



FREEDOM OF INFORMATION REQUEST



Request Number: F 2011 01503

Keyword: Crime

Subject: Northern Ireland Police Fund investigation

Request and Answer:

Question

Information in relation to the Northern Ireland Police Fund investigation in and around 4th December 2003.....

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

Section 17 (1) of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland (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 44 (1) (a) Information covered by Prohibitions on Disclosure

Qualified

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

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

Sections 40 (2) and 44 are absolute exemptions and they do not require the public interest to be considered.

Section 40 (2) 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. i.e. your

reference to other individuals.

Section 38 is a prejudice based qualified exemption 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 release of information, under FOI, is a release to the world and not just to you the individual.

The essence of the work undertaken by the PSNI is to protect both individuals and society as a whole. It has an important role in countering the many threats against society. Release of the requested information could undermine investigations and any future investigations, as it would enable targeted individuals/groups to become aware of police interest. This in turn would help subjects avoid detection, and inhibit the prevention and detection of crime and therefore undermine the PSNI's ability to protect the community it serves.

Damage could be caused by the release of the requested information as it could assist criminal/terrorist groups in establishing what information PSNI may or may not hold therefore increasing the risk of damage to any future trial. Additionally, any released information could be interpreted alongside other information (eg current media stories) to damaging effect.

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. (Section 30) Even though a considerable amount of time has passed since the initial investigation into the Northern Ireland Police Fund, the fact that individuals may still be identified, could mean that investigations could be compromised. As has been addressed above, the release of this material would seriously jeopardise the prevention and detection of crime for the Police Service as a whole.

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 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 the information you are requesting were disclosed, distress and anxiety would be caused to individuals including other victims connected to this investigation of the Northern Ireland Police Fund. Thus the releasing of the requested information would also contravene the first Data Protection principle in that it would not be 'fair' processing. Therefore the PSNI consider that by releasing the information you have requested relating to this investigation may have the potential to identify different person/s and would not be in keeping with the Act.

Additionally, 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 factors favouring disclosure

Disclosure could promote public trust in providing transparency, demonstrating openness and

accountability into how the investigation took place. It could allow the public to be satisfied that the investigation, has been conducted efficiently and appropriately. Disclosure would also show that public funds were being used effectively and appropriately.

Section 30 Investigations factors favouring non-disclosure

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

It is the Association of Chief Police Officers approach that information relating to an investigation will rarely be disclosed under the provisions of the Freedom of Information Act. Whilst such information may be released if it provides a tangible community benefit, for example to prevent or detect crime or to protect life or property, it is hard to see how the information here will do so.

Section 38 Health and Safety factors favouring disclosure

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

Section 38 Health and Safety 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 the Northern Ireland Police Fund investigation, 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 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.

Balancing Test

On balance it is not in the public interest to release the requested information. In accordance with the Freedom of Information Act 2000 this letter should be considered as a Refusal Notice, and therefore your request has therefore been closed.

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1) (a) is to confirm or deny whether the information specified in the request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held.

Where exemptions are relied upon Section 17 (1) of FOIA requires that we provide the applicant with a notice which

- a) states that fact,
- b) specifies the exemption(s) in question and
- c) states (if that would not otherwise be apparent) why the exemption applies.

The PSNI can neither confirm nor deny that it holds personal information relevant to your request as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the following exemptions:

Absolute (in part)

Section 40 (5) Personal Information

This exemption applies because all releases under FOI are releases into the Public Domain. The requested information, if held would relate to a investigation and therefore in turn would

amount to personal information about an individual. Simply to confirm the existence of the requested information would also amount to a release of personal information about that individual into the public domain. This would be unfair to that individual and not necessary to satisfy the public interest and would therefore be a breach of the Data Protection Act.

Section 40, under most circumstances is an absolute exemption, meaning that a Public Interest Test is not required. For the purpose of neither confirming nor denying however, the 'absolute' status does not apply, and a Public Interest Test is required.

Public Interest Test

Factors Favouring Confirmation or Denial Section 40 (5)

Confirmation or Denial of the existence of the requested information would enable the public to have a better knowledge of what information is recorded by PSNI and therefore a better understanding of the decision making process when it comes to the disclosure of personal details.

Factors Against Confirming or Denying Section 40 (5)

To confirm or deny that the requested information is held would amount to the processing of personal information in breach of the 1st Principle Data Protection Act i.e. "Personal data shall be processed fairly and lawfully". For this reason requests for such information should be made under that legislation and not under the Freedom of Information Act.

Decision

Whilst there is a public interest in the transparency and accountability of the Service, there is also a strong public interest in maintaining confidence in the PSNI with regard to its handling of individual's personal data. The PSNI should not process such personal data in breach of the DPA in order to satisfy any request under FOI and the exemption under Section 40(5)(a) of the Freedom of Information Act exists for this purpose.

However, this should not be taken as conclusive evidence that the personal information you requested exists or does not exist.

For your information I have attached a link below to a subject access request form which should be completed when a member of the public seeks access to his or her own personal data. It should be noted however that the provision of this link is not confirmation that any relevant information is held and that if any information is held, it may be subject to exemptions under the Data Protection Act.

<http://www.psni.police.uk/dat.pdf>

Furthermore, PSNI can neither confirm nor deny that any further information 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.