



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2008-05175
Keyword: Operational Policing
Subject: ERNEST GEORGE FINLAY

Request:

Under the Freedom of Information Act 2000, I ask for a disclosure of the following information relating to a high-risk sex offender who has gone missing.

Q1: A copy of all correspondence involving the PSNI relating to managing the risk presented by Ernest George Finlay since he was released from serving his most recent prison sentence (for breach of post-custody conditions)

Q2: A copy of all correspondence involving the PSNI following the disappearance of Ernest George Finlay on November 15 2008.

Answer:

The information you requested forms part of the criminal investigation into the circumstances surrounding Ernest Finlay's disappearance and breaches of his Sexual Offences Prevention Order (SOPO) conditions which is ongoing and because of this your request for information has now been considered and the decision has been taken not to supply the information you have requested.

Section 17 of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which:

- (a) states that fact,
- (b) specifies the exemption in question and
- (c) states (if not otherwise apparent) why the exemption applies.

The exemption/s, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

The information you have requested is exempt by virtue of

Section 30(1)(a)(b)(c)

Section 38(1)(a)& (b) and

Section 40(2)

Section 30(1)(a)(b)(c) - Investigations and Proceedings conducted by a Public Authority

Under the Freedom of Information Act (2000) any information released under FOI is deemed to be released in to the **public domain** and not only to the individual requesting the information.

Exemption 30 has been engaged as the information you have requested relates to an ongoing police investigation.

The Police Service of Northern Ireland has an important role in countering the many threats against society and the flow of information is essential to this work. Release of information, regarding the disappearance of Ernest George Finlay, could compromise the confidence of individuals who may supply information, as release of information under FOIA must be considered a release of information to the world as a whole.

Release of information relating to managing the risk of registered sex offenders would help educate other sex offenders to the methodology employed in their management and may leave the community vulnerable to future crimes at their hands.

The release of information at this stage into the public domain may jeopardise the integrity and impartiality of any future proceedings in court.

S38 (1)(a)& (b) - Health & Safety

Under the Freedom of Information Act (2000) any information released under FOI is released in to the public domain, not just to the individual requesting the information. The information requested contains personal details i.e. names and addresses for parties involved in the ongoing investigation and individuals involved in the management of registered sex offenders.

By releasing these names there is the potential to ultimately endanger the physical or mental health of an individual and / or their families. This danger not only relates to the particular individual, but also to his / her family. It has been shown, by recent events, that family homes have been attacked by elements of the community thus creating danger for family members who would have no connection with the PSNI and also endangering the well being of innocent neighbours or passers-by. It is obvious that certain elements within the community specifically seek out information that would identify persons associated with the PSNI, for the sole purpose of carrying out attacks, with the view to killing individuals.

Releasing information into the public domain could have a detrimental effect on the well being of the victims of Ernest George Finlay's attacks. These persons will have been through the court process and to potentially remind them of what they had gone through could in turn have an adverse affect on their mental health and it is not in the public interest to have this occur.

The disclosure and publication of information relating to Registered Sex Offenders, (RSOs) is a highly emotive subject. The Northern Ireland Office's 2007 report, Public Attitudes Towards Sex Offenders In Northern Ireland has shown, 83% of the public felt that all RSOs should always be imprisoned and 58% felt that it was unacceptable for an adult RSO to live in their community. On occasions, the strength of feeling has escalated to such a degree, that both RSOs and innocent persons have been targeted by those in society who feel it is appropriate to take vigilante style action which would have an effect of the Health and Safety of these individuals.

Section 40(2) - Personal Information

Section 40 is a 'Class' based exemption, which means that the legislators have agreed that there would be 'Harm', if this information were released. It is also an Absolute exemption, which means there is no requirement on the police to consider whether there is a public interest in disclosure. This is because personal data is governed by other legislation (the Data Protection Act 1998). There are two elements to this exemption, the second element, being engaged if the personal data is about someone other than the applicant.

Personal Data is regulated under the principles of the Data Protection Act 1998 and when information contains personal data about a third party it can only be refused if disclosure would breach any of the data protection principles.

As previously highlighted, any disclosure under FOIA is a public disclosure and release of the personal data of individuals who are involved in the management of registered sex offenders and persons contributing to the current police investigation, in whatever capacity, would breach principles 1 and 2 of the Data Protection Act 1998.

Principle 1 states that personal data is processed lawfully and fairly. Personal data imparted and recorded for the investigation will be confidential and consequently any public disclosure may be unlawful if there were to be a breach of that law of confidentiality. Persons who give their data to the police during the course of an investigation have the expectation that it will be used for the purpose given and there would be unfairness to individuals involved or those who would have contributed, to disclose their personal data in to the public domain.

Principle 2 states that personal data is processed for a specific purpose and not further processed in any manner incompatible with that purpose. Once personal data has been publicly disclosed, it will in most cases be used for a purpose other than it was initially obtained. Public disclosure would cause unnecessary distress or damage to the persons involved, they would not have an expectation their personal data will be disclosed to others or possibly used for another purpose.

