

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 03 June 2010

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

### Summary

---

The complainant requested information regarding the number of police message forms that were served on ex-security force members in Northern Ireland during a particular period. The Police Service of Northern Ireland (the PSNI) refused the request under section 12 of the Act. The Commissioner finds that the PSNI applied section 12 correctly, and therefore he does not require any steps to be taken.

### The Commissioner's Role

---

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act). This Notice sets out his decision.

### Background

---

2. The general duties of the Police Service of Northern Ireland (the PSNI) are set out in Section 32(1) of the Police (Northern Ireland) Act 2000 which states that:

*"It shall be the general duty of the police officers –*

- (a) to protect life and property;*
- (b) to preserve order;*

- (c) *to prevent the commission of an offence;*
- (d) *where an offence has been committed, to take measures to bring the offender to justice”<sup>1</sup>.*

3. This reflects Article 2 of the European Convention on Human Rights (contained in Schedule 1 of the Human Rights Act 1998)<sup>2</sup>. The Right to Life has been interpreted by the European Court of Human Rights as placing a positive obligation on the State to actively protect the lives of individual citizens.
4. Therefore, where it is established that a real and immediate threat exists to an individual, the PSNI is under a legal duty to take reasonable measures to avoid the risk to life. In many cases, a “Police Message” will be issued.
5. A Police Message form (PM1) provides an individual with details concerning the nature of the threat, giving as much information as possible as to the circumstances of the threat so that the individual can take steps to protect themselves and to enable them, in conjunction with the police, to regulate their behaviour accordingly.
6. During the course of the Commissioner’s investigation, the Commissioner sought clarification from the complainant as to what he meant by the term “ex-security force members”. The complainant advised the Commissioner that he considered the term to include individuals who had previously served in the following categories:
  - members of the Royal Ulster Constabulary (RUC);
  - members of the Police Service of Northern Ireland (PSNI);
  - members of the RUC/PSNI (full-time and part-time) Reserve;
  - members of the Ulster Defence Regiment (UDR);
  - members of the Royal Irish Regiment (RIR); and
  - members of the British armed forces.
7. The British armed forces are made up of the British Army, Royal Navy and the Royal Air Force. However, the Commissioner notes that the

---

<sup>1</sup> [http://www.opsi.gov.uk/Acts/acts2000/ukpga\\_20000032\\_en\\_5#pt6-pb1-l1g32](http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000032_en_5#pt6-pb1-l1g32)

<sup>2</sup> [http://www.opsi.gov.uk/ACTS/acts1998/ukpga\\_19980042\\_en\\_1#pb3-l1g6](http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980042_en_1#pb3-l1g6)

only part of the armed forces that relates to Northern Ireland and the information requested by the complainant is the British Army.

## The Request

---

8. On 28 July 2008, the complainant submitted his request to the PSNI for the following information:

*"This is a refined request resulting from a refusal notice regarding ATI request F-2008-003371.*

*I wish to establish the number of form PM1s served on ex-security force members in Northern Ireland during the period 1<sup>st</sup> January 2007 to 28<sup>th</sup> July 2008".*

9. On 5 August 2008 the PSNI issued the complainant with a refusal notice. The refusal notice stated that, although the PSNI held information that was relevant to the request, the exact information requested by the complainant, namely the number of PM1 forms issued to ex-security force members, was not held in a format that would enable the request to be answered. Therefore the PSNI considered that the cost of complying with the request would exceed the "appropriate limit" as stated in the Act.
10. On 16 August 2008, the complainant asked for an internal review to be carried out in respect of this decision.
11. On 23 September 2008, the PSNI wrote to the complainant to inform him that an internal review had taken place and that a decision had been made to uphold the original decision of 5 August 2008. The complainant was advised of his right to appeal to the Information Commissioner.

## The Investigation

---

### Scope of the case

12. On 23 October 2008 the complainant contacted the Commissioner to complain about the way his request for information of 28 July 2008 had been handled. The Commissioner notes that this request referred to an earlier request made by the complainant to the PSNI. However, the complainant advised the Commissioner that he did not pursue this

earlier request and instead submitted a refined request on 28 July 2008. Therefore the Commissioner's investigation will only focus on this refined request, rather than the earlier request.

