



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2011-00402

**Keyword:** Crime

**Subject:** Kidnapping 1991

### Request and Answer:

As a result of correspondence sent to me by the PPS dated 1st Feb. 2011 I am requesting all information and documents from the PSNI under the FOIA and or any other rights of access as follows;

The PPS stated in their 01-02-2011 correspondence to me that;

"Enquiries have been made with the Royal Victoria Hospital and Musgrave Park Military Hospital. No records have been identified concerning your admission on 8th August 1991."

### Question 1

Please supply all information and or documents relating to all such requests and enquiries by the PSNI (or RUC) to both Royal Victoria Hospital and Musgrave Park Military Hospital and also all replies received.

And; "While there is some indication that fingerprints of three suspects were recovered at the scene it is by no means clear that these could now be proved to the requisite standard. The original exhibits are unavailable and it is not possible to identify the officers responsible for recovering the prints and supplying them for analysis."

### Question 2

Please give full details of all fingerprints recovered from the scene.

### Question 3

Please list and supply full details concerning the 'original exhibits' which are referred to in PPS letter and supply full details concerning all other exhibits recovered by the RUC at the crime scene.

### Question 4

Please supply full details, information and documents concerning all requests and enquiries made by PPS to PSNI, including all replies, for information relating to; 'The original exhibits are unavailable and it is not possible to identify the officers responsible for recovering the prints and supplying them for analysis.'

**Question 5**

Please supply all information and documents held by PSNI (and or RUC) concerning 'One of the suspects is thought to have been the tenant of the property at the time.' as well as all information concerning; ' ... and the two other suspects were his associates.'

**Question 6**

Please supply all information Police have concerning where all fingerprints were found, on which items, number of items and where were the said items recovered from.

**Question 7**

Please supply all information given to the PPS by the PSNI which confirmed that I was in the flat on the 8th Aug 1991.

**Question 8**

Are the PSNI satisfied that I was in the flat? If so, please supply all information and documents they have concerning my being inside the flat on 08-08-91.

**Question 9**

Please detail all other forensic evidence which was recovered from the scene by police, inside and outside the flat.

**Question 10**

Please supply all information relating to statements made by all other third parties which make reference to man jumping out of window.

**Question 11**

Please supply full details concerning '...crime scene was held at (named address) and that an examination was carried out by scenes of crime officer and a photographer.' What was the name of all officers involved? When did they, police first arrive at the crime scene and when did they leave the crime scene. Was anyone arrested at the scene on the day, 8th Aug 1991?

**Question 12**

Please supply all detail, information or evidence which was recorded by the police photographer concerning broken window(s) and or broken glass both inside and outside the flat, crime scene.

**Question 13**

Please supply all information or detail concerning person(s) referring to man, at flat or nearby, whose feet were tied and who was not wearing shoes.

**Question 14**

Please supply all information which was recorded concerning my shoes, trainers and or the laces having been recovered from inside or outside the flat.

**Question 15**

When did Police first speak to the owner of the flat, what date and how was owner contacted? Please also explain any delay in making contact with the owner. How did the owner of the flat explain the events which took place at the flat on 08-08-1991, flat? What explanation did the owner of the flat give concerning broken window(s), man found injured on ground outside, police and others treating the flat as a crime scene etc.

**Question 16**

Please supply all detail or information concerning any reference relating to the flat having been taken over by anyone, including terrorists, by force, making threats or using intimidation.

**Question 17**

What date did the PSNI first made aware that; 'The original exhibits are unavailable.' and by whom, name of officers.

**Question 18**

I'm being told; '.original exhibits are unavailable ...Please supply all information and documents concerning what happened to these exhibits, where have they gone. When did police discover the exhibits were missing and what has been done to find them. Which officers were involved in same?

**Question 19**

I'm also being told; '... it is not possible to identify the officers responsible for recovering the prints and supplying them for analysis.' Please supply all information and documents concerning all attempts made by police to identify all officers involved.

**Question 20**

When did the police first become aware that 'it is not possible to identify the officers responsible for recovering the prints and supplying them for analyses? What was the name of officers? How was the information passed to the police? Please supply all documents and information concerning same letters to the police as well as all replies relating to same.

**Answer****Questions 1 - 20**

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

**Section 30 (1) (a):** Investigations and proceedings conducted by the public authority – Section 30 is a class based qualified exemption which means that the legislators have identified that the public interest considerations need to be evidenced and articulated to the applicant.

