



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2011-01691

**Keyword:** Complaints/Discipline

**Subject:** Investigation Report

### Request and Answer:

#### Question

According to the Police Ombudsman the PSNI received an investigation report from them in February this year in relation to serious public disorder in East Belfast on the 31/8/09. Could you provide me with a copy of that report and any response from the PSNI to the Police Ombudsman ?

#### 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 information in response to your request on the pages below numbered 1- 14 subject to the deletion of information pursuant to the provisions of Sections 38 and 40 of the Freedom of Information 2000 (the Act)

With regard to a response from the PSNI to the Police Ombudsman I can advise that as of the date of your request no response has been issued.

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.

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

Section 40 (2) (a) (b) by virtue of Section 40(3)(a)(i) - Personal Information

**Section 38 Health and Safety** is a prejudiced based exemption which means that the PSNI must demonstrate that it is satisfied that to release the information would be likely to endanger the physical or mental health of any individual.

It is also a qualified exemption which means that the PSNI must consider the balance of the public interest in releasing the information against the public interest in withholding it.

A summary of the Harm and Public Interest considerations for Section 38 is provided below:

### **Harm Test - Section 38**

Disclosure of the names of persons in various roles within PSNI could put these individuals at risk and impact on their safety. The Service is currently under threat from terrorists and releasing names of personnel could assist these terrorists in targeting individuals. In the last year police officers have been targeted on several occasions 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**

#### **Factors Favouring Release**

Releasing the information would promote openness and transparency. When information disclosed relates directly to the efficiency and effectiveness of the service or its officers; in this case when referring to how the PSNI deal with serious public disorder, the proper allocation of resources is a matter that the Service should hold up to public scrutiny to enhance accountability and justification.

#### **Factors Favouring Retention**

Releasing the names of persons who work within the PSNI into the public domain would assist terrorists and criminal elements to carry out attacks on these persons.

Release of this information would be likely to place at risk the lives of officers and the public. This is because the detailed information in question would be useful to terrorists planning to carry out attacks on police, which have in the past been known to be indiscriminate in nature, therefore endangering unsuspecting bystanders in addition to the intended target.

#### **Decision**

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

**Section 40 Personal information** is an absolute exemption which means there is no requirement on the Public Authority to consider whether there is a public interest in disclosure. This is so because personal data is governed by other law (The Data Protection Act 1998).

To answer your request would require me to release personal details about individuals other than the applicant. The names of police officers could be used in conjunction with other information which may already be in the public domain or which may become available in the future to compromise their security. The PSNI have a duty of care to ensure the safety of police officers. A release under the Freedom of Information Act is considered to be a release to the public at large. 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.

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.

Members of staff are entitled to protection under the Data Protection Act 1998. The Service would be failing in its lawful duty were it to breach the Data Protection Act in order to furnish a disclosure under the Freedom of Information Act 2000. The Service has a duty to protect the personal data of all individuals. Therefore, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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.

PSNI HEADQUARTERS  
COMMAND SECRETARIAT

21 FEB 2011

1. Scan-Comsec... 111503  
2. Action .....  
3. Other .....



Our Ref: AL/CW

18 February 2011

Mr Matt Baggott CBE QPM BA (Hons)  
Chief Constable  
Police Service of Northern Ireland  
Brooklyn  
65 Knock Road  
BEFLAST  
BT5 6LE

Dear Chief Constable

Having been notified under the provisions of Section 55(4)<sup>of</sup> the Police (Northern Ireland) Act 1998 in accordance with an agreed protocol, I now attach my report on:

AEP Discharges, Mountpottinger / Albertbridge Road Area, Belfast  
(50264536-2009)

Yours sincerely

**AL HUTCHINSON**  
*Police Ombudsman for Northern Ireland*

Enc



INVESTOR IN PEOPLE

**Al Hutchinson - Police Ombudsman for Northern Ireland**  
New Cathedral Buildings, St. Anne's Square, 11 Church Street, Belfast BT1 1PG Tel: 028 9082 8727  
Fax: 028 9082 8615 Email: al.hutchinson@policeombudsman.org Web: www.policeombudsman.org  
Telephone calls to this office may be recorded and monitored for training, quality assurance and other lawful purposes

