



FREEDOM OF INFORMATION REQUEST



Request Number: F-2011-01869

Keyword: Crime

Subject: Investigation

Request and Answer:

In accordance with the Act, this letter represents a Refusal Notice for this particular request. The Police Service of Northern Ireland can neither confirm nor deny that it holds the information you have requested.

Question

We now act on the instructions of (named individual) in relation to this matter. (Named individual) we understand has been informed by you that due to the death of his son the position is that you are no longer investigating this matter and that as the witness had died you will not be able to proceed with a prosecution, should you so wish.

It is our clients instructions that he obtained from you by way of discovery or if appropriate under the Freedom of Information Act (if applicable) the information which would have been obtained by PSNI during the course of the investigation.

Answer

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 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 Police Service of Northern Ireland (PSNI) can Neither Confirm Nor Deny that it holds the 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:

Section 30 (3) – Investigations and Proceedings conducted by Public Authorities

Section 40 (5) – Personal Information

Section 41 (2) – Information Provided in Confidence

Section 30 is a classed based and qualified exemption. This means that it is not necessary to consider the harm in confirming or denying the existence of the requested information but it is necessary to consider the public interest. If the information were held it must fall into the class of information covered by this exemption. If the information were held it would be held for the purposes of investigation to determine whether an offence has been committed and therefore clearly falls within the class of information provided by this exemption.

Sections 40 and 41 are class based and absolute exemptions and this means that the legislators have agreed that there would be harm in disclosure. Although not qualified there is a requirement to conduct a Public Interest Test for the purposes of NCND.

Public Interest Test

Factors Favouring Confirmation or Denial – Section 30

Confirming the existence of the information would show that the PSNI conducted an investigation, which the public would expect.

Factors Against Confirmation or Denial – Section 30

Confirming or denying the existence of the requested information could hinder the prevention and detection of crime, as an investigation or the outcome of subsequent proceedings could be compromised.

Factors Favouring Confirmation or Denial – Section 40

Confirming or denying whether the PSNI hold this information would aid accountability in that the Public could see what action is or is not taken by police when an incident such as this is reported to the police service.

Factors Against Confirmation or Denial – Section 40

Confirming or denying the existence of the requested information would contravene the first principle of the Data Protection Act which states that personal data shall be processed fairly and lawfully and that a public authority must handle people's personal data only in ways that they would reasonably expect. The breach of any individual's data protection rights would be caused by confirmation or denial. This is so whether or not the information is held.

Factors Favouring Confirmation or Denial – Section 41

This type of information, if held would relate directly to the efficiency and effectiveness of the Service and its officers when investigating incidents which have been reported to them.

Factors Against Confirmation or Denial – Section 41

Information gathered in relation to an investigation will contain statements which will have been given for the purposes of the investigation only. Persons involved will expect that their information will be treated in confidence. Police investigations are conducted with due regard to the confidentiality and privacy of victims, witnesses and suspects.

Decision

Confirmation or denial of whether the PSNI hold information of this nature would amount to a release of information either on this occasion or on other occasions where a similar request is made. Whilst there is a public interest in the transparency of how the police deal with allegations which are

reported to them and providing assurance that the PSNI is appropriately and effectively dealing with incidents of this nature, there is also a strong public interest in ensuring investigations are conducted properly.

The public interest is also strong in maintaining confidence in the PSNI with regard to its handling of individuals' personal data. No release under FOI should be made where an individual's data protection rights would be breached. Not only would this be a breach of Data Protection legislation by the PSNI, but it would also leave the PSNI open to action against it by individuals concerned.

It is for these reasons that the public interest must favour neither confirming nor denying that the requested information is held.

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

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.