HARM TEST

Under the Freedom of Information Act (2000) **any information released under FOI is released in to the public domain, not just to the individual** requesting the information. The information requested contains personal details i.e. names and addresses for all parties involved including those of police personnel and other bodies involved in managing the risk of registered sex offenders.

Police investigations are conducted with due regard to the confidentiality and privacy of witnesses. There is an expectation that details/statements provided are to be used only for the purpose for which provided, in this case for the purpose of a criminal investigation and any follow up court proceedings.

It is a principle of long standing that police reports in criminal investigations are to be regarded as confidential. Such reports usually contain a measured and balanced consideration of evidence accrued during investigation, the credibility of witnesses and, in some cases, critical evaluation of sensitive issues. They can also contain advice. In essence, they contain well-marshalled and cogent argument surrounding the merits and demerits of the case as a whole and provide a platform to inform the decision making process. If the long-standing principle were to be abandoned officers would feel inhibited from being frank and candid. The result would be to detract from, rather than to enhance, the ability of those directing the initiation or continuance of criminal proceedings to make informed, balanced and prudent directions; particularly because future reports will be likely to become little more than a sterile and anodyne statement, confirming that evidence has been transmitted to the appropriate authority.

Releasing details, which may lead to the identity of witnesses, may prevent future witnesses of crime from coming forward for fear of identification. This will lead to unreported crime and a loss of confidence in the PSNI to investigate such cases. Information contained in documentation relating to managing the risk may identify the victims of Ernest Finlays crimes and these persons would be put through further undue stress .The release of this information could also potentially impact on any future rape investigations, it is suggested that as many as 80% of rapes are still unreported. One of the contributing factors to under reporting is the victim's perceptions that they will not be believed. We are seeking to increase reporting to increase detections and secure prosecutions. To publish details of victims details may discourage further victims from coming forward, thereby reducing our ability to detect offenders and increasing the risk to the public.

PUBLIC INTEREST TEST

Favouring Disclosure

Accountability

There is a public interest in public authorities being accountable for their actions. The information you have requested relates directly to the efficiency and effectiveness of the Police Service and its officers when investigating all matters reported to the police and the managing of risk presented by sex offenders.

Public Participation

Release of the requested information may further the interests of justice as it would improve the public's knowledge and understanding of the investigatory process, thereby encouraging the participation of members of the public in that process.

Accountability for Public Funds

Where public funds are being spent, there is a public interest in the accountability and justification of the expenditure.

Favouring Non Disclosure

Investigations

The release of information may jeopardise the integrity and impartiality of any future investigation conducted by the Police Service of Northern Ireland. This could also impact on any court proceedings, which may arise from the investigation. Releasing details, which may lead to the identity of witnesses, may prevent future witnesses to crime from coming forward for fear of identification. This will lead to unreported crime and a loss of confidence in the police to investigate such cases. This may lead to individuals not being brought to justice.

Interests of Third Parties

Where third party interests may be jeopardised by the release of information that relates to their identity or personal affairs. The release of information relating to managing the risk would be detrimental to all of the other bodies involved in the management of sex offenders and may lead to a risk of harm being inflicted on personnel employed by these bodies.

Efficient and Effective Conduct of the Service

It is a principle of long standing that police reports in sensitive investigations are to be regarded as confidential, such reports contain a measured and balanced consideration of evidence, the credibility of witnesses and, in some cases, critical evaluation of sensitive issues. Disclosure of information has the potential to prejudice the prevention and detection of crime and the apprehension or prosecution of offenders.

Flow of Information to the Service

A decrease in public confidence or support may lead to a reduction in the supply of intelligence, information and evidence that is made available to the police thus impacting on the effectiveness and efficiency of the service in investigating crime.

Tortuous Duty

Breach of confidentiality of any witnesses involved could lead to civil redress against the service.

BALANCING TEST AND DECISION

There is always a strong public interest in the accountability of the service, particularly how they deal with investigations of a sensitive nature. There can be no public interest in releasing details of witnesses, which would reduce witness confidentiality and prevent others from reporting incidents in the future. Such action would reduce the flow of information and evidence to the service. There can be no public interest in allowing the due process of law to be impeded.

After considering all aspects of this request I feel that the public interest for retention outweighs the public interest for release and the exemptions are therefore engaged.

If you have any queries regarding your request or the decision please do not hesitate to contact me on 028 9070 0164. When contacting the Freedom of Information Team, please quote the reference number listed at the beginning of this email.

If you are dissatisfied in any way with the handling of your request, you have the right to request a review. You should do this as soon as possible, or in any case within two months of the date of issue of this letter. In the event that you require a review to be undertaken, you can do so by writing to the Head of Freedom of Information, PSNI Headquarters, 65 Knock Road, Belfast, BT5 6LE or by emailing FOI@psni.pnn.police.uk

If following an internal review, carried out by an independent decision maker, you were to remain dissatisfied in any way with the handling of the request you may make a complaint, under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office and ask that they investigate whether the PSNI has complied with the terms of the Freedom of Information Act. You can write to the Information Commissioner at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out, however the Commissioner has the option to investigate the matter at his discretion.

Please be advised that PSNI replies under Freedom of Information may be released into the public domain via our website @ <http://www.psnipolice.uk/>

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.