

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2024

Public Authority: Police Service of Northern Ireland
Address: 65 Knock Road
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant has requested information regarding training request from other countries. The Police Service of Northern Ireland ("the PSNI") neither confirmed nor denied ('NCND') that it held the requested information, citing sections 27(4) and 31(3) of FOIA.
2. The Commissioner's decision is that PSNI has correctly applied section 27(4) of FOIA.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 1 April 2024 the complainant requested the following information:-
Please could you provide me with:-
 - a) a list of the countries (not including the UK/Ireland) to which the Police Service of Northern Ireland (PSNI) provided training in 2023;
 - b) a list of the countries (not including the UK/Ireland) which requested training from the PSNI in 2023, but where that request was turned down

5. PSNI responded to the request on 5 June 2024, refusing to confirm or deny whether it held the requested information, citing sections 27(4) and 31(3) of FOIA as a basis for non-disclosure.
6. The complainant sought an internal review of PSNI's handling of the request on 9 June 2024. A response to this was provided on 19 June 2024. The reviewer upheld the original decision.

Reasons for decision

Section 1(1)(a) – duty to confirm or deny that information is held

7. The general right of access under FOIA is set out at section 1. Section 1(1)(a) provides that a public authority must confirm or deny that it holds information within the scope of a particular request. Section 1(1)(b) provides that the authority must communicate that information to the requester. Both parts of section 1 are subject to exemptions and exclusions.

Section 27: prejudice to international relations

8. Section 27(1) provides that:

“(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) relations between the United Kingdom and any other State,

(b) relations between the United Kingdom and any international organisation or international court,

(c) the interests of the United Kingdom abroad, or

(d) the promotion or protection by the United Kingdom of its interests abroad.”

9. Section 27(4) further provides that the duty to confirm or deny does not arise if, or to the extent that, doing so would, or would be likely to prejudice any of the matters described in section 27(1).
10. PSNI sought to rely on section 27(4) in conjunction with section 27(1)(a) of FOIA. The Commissioner is of the opinion that this exclusion does not necessarily focus on the importance, subject or content of the requested information (whether or not it is held), but on whether the international relations of the UK would or would likely be prejudiced through confirming or denying that the requested information is held.

11. In order for a prejudice based exemption or exclusion, such as section 27, to be engaged the Commissioner believes that three criteria must be met:
 - Firstly, the actual harm which the public authority alleges would, or would be likely to occur if it confirmed or denied that it held the requested information has to relate to the applicable interests within the relevant exclusion;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential confirmation or denial and the prejudice which the exclusion is designed to protect against. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, confirming or denying would be likely to result in prejudice or would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.
12. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that in the context of section 27(1), prejudice can be real and of substance: "...if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary".¹
13. PSNI set out that confirming or denying that it held information relevant to the request would risk the ongoing national security of the country and would be likely to prejudice relationships with other countries, by undermining Northern Ireland's relationship of trust and confidence with those other countries, which would ultimately prejudice the interests of the United Kingdom abroad.
14. With regard to the first criterion of the test outlined above, the Commissioner accepts that the prejudice described by PSNI clearly relates to the interests which section 27(1)(a) is designed to protect.

¹ Campaign against Arms Trade v the IC and MoD (EA/2007/0040):

<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i205/Campaign%20Against%20the%20Arms%20Trade;%20EA.2007.0040%20.pdf>

15. With regard to the second criterion, the Commissioner accepts that there is a causal link between confirming or denying and prejudice occurring. The Commissioner accepts that prejudice to relationships with other countries would be likely to result in prejudice to the interests of the United Kingdom abroad and its relationships with other States.
16. PSNI provided the Commissioner in confidence with more detailed arguments setting out that relationships between the relevant countries are based on trust, which is fundamental to international relations in general and maintaining effective security. The Commissioner is thus persuaded that it is plausible to argue that confirming or denying whether it holds information relating to other countries that falls within the scope of this particular request would harm relations between the United Kingdom and the relevant countries.
17. The Commissioner is satisfied that the third criterion is met in that there is clearly more than a hypothetical possibility of prejudice occurring if PSNI was to confirm or deny that it held relevant information.
18. On this basis the Commissioner finds that the exclusion at section 27(4) is engaged at the lower threshold in conjunction with sections 27(1)(a) and (c) of FOIA in this particular case. He has gone on to consider the balance of the public interest.

Public interest test

Public interest arguments in favour of confirming or denying whether information is held

19. PSNI recognises the importance of the public being informed of how public money is being spent, and how public authorities conduct their activities and generate income. PSNI stated that transparency in public office in respect of requests concerning police training, whether domestically and abroad, would inform public debate, provide reassurance and promote confidence in the police service as a whole.

Public interest arguments in favour of maintaining the exemption

20. PSNI argued that there is a considerable risk that disclosure of the requested information would be seen by some as a breach of vital trust and confidence, and would cause severe and lasting damage to the relations of the United Kingdom with other states. Disclosure of information that is likely to prejudice the interests of the UK abroad, and

further undermining the ability of the UK to protect and promote its interests abroad cannot be in the public interest.

Balance of the public interest test

21. In balancing the public interest arguments, the Commissioner accepts that there is some valid public interest in confirmation or denial in response to this request. This would inform the public on how public money is being spent, how PSNI carry out their activities and create income. It could also provide reassurance, raise public confidence in PSNI and allow for better informed public debate.
22. However, the Commissioner understands that confirming or denying whether information is held in this case is likely to compromise the ability of the United Kingdom to promote and protect its interests abroad whilst also undermining its ability to form new and mutually beneficial relationships with other states. The damage that confirmation or denial is likely to cause to the United Kingdom's international relations in this case cannot be said to be in the public interest.
23. Therefore, the Commissioner's conclusion is the public interest in maintaining this exemption outweighs the public interest in disclosure of the confirmation or denial that information is held.
24. In view of the Commissioner's findings, PSNI was not required to confirm or deny whether it held the requested information. Therefore, the Commissioner has not found it necessary to consider the other exemption (section 31(3) of FOIA cited by PSNI in this case.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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.

Deirdre Collins
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