



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2010-00609

Keyword: Crime

Subject: Copies of a Statement

Request and Answer:

Question

I am writing to request copies of a statement made by a Miss Tina McCarthy relating to an assault on myself by her and her partner on the 13/03/2005. I wish to request this information under the Freedom of Information Act 2000; I am currently taking legal action against my employer and wish to make this statement available to my legal team.

Answer

In accordance with the Act, this letter represents a Refusal Notice for this particular request. The Police Service of Northern Ireland can neither confirm nor deny that it holds the information you have requested.

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1)(a) is to confirm or deny whether the information specified in the request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held.

Where exemptions are relied upon Section 17 of FOIA requires that we provide the applicant with a notice which

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

The Police Service of Northern Ireland (PSNI) can Neither Confirm Nor Deny that it holds the information 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 40 (5) Personal Information

Section 30 (3) Investigations and Proceedings Conducted by Public Authorities

The release of information under the Freedom of Information Act is a release into the public domain, and not just to an individual. To confirm that the PSNI hold the requested information would in fact

confirm whether or not this assault was reported to and recorded by the PSNI. This would amount to a release into the public domain, of personal information about the individuals involved. The individuals would have no expectation that these details would be released into the public domain, therefore their data protection rights would be breached by release.

Before refusing to comply with the provisions of s(1) (1) (a) of the Freedom of Information Act, the PSNI also has to analyse any public interest factors in neither confirming nor denying that information is or is not held if any of the exemptions cited are qualified in nature. Section 30 is a qualified class-based exemption so the public interest factors below are relevant. Also, although Section 40 is an absolute class-based exemption, a Public Interest Test is required for the purposes of NCND.

Public Interest Test Section 40 Personal Information

For Confirmation or Denial

Confirming or denying whether the PSNI holds this information would lead to a better informed public and a more accountable service in that procedures surrounding action taken by the police with regard to an assault would be revealed.

For Retention

To confirm or deny this information would be a breach of the Data Protection Act. It is important to be consistent with the use of NCND whether or not the requested information is held so that no conclusions regarding the existence of the information can be drawn from an NCND response.

Public Interest Test Section 30 investigations and Proceedings Conducted by Public Authorities

For Confirmation or Denial

The public are entitled to know how public funds are being spent on investigations. Confirmation or denial would reveal whether or not an investigation was, or is being, conducted and satisfy public interest.

Against Confirmation or Denial

Confirming or denying that the statement is held could affect the police service's future investigative capabilities which would hinder the prevention or detection of crime. This would impact on police resources and more crime would be committed, placing individuals at risk.

Decision

Confirmation or denial of whether the PSNI hold information of this nature would amount to a release of information whether on this occasion or on other occasions where a similar request is made. Whilst the PSNI would always wish to be transparent and accountable, no release under FOI should be made where an individual's data protection rights would be breached. Also, at this time, potential harm to current and future investigations outweighs any public benefit in knowing if this information is held. There is no tangible community benefit it complying with section 1 (1) (a) of the Act at this time. The public interest therefore must favour neither confirming nor denying that the information is held.

However, this should not be taken as conclusive evidence that the information you requested exists or does not exist.

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 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.