



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2010-02745

Keyword: Operational Policing

Subject: Operation Exposure

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 1

I would like copies of all documentation, in any form, of any communications within the PSNI on the subject of Operation Exposure in Foyle/ G District and its potential to cause issues in terms of human rights. I exclude documentation to and from the PSNI's legal advisers from this request but I would like see any documentation that records moves and views within the force itself on this issue.

Question 2

I would like to know whether all of the images of children released because of the Operation Exposure investigation into interface violence in Londonderry over the Twelfth July period were released by the same person to the media. If not, what checks were made to ensure that all other avenues had been exhausted before releasing images of children.

Question 3

Can you confirm whether anyone else took responsibility on this instance or any other for issuing images when the permanent Operation Exposure officer was not at work for any reason, whether through illness or leave, and if so what checks were made to ensure that no image could be issued wrongly.

Question 4

Can you supply me with any documentation that records the decision to release images of children to the press, and any documentation that answers the question of why police felt the need to make this decision at that time?

Question 5

I would like to know if the police are aware of any images of children being released to the press either by mistake, or in cases where the identity of the child was already known.

Question 6

If so, can you also provide me with any documentation in any form within the police service that mentions this issue. Can you also tell me what steps had been taken in these cases to ensure that those images were not released by mistake?

Question 7

Can you tell me whether images of any children were published under Operation Exposure who had not been shown on CCTV to have committed any offence? And, if so what moves have been made to ensure this does not happen again?

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 31 (1) (b) and (c) Law Enforcement

This is a prejudiced based, qualified exemption. This means that it is the Public Authority's responsibility to evidence the Harm and carry out a Public Interest Test.

Section 42 (1) Legal Professional Privilege

This is a qualified exemption. If information falls within this exemption, public authorities must then apply the public interest test set out in section 2(2)(b). The information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

There are two categories of Legal Professional Privilege - litigation privilege and legal advice privilege.

Operation Exposure is currently under Judicial Review and litigation privilege applies if litigation is underway or anticipated. Litigation privilege can cover a variety of information including advice, correspondence, notes, evidence, reports or other documents relating to the preparation of the case. The information you have requested is subject to litigation privilege as it is contained in draft affidavits prepared by PSNI for the purposes of the Judicial Review Proceedings. Information is also contained in guidance documents and decision making booklets which were prepared for each image released. The guidance documents and decision booklets concern legal rights, liabilities and obligations discussed in preparation for the operation and were brought together for the purpose of the litigation and therefore fall within this exemption.

Harm Test

Section 31

Release of the requested information in relation to Operation Exposure could prejudice the apprehension or prosecution of offenders involved in street violence in Londonderry and the administration of justice in relation to these crimes. Operation Exposure is currently under Judicial Review and if the requested information were to be released it would be likely to undermine the Judicial Review and subsequently any investigation/prosecution currently ongoing in relation to the operation.

Public Interest Test

Factors Favouring Release – Section 31

Release of this information would raise awareness of operations of this nature and transparency would increase public confidence in the processes involved. It could lead to a reduction in crime or more information being passed on to police concerning crime/violence.

Factors Favouring Retention – Section 31

Disclosure would adversely affect the law enforcement activities of the PSNI. The purpose of Operation Exposure was to identify individuals who have broken the law. It is currently the subject of Judicial Review proceedings. The information requested is central to that process. If this information were placed into the public domain at this time it would be likely to impact on these proceedings. There is a possibility that the Judicial Review would fail as a result of this which would lead to a collapse in the prosecution of offenders and the administration of justice.

Factors Favouring Release – Section 42

There is a general public interest inherent in FOI – ‘the assumption of disclosure’. In this case, Operation Exposure and the release of images of individuals have been reported in the media and release would aid accountability of the PSNI and lead to a better informed public.

Factors Favouring Retention – Section 42

The information requested is protected by Legal Professional Privilege. Release of the information would restrict access to full and frank legal advice which is fundamental to the administration of justice concerning the street violence in Londonderry. The information you have requested is subject to litigation privilege as it is contained in draft affidavits prepared by PSNI for the purposes of the Judicial Review Proceedings.

The information is current and relates to litigation proceedings which are already underway and are yet to reach their conclusion. Release of information into the public domain at this time would be likely to prejudice these proceedings.

Decision

The public interest in maintaining the exemption is strong due to the importance of the principle behind Legal Professional Privilege. This is enhanced further by the fact that the advice is still live and relates to an ongoing Judicial Review. The information would reveal the basis of the PSNI's case and would be likely to prejudice the outcome. The outlined factors in favour of disclosure, therefore, are not strong enough, at this time, to equal the factors in favour of maintaining the exemption.

Disclosure of the specific information requested would be likely to prejudice the prosecution of offenders and administration of justice if released prior to the completion of the Judicial Review and prior to the completion of investigations currently ongoing by PSNI in relation to the operation. Although there are valid reasons for disclosing the information, in this case they are outweighed by the strong public interest in ensuring penalties for those who engage in criminal behaviour and break the law.

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.