Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST

Request Number: F-2009-02722

Keyword: Crime

Subject: CJI REPORT RE INSPECTION OF PPS

Request and Answer:

Question
The Criminal Justice Inspectorate follow-up report on an inspection of the Public Prosecution Service (published June 30, 2009; page 27) refers to "a specific piece of work undertaken between the PPS and PSNI on the analysis of unsuccessful outcomes in cases involving an allegation of rape."

Under the Freedom of Information Act, I would like the work mentioned in the above CJI report.

Answer
The Rape Crime Unit's (RCU) were established in April 2008 following a period of consultation within the organisation, external consultation with other stakeholders and in line with current developments nationally of good practice.

The function of the RCU is to provide a professional service to victims of serious sexual assault and to conduct a through and professional investigation.

The investigation of Rape presents unique challenges to investigators. Some of theses challenges arise because Rape is a serious crime and bringing offenders to justice promptly is a priority for the public and Criminal Justice System.

Part of that consultation process was between the Public Prosecution Service (PPS) and PSNI involving an analysis of unsuccessful outcomes in cases involving an allegation of rape. This was conducted by the Serious Crime Review Team (SCRT).

The purpose of SCRT is to enhance and assist the investigation of serious crime by conducting reviews of serious crime, as commissioned by Assistant Chief Constable Crime Operations. The ultimate aim is to provide assistance and support to investigators.

ACPO has described a review as a constructive evaluation of the conduct of an investigation to ensure an objective and thorough investigation, that has been conducted to national standards and which seeks to ensure investigative opportunities are not overlooked and that good practice is identified.

The requested information is therefore considered an integral part of the investigation and exempt under Section 30 Investigations, Section 38 Health and Safety, Section 40 Personal Information and Section 44 Legal Prohibitions on Disclosure.

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 exemptions, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

Absolute Exemptions

Section 40 (2) Personal Information

Section 44 (1) (a) Information covered by prohibitions on disclosure

Qualified Exemptions

Section 30 (1)(a)(b)(c)(2)(a) Investigations and proceedings conducted by the public authority

Section 38 (1)(a)(b) Health and Safety

HARM

The essence of the work undertaken by the PSNI is to protect both individuals and society as a whole.

As Police investigations are conducted with due regard to the confidentiality and privacy of witnesses, there is an expectation that details provided are to be used only for the purpose for which provided.

Under the Freedom of Information Act (2000) any information released under FOI is released into the public domain, not just to the individual requesting the information. If any personal details were disclosed there is the possibility that it may endanger the physical or mental health of an individual. The releasing of the names of any individual would contravene the first data protection principle in that it would not be ‘fair’ processing.

Section 30 - a public authority is exempt from the duty to communicate information where that information has, at any time been held for the purposes of any investigation, which the public authority has a duty to conduct.

Police (NI) Act 2000, which states:

“It shall be the general duty of police officers –

(a) to protect life and property
(b) to preserve order
(c) to prevent the commission of offences
(d) where an offence has been committed, to take measures to bring the offender to justice".

The European Convention of Human Rights states under Article 8 that each person has the right to respect for private family life. Section 38 of the Freedom of Information Act 2000 also protects an individual's physical health and mental wellbeing whether the harm is real or perceived. Therefore the PSNI consider that by releasing any information you have requested relating to investigations may have the potential to identify different person/s and would not be in keeping with the Act.

Where an application for information is made by someone other than the 'data subject' disclosure of that information will often constitute a breach of the Data Protection Act and consequently the public authority will usually be exempt from its duties under the Act as a result of Section 40 (2).

Public Interest Test

The public interest test relevant is as follows: -

Favouring Disclosure

Accountability

The actions of the Police Service, particularly in relation to crime requires appropriate application of legislation. This information would go some way towards reassuring those factors.

Public Participation

Where disclosure would enhance informed debate and decision making by the service.

Public Debate

Where the release of information would contribute to the quality and accuracy of public debate.

Considerations Favouring Non-Disclosure

Efficient and effective conduct of the service.

It would not be in the public interest to release information that may prevent or hinder current and future police investigations and regulatory enforcement.

Human Rights

The rights of individuals in these cases cannot be under estimated. The Human Rights of other individuals who may potentially be identified also need to be protected.

Investigations

It is the Association of Chief Police Officers approach that information relating to an investigation will rarely be disclosed under the provisions of the Freedom of Information Act. Whilst such information may be released if it provides a tangible community benefit, for example to prevent or detect crime or to protect life or property, it is hard to see how the information here will do so.

Interests of Third Parties

Where third party interests might be jeopardised by release of information that relates to personal affairs of individuals and/or sensitive commercial information held about business, financial, contractual or operational issues.

Although the request does not ask for personal data the interests of third parties, i.e. other persons involved, could still be jeopardised by the release of information that could lead to their identification.

Fair treatment of an individual

There can be public interest in non-disclosure of information that adversely affects the reputation of an individual. e.g. where they have been the subject of police investigations.

Flow of Information to the Service

The lack of confidentially would deter the public from providing information to the PSNI.

Tort in Law

In circumstances where the service is under a legal obligation to maintain confidences, it would not be in the public interest to release the information if the grounds for this duty can be shown to be valid.

Balancing Test

PSNI consider that the benefit, which would result from, the release of the information requested does not outweigh disclosing information relating to the above exemptions.

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

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 @ www.psni.police.uk

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