13. The complainant advised the Commissioner that he found it highly unlikely that the information he requested on 28 July 2008 could not be retrieved and disputed the reasons given by the PSNI in the refusal notice.
14. The complainant provided the Commissioner with background information as to the circumstances surrounding his request and in particular the high-risk threat level from dissident republicans to members of the security forces that was reported in the media.<sup>3</sup> The complainant advised the Commissioner that due to the ongoing threat to the security forces, this is information that the PSNI would be expected to have and to record. The Commissioner understands the complainant's expectation that this is information which the PSNI should hold given the reported level of threat currently posed to ex-security force personnel. However while the Commissioner may only decide whether information should or should not be disclosed, the Commissioner has no remit to comment on what information should be recorded by any public authority.
15. While the Commissioner understands that why the complainant is seeking disclosure of the requested information, he is unable to take into account any personal reasons for wanting the requested information. The Act is "motive-blind"; in other words, there is no requirement to consider the reasons or motive for a request. The Commissioner is only able to investigate whether or not a public authority has correctly applied the legislation in relation to documentation that is held.
16. Given the slightly ambiguous nature of the refusal notice issued by the PSNI, the Commissioner, during the course of his investigation, sought clarification from the PSNI as to whether it could confirm it held the exact information that the complainant requested or whether it could only confirm it held relevant information to the request that may contain the requested information. The PSNI confirmed that to retrieve the exact information requested by the complainant, namely the number of PM1 forms issued to ex-security force personnel would exceed the appropriate limit as it did not hold the information in an easily retrievable format. The PSNI confirmed that the only way to ascertain whether or not this information was actually held would be to

---

<sup>3</sup> <http://www.telegraph.co.uk/news/uknews/2464018/Dissident-Northern-Ireland-republican-threat-higher-than-from-Islamic-extremists.html>

check each individual form, which would exceed the appropriate limit under section 12.

17. The Commissioner's investigation will therefore focus on whether or not the exact information requested by the complainant, namely the number of PM1 forms issued to ex-security force members, was exempt on the basis of section 12 of the Act as it would exceed the appropriate limit to extract the actual number of forms issued to this particular category of individuals.

### **Chronology**

18. Unfortunately there was a delay of 12 months before the Commissioner was able to begin his investigation in this matter. The Commissioner contacted the PSNI on 27 November 2009 to request further information. Although the PSNI had referred to the "appropriate limit" in its refusal notice, it had not cited the corresponding provision of the Act (section 12). It appeared to the Commissioner that the PSNI was in fact seeking to refuse the request under the provision of section 12(2). The Commissioner therefore asked the PSNI to provide him with detailed representations regarding the application of section 12(2).
19. On 7 January 2010, the Commissioner received a response from the PSNI. The PSNI provided an explanation of the format in which it held relevant information, and provided a specimen PM1 form to illustrate this point.
20. On 12 January 2010 the Commissioner wrote to the PSNI asking for a detailed explanation of the steps taken to ascertain what information was held at the time of the request. On 22 February 2010 the Commissioner also requested that the PSNI provide him with all the PM1 forms issued during the timeframe requested by the complainant.
21. Further to a telephone call on 25 February 2010 with the Commissioner, the PSNI provided the Commissioner with a written response to his enquiries.
22. On 3 and 19 March 2010 the Commissioner sought clarification from the PSNI. On 23 March 2010, the PSNI responded to the Commissioner.
23. Following further correspondence with the PSNI in relation to its handling of the request, the Commissioner wrote to the PSNI on 25 March 2010. The Commissioner sought further explanations as to how the PSNI concluded that section 12 applied in relation to the complainant's request. The Commissioner also asked the PSNI to

provide a breakdown of its estimate of the time that would be needed to comply with the request.

24. On 31 March 2010, the PSNI provided a response to the Commissioner. The PSNI provided the Commissioner with a detailed breakdown as to how long it would take to extract the requested information.

## Analysis

---

### Section 12 – costs of compliance exceeds appropriate limit

25. The full text of section 12 can be found in the Legal Annex attached to this Decision Notice.
26. Under section 12(1) of the Act, a public authority is not obliged to comply with a request for information if it estimates that to do so would exceed the appropriate cost limit. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations). The Regulations allow for £25 per hour to be attributed to time spent complying with a request for information. The cost limit is set at £450 for the PSNI, which amounts to 18 hours' work.
27. Section 12(2) of the Act, provides that:
- “Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit”.*
28. Regulation 4(3) of the Regulations provides that the following factors can be taken into account when formulating a cost estimate:
- (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it.

