

Our Ref: 000983/13



Freedom of Information Section
Nottinghamshire Police HQ
Sherwood Lodge, Arnold
Nottingham NG5 8PP

Tel: 101
Ext 800 2507
Fax: 0115 967 2896

5 March 2013

Request under the Freedom of Information Act 2000 (FOIA)

I write in connection with your request for information, which was received by Nottinghamshire Police on 5 February 2013.

Following receipt of your request searches were conducted within Nottinghamshire Police to locate the information you require.

Please find below answers to your questions:-

RESPONSE

I wish to gain the budget spent on undercover & covert operation in calendar years.

Under the terms of the Freedom of Information Act, I wish to request how much police have spent on undercover operations over the following years: 2008, 2009, 2010, 2011 & 2012?

Could you also send your total budget for each of the years above.

If you anticipate this request will exceed the cost limit, could you please provide the most recent year first and then work backwards until the cost limit is reached.

Undercover operative activity is one of the most highly sensitive areas of policing that is utilised in this country and it is an area of methodology that has recently been under significant legal scrutiny and media attention.

Disclosure of any information in relation to undercover operations, even if it only relates to expenditure, would provide details that would be useful to those

involved in criminal activities. For example, it would highlight whether Nottinghamshire Police had been investing in this discipline. If it was disclosed that Nottinghamshire Police had no, or little expenditure, then it would highlight 'to the world' that this type of activity is not taking place. In turn, the organised criminals and terrorists could take advantage of that situation. Conversely, if Nottinghamshire Police disclosed increased or large scale expenditure, it would demonstrate to the world that this area is well resourced.

In addition Nottinghamshire Police Force can neither confirm nor deny that any other information is held relevant to your request as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the following exemptions:

Section 23(5) Information Supplied by or concerning certain Security Bodies

Section 24(2) – National Security

Section 30(3) Investigations

Section 31(3) Law Enforcement

Section 23 is a class based absolute exemption which means that the legislators have identified harm in disclosure.

Section 30 is a class based qualified exemption and consideration of the public interest must be given as to whether neither confirming nor denying the information exists is the appropriate response.

Section 24 and 31 are prejudice based qualified exemptions and there is a requirement to articulate the harm that would be caused in confirming or not whether information is held, as well as carrying out a public interest test.

Section 24 (2) – National Security

Factors favouring confirmation that any other information is held

Whilst there is a public interest in the transparency of policing operations and in this case, providing assurance that any expenditure on undercover operations is fair and transparent, there is a very strong public interest in safeguarding national security operations and the use of any undercover strategies in any investigations.

The public are entitled to know how public funds are spent and resources are distributed within an area of policing. To confirm whether any other information is held relating to this request would enable the general public to hold the force to account on the way in which they deploy resources. In the current financial climate of cuts and with the call for transparency of public spending this would enable improved public debate.

Factors favouring denial that any other information is held

Any undercover operations are undertaken in order to protect the community that we serve. Under no circumstances would the Police wish to confirm whether any other information relevant to this request is/is not held as it would

highlight to terrorists and individuals intent on carrying out criminal activity any vulnerabilities within the Police Service.

Section 30(3) – Investigations.

Factors favouring confirmation that information is held

There is information within the public domain confirming that police use of undercover officers to assist them with investigations and the effective delivery of law enforcement. Any further disclosure or confirmation of details within this investigation would enhance the public's knowledge about how Nottinghamshire Police applies the prevention and detection of crime; the apprehension and prosecution of offenders and the administration of justice.

Factors favouring confirmation that information is not held

The provision of any other information would hinder the prevention and detection of crime, and also prejudice Nottinghamshire Police's ability to undertake investigations professionally and effectively.

Section 31(3) – Law enforcement

Factors favouring confirmation that information is held

Confirmation that additional information is held will enable the public to have a better understanding of the efficiency and effectiveness of the police service and how they adhere to the legislative framework surrounding the use of undercover officers.

Arguably it is in the public's interest to know if forces are making mistakes with regard to any expenditure on undercover operations that may be taking place.

Factors favouring confirmation that information is not held

Specific information relating to the use of undercover officers and any other law enforcement techniques would provide useful intelligence and a valuable asset to individuals and/or organisations wishing to commit crime.

Vulnerabilities and capabilities would be highlighted.

Balancing test

Obviously there is some information already in the public domain about the use of undercover officers and the effective delivery of law enforcement. The Police Service is tasked with protecting the community we serve and in solving crime and there is a public interest argument in ensuring we are open and transparent with regard to policing investigations and operations. There is no doubt that for the issues outlined above any disclosure relating to sensitive investigation material, such as any undercover information would jeopardise investigations and/or law enforcement.

Therefore, at this moment in time, it is our opinion that for these issues the balance test for confirmation or denial is not made out.

No inference can be taken from this refusal that any other information related to your request exists or does not exist.

I must also advise you that information with regards to Nottinghamshire Police's budget is already published on the Nottinghamshire Police website as per the following link:

http://www.nottinghamshire.police.uk/library/what_we_spend_how_we_spend_it/date/1/

Therefore this information is exempt from disclosure under Section 21 of the Freedom of Information Act.