000001

**REGULATION 20 RUC (COMPLAINTS ETC.) REGULATIONS 2000**

**AEP DISCHARGES**

**MOUNTPOTTINGER / ALBERTBRIDGE ROAD**

**AREA, BELFAST**

**31 AUGUST 2009**

# 1.0

## INTRODUCTION

- 1.1 On 31 August 2009, the Chief Constable of the Police Service of Northern Ireland (PSNI) referred the circumstances in which a police officer discharged six Attenuated Energy Projects (AEP) rounds at members of the public, to the Police Ombudsman for Northern Ireland for independent investigation, under Section 55(4) of the Police (Northern Ireland) Act 1998.
- 1.2 The referral was made in accordance with an agreed protocol between the Police Ombudsman and Chief Constable that firearm discharges would be referred for independent investigation.
- 1.3 This report has been completed in compliance with Regulation 20 of the Royal Ulster Constabulary (Complaints etc.) Regulations 2000.

# 2.0

## CIRCUMSTANCES

- 2.1 On 31 August 2009 some members of the Nationalist Community gathered in the Mountpottinger / Albertbridge Road area in order to celebrate the closure of Mountpottinger PSNI Station.
- 2.2 Police monitored the situation via CCTV and a Tactical Support Group (TSG) unit was positioned on the Ravenhill Road in order that they could react to any incidents that may arise.
- 2.3 Later that evening rival Nationalist and Loyalist crowds gathered on either side of the Albertbridge Road. The TSG unit moved in to closely monitor the area and to keep both sides of the community away from each other. The situation deteriorated with large groups of people trying to attack each other and police vehicles in the area.
- 2.4 Police came under sustained attack and police Land Rovers were becoming heavily damaged with a very real threat to the officers inside. A request to deploy AEP systems was made and this was approved by an Assistant Chief Constable (ACC).
- 2.5 Police used a public address system mounted on a police helicopter to warn the crowd that AEP rounds would be discharged if they did not disperse.
- 2.6 The main crowd failed to disperse and six AEP rounds were subsequently discharged, all rounds striking their intended targets. The use of the AEPs had the desired effect and the crowds dispersed from the immediate area and the level of violence was reduced.

2.7 Sporadic violence continued throughout the evening until approximately 01:30 hours on 1 September 2009.

2.8 No public complaint was received by the Police Ombudsman's Office.



# 3.0

## INVESTIGATION

- 3.1 Upon notification of the AEP discharge the Police Ombudsman's Duty Senior Investigation Officer (SIO) initiated an investigation of the incident, attending the area with a team of investigators.
- 3.2 The scene was examined and recorded by Police Ombudsman investigators with R2S (Return to Scene) spherical photographic imagery.
- 3.3 Police Ombudsman investigators immediately made arrangements to obtain relevant police documentation and materials.
- 3.4 Statements were obtained from officers, including those involved at the scene and the police Silver Commander.
- 3.5 CCTV footage was obtained, including footage taken from the police helicopter. This showed that there were very large crowds in the area and that the police vehicles were surrounded on several occasions.
- 3.6 Radio transmissions broadcast during the incident were analysed. These transmissions provided a detailed chronology of actions taken by police and of the authorization process for the use of AEPs.
- 3.7 Enquiries revealed that several days before the incident community representatives from the Short Strand area attended Strandtown PSNI Station. During this meeting the representatives met with the local neighbourhood police to discuss plans for a peaceful rally to mark the

closure of Mountpottinger PSNI Station. Police were informed that local residents would meet outside the police station and release balloons. There was also to be a guest speaker who was not confirmed at that time. The participants would then make their way to St Matthew's Church for refreshments.

3.8 On the day of the rally police deployed local neighbourhood officers to the area with a TSG unit on standby in the immediate vicinity.

3.9 When disturbances began to occur during the rally, neighbourhood officers in the area informed the PSNI's Duty Officer. The police then contacted local community representatives and requested that they try to use their influence to restore order. The police also received several calls from members of the public reporting that large crowds had begun to gather in the Short Strand area and some people were becoming involved in disturbances, including assaulting people with hurley sticks, throwing missiles and damaging property.