29. The Tribunal considered the issue of what constitutes a reasonable estimate in the case of *Roberts v Information Commissioner*<sup>4</sup> and made the following comments:
- “Only an estimate is required” (i.e. not a precise calculation);
  - The costs estimate must be reasonable and only based on those activities described in regulation 4(3);
  - Time spent considering exemptions or redactions cannot be taken into account;
  - Estimates cannot take into account the costs relating to data validation or communication;
  - The determination of a reasonable estimate can only be considered on a case-by-case basis; and
  - Any estimate should be “*sensible, realistic and supported by cogent evidence*” as per the Tribunal’s findings in *Randall v Information Commissioner and Medicines and Health Care Product Regulatory Agency (EA/2007/0004)*.
30. In producing an estimate, the PSNI advised the Commissioner that the paper copies of PM1 forms were not held centrally, but were held across 8 District Area Units comprising of 29 Area Commands. A synopsis of the PM1 forms that were issued was also held in a number of Headquarter Units. The PSNI advised the Commissioner that the PM1 forms were retained in paper format, filed chronologically and stored in secure storage systems in secure accommodation. Therefore the PSNI argued that it firstly required a significant amount of time in order to collate the PM1 forms which may or may not contain the relevant information.
31. The PSNI provided the Commissioner with an explanation of the steps required in order to obtain and extract the requested information (to the extent that it was held). The PSNI advised that it would need to contact the 8 PSNI District and Headquarter Units to obtain the PM1 forms held by each Unit. Staff would then need to check each PM1 form to ascertain whether or not any reference was made to the individual’s background or occupation.
32. The PSNI provided the Commissioner with further details in relation to this process. The Commissioner has considered the sample forms

---

<sup>4</sup> EA/2008/0050, paras 9-13

provided by the PSNI. The Commissioner notes that each form consists of 2 separate pages containing a number of different headings. The Commissioner notes that the PM1 form contains space for the following pieces of information to be recorded:

- the individual's name;
  - the individual's address;
  - the actual message;
  - the name, rank and station address of the officer who served the PM1;
  - the date and time when the form was served;
  - signature for the recipient to acknowledge receipt of the form;
  - the recipient's response; and
  - additional information provided by the recipient.
33. The Commissioner is aware that the amount of information recorded in each form will vary depending on the level and details of the actual threat to the individual in question. The Commissioner notes that there is discretion for the officer to record any information which is deemed relevant to the particular threat. The PSNI provided the Commissioner with an example as to how this might occur: where a threat mentioned an individual driving a red car of a particular make, it would be appropriate to ask the recipient if they were still driving that make and colour of car and to record this on the form. The PSNI also accepted that this may on occasion include information concerning the individual's occupation. However, if this was not the case, the only way the information would be recorded would be where the recipient informed the serving officer of their background, or the serving officer personally knew the recipient to be an ex-security force member.
34. The Commissioner notes that, even though there is no requirement for a police officer to record the individual's occupation, there is equally nothing preventing the officer from doing this if he or she considers it relevant. Therefore the Commissioner is of the view that the PSNI could not say with complete certainty that the occupations of individuals were not recorded on any of the forms unless each individual form was checked. Additionally, the Commissioner is mindful of the possibility that a PM1 form issued to an individual who is ex-

security force personnel may not record that individual's employment or occupation.

35. The PSNI argued that the time taken to check each individual PM1 form would exceed the cost limit as set out at section 12 of the Act and the Regulations. The PSNI provided the Commissioner with a number of different arguments as to why this would be the case. As these representations contain sensitive information, the Commissioner has not reproduced all of these details within this Notice. However, the Commissioner is satisfied that, owing largely to the number of PM1 forms issued within the time period requested by the complainant, the process of locating and examining the forms, and extracting any relevant information, would take almost 170 hours, which is well in excess of the 18 hours allocated.
36. The Commissioner also explored whether the PSNI could answer the complainant's request by reference to its electronic records. The PSNI confirmed that it has computerised systems which record prior intelligence and subsequent investigations. However, the requested information was not held on the computer system. Information that was held electronically was for statistical purposes, such as the number of PM1 forms issued per month. The PSNI confirmed that their computer systems did not have the query search tools or language programs that would allow them to search for the number of PM1 forms served on ex-security force personnel. The PSNI confirmed that the only way to ascertain the requested information from these systems would be as a result of prior knowledge of the name of the individual who had been served with a PM1 form. In the absence of having the recipient's name, the only way to obtain the requested information was to conduct a manual search of all the paper records that were issued during the specified timeframe, which, as detailed above, would exceed the appropriate limit. This of course was subject to the occupations of the recipients being actually recorded on the forms in the first instance. The PSNI argued that either search would not provide an accurate account of how many PM1 forms had been served on ex-security force personnel unless the recipient was personally known to be an ex-security force member or that they disclosed this information to the serving officer at the time of receiving the PM1 form.
37. In respect of this argument, the Commissioner has taken into account the findings of the Information Tribunal in the case of *Home Office v Information Commissioner*. In this case, the Home Office argued that they could not guarantee that their database held all the information requested and that the results may not be 100% accurate. The Tribunal held that:

*"...the same must be true of information produced from any database (which is after all dependent on human beings to input data)..."*<sup>5</sup>

38. The Tribunal also stated that:

*"... if the records are faulty or inadequate and the information turns out therefore to be inaccurate that it is irrelevant: the right under the Act is to information which is held, not information which is accurate..."*<sup>6</sup>

39. Where an applicant requests a total number, the Commissioner will not accept arguments that the information is not held because the extraction process may only produce inaccurate or incomplete results. Therefore the Commissioner does not consider that this argument is a valid one for the purposes of this investigation.