This letter constitutes a refusal notice under Section 17(1) of the Freedom of Information Act 2000 with Sections 21, 23(5), 24(2), 30(3) and 31(3) of the act being applied.

21. – (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1) –

- a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2) b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

23. – (1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

(2) A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.

(3) The bodies referred to in subsections (1) and (2) are –

- a) the Security Service

- b) the Secret Intelligence Service
- c) the Government Communications Headquarters
- d) the special forces
- e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000
- f) the Tribunal established under section 7 of the Interception of Communications Act 1985
- g) the Tribunal established under section 5 of the Security Service Act 1989
- h) the Tribunal established under section 9 of the Intelligence Services Act 1994
- i) the Security Vetting Appeals Panel
- j) the Security Commission
- k) the National Criminal Intelligence Service, and
- l) the Service Authority for the National Criminal Intelligence Service
- m) the Serious Organised Crime Agency

(4) In subsection (3) c) “the Government Communications Headquarters” includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

(5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1 (1) a) would involve the disclosure of any information (whether or not already recorded)

24. – (1) Information which does not fall within section 23 (1) is exempt information if exemption from section 1 (1) b) is required for the purpose of safeguarding national security.

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1 (1) a) is required for the purpose of safeguarding national security.

30. – (1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of –

- a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –
 - i) whether a person should be charged with an offence, or
 - ii) whether a person charged with an offence is guilty of it
- b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- c) any criminal proceedings which the authority has power to conduct

(2) Information held by a public authority is exempt information if –

- a) it was obtained or recorded by the authority for the purposes of its functions relating to –
 - i) investigations falling within subsection (1) a) or b)
 - ii) criminal proceedings which the authority has power to conduct
 - iii) investigations (other than investigations falling within subsection (1) a) or b) which are conducted by the authority for any of the purposes specified in section 31 (2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- b) it relates to the obtaining of information from confidential sources

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).

31. – (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

- a) the prevention or detection of crime
- b) the apprehension or prosecution of offenders
- c) the administration of justice
- d) the assessment or collection of any tax or duty or of any imposition of a similar nature

- e) the operation of the immigration controls
- f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained
- g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)
- h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry rises out of an investigation conducted, for any of the purposes specified in subsection 2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1 (1) a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

Complaints Rights

Your attention is drawn to the enclosed review procedure, which details your right of complaint.

Copyright

Nottinghamshire Police in complying with their statutory duty under Sections 1 and 11 of the Freedom of Information Act 2000 (FOIA) to release the enclosed information will not breach the Copyright, Designs and Patents Act 1988. However, the rights of the copyright owner of the enclosed information will continue to be protected by law. Applications for the copyright owner's written permission to reproduce any part of the attached information should be addressed to the Force Solicitor, Nottinghamshire Police, Force Headquarters, Sherwood Lodge, Arnold, Nottinghamshire, NG5 8PP.

I would like to take this opportunity to thank you for your interest in Nottinghamshire Police.

Should you have any further enquiries concerning this matter, please write or contact the Freedom of Information Officer on telephone number 0115 9672507 or e-mail freedomofinformation@Nottinghamshire.pnn.police.uk quoting the above reference number.

Yours sincerely

Disclosure Officer

Are you dissatisfied with your response?

If so, prior to lodging a formal complaint, you are welcome and encouraged to discuss the decision with the case officer that dealt with your request.

Ask to have the decision looked at again

The quickest and easiest way to have the decision reconsidered is to telephone the case officer that is identified at the end of your decision letter.

That person will be able to discuss the decision, explain any issues and assist with any problems.

Formal Independent Review

If you are dissatisfied with the handling procedures or the decision made by Nottinghamshire Police under the Freedom of Information Act 2000, you can request an Independent Review.

Upon receipt for a review of the initial request response, an independent audit officer from Information Management will review the request and assess whether it has been satisfactorily processed in accordance with policy and procedure.

Requests for Independent Reviews requests should be made in writing to-

Force Information Manager
Nottinghamshire Police
Force Headquarters
Sherwood Lodge
Arnold
Nottingham
NG5 8PP

The Audit officer will record and communicate his/her decision to the information requester within 20 working days.

Appeals

If the findings of the formal independent review do not meet your approval, you can register an appeal against the decision.

An investigation will then take place by the Freedom of Information officer, which will be reported and presented to the Internal Appeal Board. This will include a full account of the reasoning for or against disclosure and the application of any relevant exemptions.

The Internal Appeal Board will consist of at least a member of the Chief Officer Team, a member of the Legal Team and the Force Information Manager.

Appeals should be registered in writing to:

Freedom of Information Officer
Nottinghamshire Police
Force Headquarters
Sherwood Lodge
Arnold
Nottingham
NG5 8PP

Alternatively E-mail: Freedomofinformation@nottinghamshire.pnn.police.uk

Or call: 01159672507

Applications to the Information Commissioner

If you then remain dissatisfied, you may make an application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make an application to the Information Commissioner, please visit their website at www.informationcommisioner.gov.uk

Alternatively, Write to:

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

Or call: 01625 545700.