

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2023

Public Authority: Chief Constable of the Police Service of Northern Ireland

Address: 65 Knock Road
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant submitted a request to the Chief Constable of the Police Service of Northern Ireland ("PSNI") for information relating to its interactions with Interpol.
2. The Commissioner's decision is that PSNI correctly relied upon section 40(5)(b)(a)(i) of FOIA to refuse to confirm or deny whether it held the information falling within scope of question one of the request.
3. The Commissioner does not require further steps as a result of this decision notice.

Request and response

4. On 27 March 2023, the complainant made the following request for information under FOIA. For ease of reference, the Commissioner has numbered the questions to align with PSNI's response:
 - "1. How do PSNI interact with Interpol, with particular regard to Spain and the Republic?
 2. Under what circumstances are matters referred to Interpol?"
5. On 28 March 2023, PSNI asked for clarification regarding the words 'interact' and 'Republic' and on the same day the complainant provided clarification.
6. On 26 April 2023, PSNI responded and refused to neither confirm nor deny holding the information requested in question one, citing section 40(5)(b)(a)(i) of FOIA. With regards to question two, PSNI provided a link which set out the parameters of engagement with Interpol.
7. Upon receiving this response, the complainant submitted an internal review on 26 April 2023, and on 5 May 2023, PSNI provided its review response, in which it upheld its original position.

Reasons for decision

8. The following analysis explains why the Commissioner is satisfied that PSNI was entitled to neither confirm nor deny holding the requested information falling within scope of question one.
9. Section 40(5B)(a)(i) of FOIA allows a public authority to refuse to confirm or deny that it holds particular information if the mere act of confirming (or denying) that information is held would, in itself, reveal personal data about an identifiable individual – unless there is a lawful basis for doing so.
10. Section 3(2) of the Data Protection Act 2018 defines personal data as:
 - "any information relating to an identified or identifiable living individual".
11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

12. In this case, in response to PSNI's request for clarification, the complainant explains that the term 'interact' means "any communication PSNI have relating to the matter of an elderly tenant (my good self) being reported to Interpol". Therefore, the Commissioner is satisfied that confirmation or denial of the requested information would involve the disclosure of personal data.
13. PSNI clarified, to the Commissioner, that it did not apply section 40(1) of FOIA (personal data of the requester) to the request, as given its law enforcement function, "it would not reveal whether it cooperated or requested assistance from Interpol about any individual". Therefore, PSNI considered it was appropriate to neither confirm nor deny to the complainant whether personal information was or was not held in the context of their request about Interpol.
14. The next step is to consider whether such confirmation or denial would contravene any of the data protection principles. The Commissioner has focused here on principle (a) which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
15. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed – or as in this case, the public authority can only confirm whether or not it holds the requested information – if to do so would be lawful, fair and transparent.
16. When considering whether confirmation or denial of the requested information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individual whose personal information it is.
17. The Commissioner accepts that the complainant has specific reasons for wanting to access the requested information, and that they are pursuing a legitimate interest. Furthermore, he considers that confirmation or denial of whether the requested information is held is necessary to meet that legitimate interest.

18. However, the Commissioner also considers that for PSNI to confirm or deny that the requested information is held, would be disclosing personal information to the 'world at large', as the data subject had been referenced within the clarification of the request. Therefore, there is insufficient legitimate interests to outweigh the fundamental rights and freedoms of the data subject. Hence, to confirm or deny if the requested information was held would be in breach of principle (a).
19. The Commissioner's decision is that PSNI was entitled to rely on section 40(5B)(a)(i) of FOIA to neither confirm nor deny it held the requested information.

Right of appeal

20. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

21. 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.
22. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF