

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2019

Public Authority: Police Service of Northern Ireland

Address: PSNI Headquarters
Brooklyn, 65 Knock Road, Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant has requested information from the Police Service of Northern Ireland (PSNI) in relation to individuals who have been identified as part of certain groups. The PSNI refused to confirm or deny whether it held the requested information, citing sections 24(2), 31(3) and 40(5)(b)(i) of the FOIA as a basis for non-confirmation or denial.
2. The Commissioner's decision is that the PSNI has correctly applied section 40(5)(b)(i) of the FOIA to the requested information. Since the Commissioner considers that this section applies to the entirety of the requested information, she has not gone on to consider the PSNI's application of the other exemptions listed above.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant on 11 July 2017 made the following request for information to the PSNI:-

I would like details on the number of individuals in the following groups who have been identified as "non-violent extremists", "potential extremists", or simply dangerous because of their views/beliefs:

1. Members of the clergy and priesthood.
 2. Members of the Labour party including elected representatives such as Members of Parliament, MEPs and Councillors.
 3. Members of the Conservative party including elected representatives such as Members of Parliament, MEPs and Councillors.
 4. Members of the UK Independence Party including elected representatives such as Members of Parliament, MEPs and Councillors.
 5. Members of the Green Party including elected representatives such as Members of Parliament, MEPs and Councillors.
 6. Members of the Scottish National Party including elected representatives such as Members of Parliament, MEPs and Councillors.
 7. Members of trade unions.
 8. Journalists.
 9. Environmental campaigners including but not limited to those who have gone on anti-fracking demonstrations.
5. The PSNI responded to the complainant on 7 August 2017, refusing to confirm or deny whether it held the requested information and citing the exemptions at sections 24(2), 31(3) and 40(5)(b)(i) of the FOIA as a basis for non-confirmation or denial.
6. The complainant sought an internal review of the PSNI's response, the result of which was provided to him on 13 September 2017. The reviewer upheld the original decision.
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Scope of the case

7. The complainant contacted the Commissioner on 26 September 2017 to complain about the way his request for information had been handled.
8. The Commissioner has considered the PSNI's handling of the complainant's request, in particular its refusal to confirm or deny whether it holds the requested information.

Reasons for decision

Section 40(5)(b)(a)(i)

9. As the PSNI's refusal of the request was before 25 May 2018, the date the new Data Protection Act 2018 (DPA 2018) and the General Data Protection Regulation EU2016/679 (GDPR) legislation came into force, the Commissioner considers that the Data Protection Act 1998 applies in this case.
10. Section 40(5) of the FOIA sets out the conditions under which a public authority can give a "neither confirm nor deny" response where the information requested is, or would be, personal data. It includes provisions relating to both personal data about the requester and personal data about other people.
11. If the information would constitute personal data relating to someone other than the requester, then the public authority does not have to confirm or deny whether it holds it if one of the conditions in section 40(5)(b)(i) or (ii) applies.
12. There may be circumstances, for example requests for information about investigations or complaints, in which simply to confirm whether or not a public authority holds that personal data about individuals can, itself, reveal something about those individuals. To either confirm or deny that the information is held could indicate that a person is or is not the subject of investigation. 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.

If held, would the information be personal data?

13. The Commissioner has first considered whether the requested information would be the personal data of any person.
14. The PSNI states that the personal data to which it refers would be that of any persons who could be identified as being monitored. This would allow individuals within specific groups such as those detailed within the request to know if they are being monitored. Individuals could be identified in particular in groupings where the cohort engages in a specific profession or is involved with a specific organisation or activity. This is especially relevant in the context of Northern Ireland, where smaller political parties, such as those detailed in the request, are not as established as they are in England, Wales and Scotland. This could render individuals capable of being identified if such information were held or not held.
15. Therefore, the Commissioner is satisfied that the requested information would be personal data. If held, it would tell the public something about the individuals within those groups, namely regarding their beliefs or perceived beliefs, which amounts to sensitive personal data under the DPA.

Would confirming or denying the information is held breach any of the data protection principles?

16. If confirming or denying whether the information is held would contravene the first data protection principle, that personal data should be processed fairly and lawfully, section 40(5)(b)(i) is applicable.
17. In assessing fairness, the Commissioner considers the reasonable expectations of individuals concerned and what might be the likely consequences resulting from disclosure.
18. In this case confirming or denying whether the information is held would communicate whether or not the individuals within the groups in the request held or were perceived to hold particular beliefs.
19. The Commissioner notes here that there may be situations in which it could be argued that giving the confirmation or denial to a requester would not necessarily contravene data protection principles because the requester already knows or suspects whether the public authority holds or does not hold the information.
20. The FOIA is motive and applicant 'blind', and the test is whether the information can be disclosed to the public at large, not just to the requester. Therefore an authority can only disclose or confirm or deny it holds information under the FOIA if it could disclose it, or confirm or

deny it holds the information, to any member of the public who requested it.

21. The Commissioner recognises that individuals have a reasonable expectation that a public authority, in its role as a responsible data controller, will respect confidentiality in this regard.
22. The PSNI is aware that the first data protection principle requires personal data to be processed in a lawful and fair manner. In considering whether it is 'fair' or 'lawful' to individuals to release this information about them, the PSNI considered the likely expectations of those individuals as well as the PSNI's positive legal obligations to protect life under Article 2 of the ECHR. Individuals would reasonably expect the PSNI not to release information which could put an individual at risk. It is unlikely that it would be within the expectations of these individuals that this information, if it exists, be put into the public domain or the individual be put at risk as a result. Disclosure of this information, if applicable, could leave any named individuals open to attack for their extremist/potential extremist beliefs, which at this stage may not actually be substantiated. Therefore, it would be reckless of the PSNI to disclose such information given that one of its core functions is to protect the lives of all citizens and it would not be 'fair' or 'lawful' to put individuals at risk.
23. The Commissioner is satisfied that confirming or denying that the requested information is held would be unfair and thus contravene the first data protection principle. Therefore the Commissioner finds that the PSNI is entitled to refuse the request on the basis of section 40(5)(b)(i) of the FOIA.
24. As the Commissioner has determined that it would be unfair to confirm or deny if the information is held, it has not been necessary to go on to consider whether this is lawful or whether one of the schedule 2 or 3 conditions is met.

Right of appeal

25. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

**Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

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