3.10 Police then held talks with local community representatives about the ongoing situation. Concerns were raised about the potential for the trouble to escalate, and the TSG unit was ordered to move to the Mountpottinger Road. Two youths were seen climbing onto Mountpottinger Police Station, damaging security cameras and trying to access the station via upper windows. Attempts by local representatives to disperse the crowd proved unsuccessful and both Nationalists and Loyalists remained in the area throwing missiles at each other.

3.11 It was feared that the situation could deteriorate rapidly and the TSG unit was directed to drop back and put on Personal Protective Equipment (PPE). A request was also made for authorisation for the deployment of AEP equipment.

3.12 The TSG unit then returned to the Mountpottinger area. Crowds from both the Nationalist and Loyalist sides of the community began to grow. Some people on the Nationalist side were reported to be breaking up paving stones and throwing them at the police vehicles. Both sides were then observed throwing missiles at each other. People were also seen carrying golf clubs, hurley sticks, baseball bats and various pieces of masonry.

3.13 Police tried to use their vehicles to maintain a sterile area between the Nationalists and Loyalists.

3.14 Due to the increase in violence, police used a PA system to warn people in the crowd that force would be used if they did not disperse. At this time police vehicles were being heavily damaged. The bullet-proof glass in the passenger side window of one of the police Land Rovers was now totally shattered and a male was continuing to strike this window with a baseball bat. The Officer-in-Charge of the TSG unit made a further request for the use of AEPs to be authorized. Officers told Police Ombudsman investigators that their vehicles had been prevented from leaving the area by the crowds, as well as by the potential for injury to members of the public if they withdrew.

3.15 At approximately 21:00 hours the PSNI local area Duty Officer spoke with the Duty Assistant Chief Constable (ACC) to inform him of the ongoing situation and to request issue of AEP systems as a tactical option. The issue of AEP systems was then authorised and arrangements were made for the TSG unit to collect the AEP systems. Also at this time the TSG unit reported that their vehicles were sustaining extensive damage.

3.16 At 21:15 hours a Silver Command control room was set up at Strandtown Police Station. Initial actions were to establish Air Support and to link in to CCTV systems to monitor the situation.

- 3.17 It could be seen from the CCTV that members of the crowd were climbing on police vehicles and the use of police vehicles to control the crowd was failing. Silver Command decided that due to the availability of only one TSG unit the use of shields was not an option. Neither were water cannons available.
- 3.18 At 21:27 hours Silver Command directed that the Albertbridge Road be closed to traffic and pedestrians. Due to the images seen on the CCTV and communication with the TSG unit in the area it was deemed that there was now a serious risk of injury to police and the public. Attempts were made by Silver Command to contact local representatives; these attempts were unsuccessful.
- 3.19 The TSG unit made a request to deploy AEPs as there was now a serious threat to police officers on the ground. Authorization was obtained but instructions were given that a further audio warning should be issued. The crowd was then warned that AEPs would be fired if they did not disperse, and another verbal warning was issued via PA equipment mounted on the police helicopter.
- 3.20 People were observed attacking each other with metal bars and damaging property. The audio warnings were ignored by the crowd who failed to disperse.
- 3.21 Silver Command now felt that there was an imminent possibility of serious injury or loss of life and authorization to use AEPs was given at 21:35 hours. Police officers told Police Ombudsman investigators that by this stage they believed the use of AEPs to be legal, proportionate and necessary in the circumstances.
- 3.22 Following authorisation a total of six AEPs, the first of which was fired at 21:38 hours, were discharged by Officer A; who was located in the rear of a police Land Rover.