40. Having considered the representations from the PSNI in conjunction with the number of PM1 forms issued, the Commissioner is satisfied that the cost of retrieving and extracting the requested information (to the extent that it is held) would exceed the appropriate limit. Therefore the Commissioner is satisfied that section 12(2) of the Act, in conjunction with section 12(1), is engaged.

## **Section 16 – duty to provide advice and assistance**

41. Section 16(1) of the Act states that:

*"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".*

42. Section 16(1) of the Act therefore requires a public authority to provide reasonable advice and assistance to complainants. Section 16(2) of the Act states that any public authority which conforms with the Code of Practice issued under section 45 of the Act (the Code) is to be taken to comply with the duty imposed by section 16(1).

43. The Code outlines that an authority is not obliged to comply with a request for information if the cost of complying with it would exceed the "appropriate limit". When this happens, the authority should

---

<sup>5</sup> EA/2008/0027, para 4

<sup>6</sup> EA/2008/0027, para 15

consider providing an indication of what, if any, information could be provided within the appropriate limit. The authority should also consider advising the complainant that if they wished to narrow the scope of their request, it may be possible to supply information for a lower fee or indeed for no fee at all.

44. In the case of *Barber v Information Commissioner*<sup>7</sup>, the Information Tribunal stated that it will be generally appropriate for the Commissioner to consider whether it was reasonable to expect a public authority to have provided more advice and assistance and, if it had done so, whether this might have had an impact upon how the request was handled.
45. The Code states that a public authority should be flexible in offering advice and assistance most appropriate to the circumstances of the complainant. As above, the Commissioner notes that in this case the PSNI considered whether or not the complainant's request could be altered by reducing the time period referred to by the complainant. The PSNI advised that even by doing this, the information was not categorised in a way that would enable the PSNI to answer the request within the cost limit.
46. The Commissioner also notes that although section 16 was not specifically referred to by the PSNI in the refusal notice issued, the PSNI did consider whether or not the request could be refined whereupon it could fall within the cost ceiling of section 12. However, the PSNI advised the complainant that even if the timeframe were to be reduced, it would still be likely that PSNI would not be able to comply with the information request within the cost limit. The Commissioner accepts that response was reasonable and is satisfied that the PSNI complied with the requirements of section 16 of the Act.

## The Decision

---

47. The Commissioner's decision is that the PSNI dealt with the following elements of the request for information in accordance with the Act:
  - the PSNI correctly applied section 12(2) to the request, as to comply with the request would exceed the cost limit; and

---

<sup>7</sup> EA/2005/0004

- the PSNI provided advice and assistance under section 16 of the Act.

48. However, the Commissioner has also decided that the PSNI did not deal with the request for information in accordance with Part 1 of the Act in the following respects:

- Section 17(5) for failing to specify its reliance on the application of section 12(1) and 12(2) in its refusal notice.

### Steps Required

---

49. The Commissioner requires no steps to be taken.

### Other matters

---

50. The Commissioner notes that the PSNI did not provide the complainant with any information to explain how it reached the conclusion that section 12 applied. The Commissioner would draw the PSNI's attention to the Tribunal's comments in the case of *Gowers and the London Borough of Camden* in which it said that a public authority should demonstrate in its refusal notice how its estimate has been calculated:

*"... a public authority seeking to rely on section 12 should include in its refusal notice, its estimate of the cost of compliance and how that figure has been arrived at, so that at the very least, the applicant can consider how he might be able to refine or limit his request so as to come within the costs limit..."*<sup>8</sup>

51. The Commissioner recommends that the PSNI should consider this in relation to future requests and should provide clear and detailed reasoning as to why section 12 applies to the information that the complainant has requested.

---

<sup>8</sup> EA/2007/0114, para 68

## Right of Appeal

---

52. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 3<sup>rd</sup> day of June 2010**

**Signed .....**

**Steve Wood**  
**Head of Policy Delivery**

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Legal Annex

---

### **Section 1 – General right of access to information held by public authorities**

- 1(1) Any person making a request for information to a public authority is entitled –
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.
- 1(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

### **Section 12 – Exemption where cost of compliance exceeds appropriate limit**

- 12(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
- 12(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
- 12(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

### **Section 16 – Duty to provide advice and assistance**

- 16(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- 16(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under

section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

### **Section 17 – Refusal of a request**

17(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.