

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 September 2022

**Public Authority:** Chief Constable Police Service Northern Ireland

**Address:** PSNI Headquarters  
65 Knock Road  
Belfast  
BT5 6LE

#### **Decision (including any steps ordered)**

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1. The complainant requested from Police Service Northern Ireland (PSNI) information regarding PSNI's settled disputes/actions brought by staff. PSNI provided the complainant with information to question 1 of the request and confirmed that it does not hold information to question 2.
2. The Commissioner's decision is that, on the balance of probabilities, PSNI does not hold recorded information to question 2 of the request. Therefore, the Commissioner does not require PSNI to take any steps as a result of this decision.

#### **Request and response**

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3. On 15 October 2021 the complainant wrote to PSNI and requested information in the following terms:

"In each of the last three calendar years, shown per year to date, how many instances has PSNI settled disputes/actions brought by staff or former staff. Of these how many involved the signing of a Non-Disclosure Agreement?"

4. On 12 November 2021 PSNI responded and confirmed it holds some of the information to the request. In response to question 1, PSNI provided the complainant with a table to illustrate the total number of instances PSNI settled disputes/actions brought by staff or former staff, for the last three years. With regard to question 2 of the request, PSNI stated that it does not hold the information.
5. On the same day the complainant asked PSNI for an internal review.
6. On 22 November 2021 PSNI provided its internal review response. It maintained its original position that it does not hold information to question 2 of the request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 2 December 2021 to complain about the way her request for information had been handled.
8. The following analysis focuses on whether PSNI holds any recorded information falling within the scope of question 2 of the request.

### **Reasons for decision**

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#### **Section 1 – General right of access**

9. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
10. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
11. In this case, PSNI stated it does not hold information to question 2 of the request regarding a non-disclosure agreement (NDA). It said that enquiries were made relating to the question and confirmed PSNI does not record this information.

12. PSNI explained "In the context of civil litigation 'non-disclosure agreement' is not a properly legal defined term, and that it is a catch all term commonly referring to an agreement between an employee and employer not to disclose sensitive information such as client details, personal data, commercial information or trade secrets." It also explained that settlement claims in the context of civil litigation, would be drafted and agreed by lawyers representing both parties if they are being used. PSNI said settlement terms are not a 'non-disclosure agreement' nor are they a 'gagging order' (as the complainant had referenced to the Commissioner). PSNI clarified that "both parties may agree to keep the terms of the settlement confidential and the settlement agreements are retained by both parties and may be referred back to the Court in case of any dispute." PSNI therefore confirmed that it does not hold information relevant to question 2 of the request.
13. With regard to searches carried out to check no information was held within the scope of the request, PSNI said it did not consider it necessary to carry out searches as it disagreed that "settlement terms endorsed on counsel's brief are 'non-disclosure agreements' or 'gagging orders' – and have interpreted the request as such."

### **The complainant's position**

14. The complainant disagrees with PSNI's position that information is not held to question 2. She said she knows of "multiple instances of PSNI settling disputes with 'gagging orders' i.e. NDAs, and have seen content of same." The complainant argued that as she knows that the information (NDAs) exists and has seen corroborative evidence, she therefore questioned why PSNI does not know this, and she also considered it to be "providing misleading information both on NDAs and the total involved..."
15. The complainant was asked to provide the Commissioner with evidence to support her assertion that the requested information exists, and PSNI are providing misleading information on NDAs and the totals involved, but the complainant was unable to do so "due to journalistic privilege".

### **The Commissioner's position**

16. The Commissioner acknowledges the complainant's comments, and he has considered the explanation and rationale from PSNI regarding this request. There is no contradictory evidence available to the Commissioner that indicates PSNI's position is incorrect, nor is there any further information provided by the complainant to support a different interpretation of her request. Having taken into account arguments from both parties, the Commissioner concludes that, on the balance of probabilities, the requested information is not held.

## Right of appeal

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17. 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@justice.gov.uk](mailto:grc@justice.gov.uk).

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. 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.
19. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**