



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2010-03451

Keyword: Crime

Subject: Report in Relation to the Death of Mr Michael McLarnon

Request and Answer:

I write in connection with your request for information dated 1st December 2010

Question

I wish to seek under the Freedom of Information Act a copy of the recent report compiled by the HET into the circumstances surrounding the death of Mr Michael McLarnon at Etna Drive, Belfast in 1972. I understand that the HET released its report on or about 01/12/10.

Answer

The Historical Enquiry team have prepared a report concerning the death of Mr McLarnon. This report has identified a number of issues which are currently the subject of further enquiry.

The Police Service of Northern Ireland (PSNI) has reviewed the material held and have consulted with the lead senior investigating officer, who reviewed the case and PSNI has considered your request for information. It has been decided not to release the information you have requested.

Section 17(1) of the Freedom of Information Act 2000 requires the PSNI, 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 PSNI considered when deciding where the public interest lies, are listed below:

Absolute Exemption

Section 40 (2) Personal information

Public authorities are in general, exempt from the Act's duty to provide access to 'personal data' (as defined in the Data Protection Act 1998).

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).

Qualified Exemptions

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

Section 38 (1) (a) (b) Health & safety

Section 40 is an absolute exemption and does not require the public interest or harm to be evidenced and articulated to the applicant.

Section 30 is a class based qualified exemption which means that the legislators have identified that the public interest considerations need to be evidenced and articulated to the applicant.

Section 38 is a prejudice based qualified exemption which means that the legislators have identified that the harm (prejudice) in disclosure as well as the public interest considerations need to be evidenced and articulated to the applicant.

Harm

The release of information at this time could jeopardise the well being physically and mentally of witnesses or potential witnesses.

It could be argued that there is a public interest in the transparency of investigations carried out by the police to ensure they are being conducted appropriately and in line with current investigative guidelines. However, the Police Service has a duty of care to all individuals involved in any investigation to ensure effective law enforcement and the prevention and detection of crime. The Police Service will not disclose information which could compromise an ongoing investigation.

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 the information you have requested relating to the investigation around the shooting may have the potential to identify different person/s and would not be in keeping with the Act.

Section 30 (1) - 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. Even though a considerable amount of time has passed since the shooting the fact that individuals may still be identified, could mean that any further investigation could be compromised.

Public Interest Test

Section 30 - Factors favouring disclosure

Disclosure could promote public trust in providing transparency, demonstrating openness and accountability into how the investigation took place. It could allow the public to be satisfied that the investigation has been conducted efficiently and appropriately. Disclosure would also show that public funds were being used effectively and appropriately.

Section 30 - Factors favouring non disclosure

The information requested relates to a criminal investigation being conducted by the Historical Enquiries Team into the death.

If the details of the investigation were to be released, the ability of the HET investigation team to progress enquiries would be hampered and undermined if new witnesses or new information were identified in other cases being reviewed by the HET. Release of details of the investigation may affect the confidence of witnesses in other cases to engage with the HET. Confidence in the HET by victim's families could also be severely dented if our abilities to interview witnesses were to be reduced.

It would therefore not be in the public interest to release information that may still be of assistance the PSNI or HET.

Section 38 - Factors favouring disclosure

Public safety is of paramount importance to the PSNI and must always be considered so that the PSNI's ability to fulfil its core function of law enforcement is protected. PSNI would not wish to endanger the health and safety of any individual.

Section 38 - Factors favouring non disclosure

Release of information that could identify key witnesses may lead to those responsible identifying the witnesses. Some witnesses are also members of the public and it would not be in their interests to expose them to the risk of identification.

By disclosing the information the risks to individuals would be significant and there would be a loss of confidence in the police service to protect individuals.

Balance Test

The requirement to withhold information relating to a criminal investigation into the death together with personal information, the release of which may affect the health and safety of individuals, must take precedence over the important issues of public accountability and transparency. This means that, at this time, it would not be in the public interest to release the information.

The HET considers that until all the deaths attributable to The Troubles are investigated, further investigative opportunities may exist and investigative opportunities may be severely hampered by the release of any of this material until the reviews are complete. Release could also jeopardise possible judicial process.

Section 16 Advice and Assistance

Information that may be of interest to you, relating to the work of the HET can be accessed by clicking on the below link:

<http://www.psni.police.uk/historical-enquiries-team/het-introduction.htm>

If you have any queries regarding your request or the decision please do not hesitate to contact the Freedom of Information Team, on 028 90700164. When contacting 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.psnj.police.uk

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