are or are not currently subject to investigation of sexual harassment and assault. Such an awareness would also highlight to suspects that their victims have either reported their offending to PSNI or not, which either way could lead to further offending against their victims causing physical and/or emotional trauma.

Irrespective of whether information is or is not held, ongoing investigations would also be compromised if the offender were made aware an investigation into their behaviour is ongoing which would enable steps to be taken by them to destroy evidence, interfere with witnesses, or put more pressure on their victims through coercive abuse to ensure the investigation is dropped.

## **Public Interest**

### **Factors Favouring Confirmation or Denial for Section 30**

Confirming or denying whether information exists relevant to this request would lead to a better informed general public by identifying that the PSNI robustly investigate all aspects of sexual harassment; sexual assault and criminal offending, including allegations made against their own officers and staff members with their PSD departments. This fact alone may encourage individuals to provide intelligence in order to assist with investigations and promote public trust in providing transparency and demonstrating openness and accountability into where the police are currently focusing their investigations.

### **Factors Against Confirmation or Denial for Section 30**

Confirmation or denial that information is held for would suggest PSNI take their responsibility to appropriately handle and manage intelligence supplied to them flippantly.

Under FOIA, there is a requirement to comply with Section 1(1)(a) and confirm what information is held. In some cases, it is that confirmation, or not, which could disclose facts, which would undermine the investigative process, and in such cases, PSNI takes advantage of its ability under FOIA legislation to, where appropriate, neither confirm nor deny that information is or is not held.

Irrespective of what information is or is not held regarding in this case, any information which could be used to undermine prosecutions and aid offenders to continue with their abuse, is not in the public interest.

### **Factors Favouring Confirmation or Denial for Section 31**

Disclosure would provide transparency in the way police officers and staff members are dealt with when suspected of carrying out sexual harassment, sexual assault and criminal offences and may improve public debate into the credibility of how PSNI deal with these allegations within the force. It would also serve to demonstrate that the PSNI are open and accountable.

### **Factors Against Confirmation or Denial for Section 31**

To confirm or deny that information is held would risk undermining the investigative process whilst determining whether any member of staff is responsible for improper conduct; including whether or not an allegation of this nature leading to police intervention was proportionate under the circumstances.

PSNI has a duty of care to the community at large and public safety is of paramount importance. If an FOIA disclosure revealed information to the world that would undermine an operation and

place the safety of an individual at risk, this could be used to offenders' advantage, which would compromise any potential victims and public safety generally. It may also encourage offenders to carry out further crimes as detailed within the harm.

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 there are currently ongoing investigations. Such action would act as a deterrent to the public to provide intelligence to the Service, which would further undermine public safety, with repercussions that could hinder the prevention or detection of crime.

### **Balancing Test**

The points above highlight the merits of confirming, or denying, whether any information pertinent to this request exists. The PSNI is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. As part of that policing purpose, various operations may or may not be ongoing. The PSNI will never divulge whether information does or does not exist, if to do so would place the safety of an individual(s) at risk, compromise an ongoing investigation or undermine the policing purpose in the effective delivery of operational law enforcement.

Whilst there is a public interest in the transparency of policing operations and investigations particularly in relation to the PSNI own police officers and staff members based within their PSD providing reassurance that the PSNI is appropriately and effectively investigating current allegations as detailed within the request, there is a very strong public interest in safeguarding the health and safety of individuals. As much as there is a public interest in knowing that policing activity into allegations against its own police officers and staff is appropriate and balanced it will only be overridden in exceptional circumstances.

Therefore, at this moment in time, it is our opinion that for these issues the balance test for confirming, nor denying that information is held is appropriate.

However, this should not be taken as conclusive evidence that the information you requested exists or does not exist.

### **Section 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

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 individuals, 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 reasonable expectation that these details would be released into the public domain. Individuals may try to use the FOI legislation to circumvent the law and may try to obtain information, which they are not entitled to, or to try to find out whether the police hold any information about them or others. To ensure this does not occur, police services use a 'neither confirm nor deny approach' and this has to be used consistently to ensure that we can protect this method of response and do

not and undermine the rationale for adopting the NCND response in the first place.

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, 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 in general.

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](mailto: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.psnipolice.uk](http://www.psnipolice.uk)

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