- 3.23 The AEPs were discharged via side portholes in the Land Rover. A 'spotter' worked in conjunction with the baton gunner to assist in identifying targets, and one AEP was discharged at each.
- 3.24 Police records show that every AEP struck its intended target. A description of each target is included on the required police documentation, as is information about every strike, each of which was recorded as hitting the lower torso area.
- 3.25 Evidence suggests that the use of AEPs removed the immediate threat to the officers and contributed towards the eventual dispersal of the crowd.
- 3.26 Serious disorder continued throughout the evening, but the level and numbers involved was reduced. Sporadic violence continued until approximately 01:30 hours when Silver Command stood down and the area was restored to normality.
- 3.27 Enquiries were made with several local hospitals and all reported that no-one had attended hospital with any injuries attributed to being struck with an AEP.
- 3.28 The firearms register used by the officers involved in this operation was examined. This showed that all weapons and ammunition were accounted for and signed out in accordance with procedures.
- 3.29 The Police Ombudsman's investigation established that Officer A was trained and authorized in the use of the AEP system (baton gun).

# 4.0

## CONCLUSIONS

- 4.1 In order to decide whether the use of a police weapon is justified, the Police Ombudsman must consider if the necessary legislation, Code of Ethics and police procedures have been complied with.
- 4.2 As regards legislation, Section 3 of the Criminal Law Act 1967 and Article 88 of the Police and Criminal Evidence (NI) Order both say that a police officer may use 'reasonable' force in performing her/his duty to protect life and property, preserve order and prevent offences being committed. Article 4 of the Police Code of Ethics outlines in detail what is expected of officers in such situations; including that as far as possible they take a 'graduated and flexible' response, act 'in proportion' and apply non-violent methods before resorting to the use of force.
- 4.3 PSNI General Order 21/2005 states that AEPs must only be used in public order situations when other means of restoring order have been tried and failed, and when their use is deemed absolutely necessary to prevent the loss of life or serious injury. Their use must be properly authorised by the Silver Commander, and they must only be aimed at identified individuals.
- 4.4 In this case the Police Ombudsman's investigation has established that the actions taken by police were graduated and proportionate to the circumstances. Various options were considered and tried before the use of AEPs was authorized.

- 4.5 It is clear from the damage sustained by the police vehicles, and from CCTV footage, that police had come under sustained attack throughout the incident. The police in attendance were only able to restore order following the use of AEPs.
- 4.6 The available evidence also indicates that police were adequately resourced to deal with a low level minor street event. The police had no information to indicate that serious street disorder would occur. The indications prior to the 'Public Meeting' were that it was to be peaceful, with balloons being released and the crowd leaving the area for refreshments. It appears that police prepared for the event on that basis.
- 4.7 If other police units had been available in the area, it is likely that order may have been restored more quickly, and less damage caused by the disturbances.
- 4.8 An immediate call was made for the deployment of additional police resources to the scene of the disorder. This request was dealt with appropriately and further resources were deployed as soon as was practicable. Police at the scene were placed at considerable risk and it is fortunate that those involved in the rioting did not gain access to police vehicles to inflict serious injury to the officers inside. The situation was ultimately brought under control by the PSNI.
- 4.9 The Police Ombudsman's investigation established that police followed all legal and procedural protocols during this incident. The incident was found to have complied with the PSNI guidelines for the use of AEPs.

# 5.0

## RECOMMENDATIONS

- 5.1 The Police Ombudsman's investigation identified no criminal offences or misconduct issues when reviewing the actions of Police. The firing of the AEP rounds was found to be legal, proportionate and necessary in the circumstances and in compliance with PSNI guidelines for the use of AEPs.



**AL HUTCHINSON**  
**POLICE OMBUDSMAN FOR NORTHERN IRELAND**

17 FEBRUARY 2011

*The Police Ombudsman for Northern Ireland*  
2009



# KEY TO IDENTITIES

*(Restricted to Chief Constable and Police Ombudsman)*

## Civilian Personnel

## PSNI Personnel

Officer Authorizing Use Of AEP'S

Assistant Chief Constable Jeremy Harris, 16282

Silver Commander

Chief Inspector John McKeag, 17928

Officer A

[REDACTED]

Spotter

[REDACTED]

Officer in Command of Scarlet TSG

[REDACTED]

s.F38(1)	s.F40(2)	s.F40(3)(a)
s.F38(1)(a)	s.F40(2)(a)	s.F40(3)(ai)
s.F38(1)(b)	s.F40(2)(b)	