



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2010-02455
Keyword: Crime
Subject: Missing Scottish Offender

Request and Answer:

Your request for information has now been considered and the decision has been taken not to supply the information you have requested.

Question

On what date was PSNI informed about the missing Scottish Offender Fraser Benjamin McLaughlin - <http://www.bbc.co.uk/news/uk-northern-ireland-11119552>

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

Section 30 (1)(a)(i)(ii) - Investigations and proceedings conducted by public bodies.

Section 40 (2)(a)(b) – Personal Information

Section 30 and Section 40 are class based exemptions and this means that the legislator's have agreed that there would be harm if this information was released.

Section 30 is a Qualified Exemption and therefore a Public Interest Test must be carried out. A summary of the Harm for Section 30 along with the Public Interest Test is provided below:

Harm

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. This information forms part of an ongoing investigation and any pending court appearance which could impact on the ongoing investigation.

PUBLIC INTEREST TEST

Favouring Release

There is a general public interest in the way that police work and for public bodies to be accountable for their actions. Information, which enables the efficiency and effectiveness of the Service to be scrutinised, will result in more confidence in the Police Service.

Favouring Retention

This information forms part of an ongoing investigation and any pending court appearance. Should a prosecution fail as a consequence of a premature disclosure of information, the public may lose confidence in the public authority in bringing offenders to justice. This will have a negative impact on the prosecution process.

This could result in a reduction in the flow of information and evidence, which would have a negative impact on the PSNI's ability to carry out its core functions.

Decision

There is always a strong public interest in the accountability of the Police and how they operate. The strongest argument for non-release is the potential harm to the prosecution process. There can be no public interest in compromising this process. The public interest for retention therefore outweighs the public interest for release. This exemption is therefore engaged.

Section 40(2)(a)(b) – Personal Information

Your request contains questions that to answer would require me to release personal details about an individual other than the applicant, as it relates to the circumstances of the missing individual. This would be a breach of the Data Protection Act and is catered for within Freedom of Information by the exemptions under Section 40(2) as outlined below.

Section 40(2) is a Class-based exemption, 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 imparted to the PSNI for the purpose of investigations. To process this information for any other purpose, i.e. by releasing it under Freedom of Information would be unfair to the individual concerned and therefore a breach of this principle.

For your information, the Child Exploitation & Online Protection site has published the following press

release which can be accessed via the link below:

<http://www.ceop.police.uk/Media-Centre/Press-releases/2010/MISSING-CONVICTED-CHILD-SEX-OFFENDER-ARRESTED-AFTER-MOST-WANTED-APPEAL--/>

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.psnipolice.uk

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