



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F 2010 03410

Keyword: Crime

Subject: Information re appointment of Baroness O'Loan and Richard Harvey

Request and Answer:

Request

I wish to request copies of:

1. the internal papers relating to the decision to appoint Baroness O'Loan and Richard Harvey to oversee an investigation into murders and other serious crimes committed by the UVF in north Belfast,
2. the terms of reference for these two people or panel and their powers,
3. and any public statements by the PSNI at the time of the appointment of this panel I asked by email for a copy of any such statement and received no reply and would like also to see any records relating to this request.

Answer

I am writing to confirm that the Police Service of Northern Ireland (PSNI) has now completed its search for the information.

I have today decided to provide the located information in relation to question 3. Searches were conducted however, no record can be found regarding your previous email.

PSNI Press Release – 18th November 2010

“The Police Service of Northern Ireland has a dedicated team of experienced detectives within Serious Crime Branch conducting a complex and substantial inquiry, named Operation Stafford, into a series of murders and other serious crimes by the UVF in north Belfast. PSNI took over this work from the Historical Enquiries Team earlier this year.

In the exceptional circumstances of this investigation and at the request of some of the affected families, a special panel has been set up which will receive regular and comprehensive briefings on the progress of the investigation. This panel is in addition to the existing levels of scrutiny and accountability provided within the criminal justice system.

The Police Service has agreed to the establishment of the panel to address issues of confidence around the progress of the investigation and to demonstrate in good faith the scale and extent of the investigative work which is being undertaken.

GUIDANCE: Membership of the panel was agreed with victims and relatives. The members are Baroness Nuala O'Loan and barrister Mr Richard Harvey."

In relation questions 1 and 2, I fully exempt the located information pursuant to the provisions of Sections 30, 31, 38, 40 and 41 of the Act.

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 the Department considered when deciding where the public interest lies, are listed below:

Absolute

Section 40 (2) Personal Information

Section 41 (1) (a) (b) Information provided in Confidence

Qualified

Section 30 (1) (a) (b) (c) (2) (a) Investigations and proceedings conducted by Public Authorities

Section 31 (1) (a) (b) (c) Law Enforcement

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

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

Section 41 is an absolute exemption however there is a requirement to conduct a public interest test on whether the common law duty of confidentiality can be overcome. This differs from the usual PIT applied under FOI insofar as the default position favours non-disclosure unless overwhelming evidence is provided favouring disclosure.

Sections 31 and 38 are prejudice based qualified exemptions 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.

Section 30 is a class based qualified exemption that means that the legislators have identified that only the public interest considerations need to be evidenced and articulated to the applicant and not the harm (prejudice).

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 (Section 41), there is an expectation that details provided are to be used only for the purpose for which provided.

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 murders, the fact that individuals may still be identified, could mean that any further investigations could be compromised. Taking on board this argument it is considered the harm in releasing the information would also undermine the PSNI's overall ability to conduct any investigation that it has the power to conduct.

Section 31 - Operational procedures, methodology and tactics must be protected by the correct application of exemptions. This is because the release of this type of information would rarely be in the Public Interest and may reduce the PSNI's capability to perform its overall functions under the 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."

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 if any personal details were disclosed, distress and anxiety would be caused to individuals including family members.

Thus the releasing of the names of any individual would also contravene the first Data Protection principle in that it would not be 'fair' processing.

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 PSNI will be exempt from its duties under the Act as a result of Section 40 (2).

Public Interest Test

The public interest test is as follows: -

Section 30 Investigations and proceedings conducted by Public Authorities

Factors Favouring Disclosure

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

Factors Favouring Non-Disclosure

Information released into the public domain could undermine current investigations therefore hinder the detection of crime.

Section 31 Law Enforcement

Factors favouring disclosure

The release of information in relation to Operation Stafford by the PSNI may be of interest to the public. The actions of the PSNI, particularly in relation to crime detection require an appropriate application of legislation.

Factors favouring non-disclosure

The Police Service has a duty to deliver effective law enforcement ensuring the prevention and

detection of crime, apprehension or prosecution of offenders and administration of justice is carried out appropriately. They will not reveal detail, no matter how generic, which would compromise effective law enforcement issues.

Section 38 Health and Safety

Factors favouring disclosure

Release of the requested information would lead to better informed public awareness and debate.

Factors favouring non-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 by causing them distress or anxiety.

By releasing information in relation to Operation Stafford, could lead to individuals being distressed and their own and family's safety endangered should the information be acted upon by an individual or criminal organisation intent on hindering these ongoing investigations and breaching current PSNI processes.

The PSNI has a duty of care to the community we serve, to release information which could lead to an individual's safety being jeopardised would result in a loss of confidence in the way information is used. The threat level for Irish related terrorism is set separately for Northern Ireland and Great Britain. In Northern Ireland it is **SEVERE** and in Great Britain, **SUBSTANTIAL**.

Section 41 Information provided in Confidence

Factors favouring disclosure

Where the release of information would contribute to the quality and accuracy of public debate and encourage the community to be more vigilant and proactive in the fight against crime/terrorism.

Factors favouring non-disclosure

As already outlined above in the harm, police investigations and operating procedures are conducted with due regard to the confidentiality and privacy of information, there is an expectation that details provided are to be used only for the purpose for which provided.

Balancing Test

On balance it is not in the public interest to release this information.

In accordance with the Freedom of Information Act 2000, in relation to questions 1 and 2, this letter should be considered as a Refusal Notice, and therefore this part of your request has therefore been closed.

Additionally, PSNI can neither confirm nor deny whether any such information is held under sections 23(5) and 24(2) as the duty in Section 1(1) (a) of the Freedom of Information 2000 does not apply by virtue of the following exemptions:

Absolute Exemption

Section 23(5) Information Supplied by or relating to Security Bodies

Qualified Exemption

Section 24 (2) National Security

Section 23 is a classed based absolute exemption and therefore there is no need to explain the public interest considerations in this area.

However, it is required that PSNI articulate the public interest considerations for the use of NCND within the section 24 exemption. To the extent that Section 24 applies, PSNI have determined that in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether PSNI holds the information.

No inference can be taken from this refusal that any relevant section 23(5) or section 24(2) information you have requested does or does not exist.

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.