



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2010-01592

**Keyword:** Crime

**Subject:** McGurk's Bar Bombing 4<sup>th</sup> December 1971

### Request and Answer:

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

I have today decided to:

- disclose records in relation to Questions 1, 3 and 5 in full;
- fully exempt records in relation to Question 2 pursuant to the provisions of section 38 of the Act, and;
- partially exempt records in relation to Question 4 pursuant to the provisions of section 40 of the Act.

### Question 1

I am a grandson of Kitty Irvine who was killed in the McGurk's Bar Massacre of 4th December 1971.

May I make a formal request for basic information regarding your teams' investigations into the atrocity? All I require is a simple, bullet-pointed timeline for my own records, including information regarding:

Investigation start date.

### Answer

The Historical Enquiry Team (HET) review of the McGurk's Bar bombing commenced in March 2006.

### Question 2

Who was in charge and when?

### Answer

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 information you have requested would require me to release the names of PSNI staff members. This information has been exempted pursuant to the provision of Section 38 of the Freedom of Information Act.

The exemption as well as the factors the department considered when deciding where the public interest lies are listed below;

### **Harm Test**

Disclosure of PSNI Senior Investigating Officers involved in the HET review of the McGurk's Bar bombing could put these individuals at risk and impact on their safety. The Service is currently under threat from Dissident Republicans and releasing names of personnel could assist terrorists in targeting individuals. Dissidents have been responsible for a number of recent attacks, including bombs at Newtonhamilton police station and Palace Barracks in Holywood and have targeted police officers with under car booby trap devices. The Independent Monitoring Commission (IMC) in its 23<sup>rd</sup> report have stated that the Real IRA and the Continuity IRA were continuing to recruit and train members, acquire weapons and target potential victims, with police officers the main focus of their activities.

### **Public Interest Test Section 38**

#### **For Release**

Releasing the information would promote openness and transparency. The public would be better informed about the Historical Enquiries Team review process and the personnel involved.

#### **For Retention**

Releasing the names of police staff into the public domain would assist terrorists and criminal elements to use a mosaic approach and link all information available to them to carry out attacks on PSNI personnel on or off duty.

### **Decision**

I have determined that the release of the names of these Senior Investigating Officers into the public domain would not be in the public interest. The Service is currently under severe threat from Dissident Republicans and disclosure of this information has the potential to assist those criminal elements seeking to carry out attacks against police officers and staff. The safety of individuals is of paramount importance and the PSNI will not divulge any information which could put lives at risk.

### **Question 3**

When appointments of key investigators were changed.

### **Answer**

A Senior Investigating Officer was appointed to the case at the commencement of the review. Another Senior Investigating Officer was appointed in September 2007 to complete the Review Summary Report (RSR) on the Historical Enquiry Team Review.

#### **Question 4**

Key dates - for example, release of reports, key family meetings etc

#### **Answer**

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.

Releasing the names of family members of a victim of the McGurk's bar bombing would breach the Data Protection Act and is catered for within Freedom of Information by the exemptions under Section 40 (2) (a) and (b) as outlined below.

Section 40 (2) is a Class-based exemption and therefore it is not necessary to evidence the harm caused by disclosure. The data protection rights of a third party would be breached by disclosure, therefore Section 40 (2) is an Absolute exemption and a Public Interest Test is not necessary. This is so because personal data is governed by other law (The Data Protection Act 1998).

All requests made under FOIA are applicant blind. A request must be treated as such and a public authority will always view any disclosure as into the public domain and not just to an individual.

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 released if disclosure would not breach any of the data protection principles.

Principle 1 is that personal data must only be processed lawfully and fairly. This data was recorded by the PSNI for administrative purposes. To process this information for any other purpose, ie by releasing it under Freedom of Information would be unfair to the individuals concerned and therefore a breach of this principle.

We can, however, provide you with the following located information;

The first Review Summary Report (RSR) was presented in May 2008.

A supplementary RSR (draft) was presented on April 28, 2010.

Five family meetings/telephone conferences took place between 25/05/2006 and 30/07/2009.

HET also attended several conferences with representatives of the wider family groupings.

#### **Question 5**

When are you going to close your investigations?

#### **Answer**

The Historical Enquiries Team are awaiting a response to the draft Supplementary Review Summary Report presented in April 2010. Apart from any issues arising which warrant attention, HET enquiries have now been completed.

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](mailto: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](http://www.psni.police.uk)

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