**Harm**

Section 30 (1) (a) - 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 investigation is still open and any release of information could prejudice the investigation. Even though a considerable amount of time has passed the fact that individuals may still be identified, could mean that any further investigations could be compromised.

It could be argued that there is a public interest in the transparency of investigations carried out by the police to ensure they are being conducted appropriately and in line with current investigative guidelines particularly in relation to unsolved crimes. However, the Police Service of Northern Ireland

(PSNI) has a duty of care to all individuals involved in any investigation to ensure effective law enforcement and the prevention and detection of crime. The PSNI will not disclose information which could compromise an ongoing investigation.

There is an expectation that statements will remain within the domain for which they were provided and are made in confidence. Release of this type of information into the public domain while an investigation is still ongoing and unresolved would be a breach of this confidentiality.

Section 30

#### 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, although unresolved, has been conducted efficiently and appropriately. Disclosure would also show that public funds were being used effectively and appropriately.

Section 30

#### Factors Favouring Non-Disclosure

Information released into the public domain could undermine a police investigation. It would therefore not be in the public interest to release information that may still be of assistance to the PSNI in relation to this investigation and therefore hinder the detection of crime. Such a release could also undermine the right to a fair trial should any person be subsequently charged with any offence. It is in the interests of both the individual concerned and the integrity of the investigation process that material relating to a live investigation can be properly protected.

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 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.

#### **Balance Test**

The strongest consideration favouring disclosure is the interest in increasing public awareness and whilst it is important to be open and transparent that has to be balanced against the detrimental impact it would have on the investigative work connected to the investigation. On weighing up the competing interests PSNI consider in this instance it would not be in the public interest. The strongest public interest is in safeguarding the integrity of police investigations.

#### **Answer**

**Questions 7, 8, 10 and 14**

#### **Additionally, Section 40 (5) Personal Information**

Section 40 is an absolute exemption however Section 40 (5) (a) is considered class based qualified exemption which means I am required to conduct a public interest test in relation to its usage in neither confirming nor denying the existence of any information.

Section 40

#### Factors favouring confirmation or denial

Confirmation or denial of whether information is held would provide the public with an awareness of what personal information is held.

Section 40

### Factors against confirmation or denial

If confirmation or denying that other information is held has the potential to identify an individual this would be a clear breach of 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 they would reasonably expect.

### **Balance test**

I am obliged to weigh up the above factors in order to determine whether the public interest lies in maintaining a neither confirm nor deny stance. In this case, the public benefit in being more aware is outweighed by the potential risk to individuals and investigations.

This should not be taken as necessarily indicating that any information that would meet your request exists or does not exist.

It is considered appropriate to neither confirm nor deny that PSNI hold sensitive personal data under the Freedom of Information Act (FOIA) as this is considered a release to the world in general and not just to an individual applicant. If you feel the PSNI process your personal data then you may wish to request the information you require under Section 7 of the Data Protection Act 1998. This legislation allows a right of access to personal including sensitive personal data held by the PSNI Data Controller.

The Data Protection Act 1998 sets out that a request must be made in writing and a £10 fee provided along with information which allows the PSNI Data Controller to satisfy himself as to the identity of the person making the Subject Access Request.

I have enclosed the web link below for your information:

<http://www.psnipolice.uk/dat.pdf>

PSNI provide a specific form DAT1 to assist an individual wishing to request their personal data. Copy identification information such as a passport or driving license and a fee of £10 payable by cheque or postal order is required. The Data Controller is not obliged to comply with the legislation unless he is supplied with the above elements. Section 7 (2) & (3) addresses this legal obligation.

It should be noted however that the provision of this form 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.

### **Answer**

#### **Question 16**

Additionally, the PSNI can Neither Confirm Nor Deny that it holds any further 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 23(5) - Information supplied by, or concerning, certain security bodies

Section 24(2) - National Security

Section 23 is an absolute exemption and I am not required to provide a Public Interest Test or a Harm test.

Section 24 is a qualified, prejudice-based exemption which requires me to evidence the harm and consider the public interest.

### **Harm**

In 1991, the PSNI had primacy in Northern Ireland for national security. This national security remit was undertaken in partnership with S23(3) security bodies. In specific circumstances there is therefore a necessity to engage the Section 23(5) and 24(2) exemptions in conjunction in response to certain requests for information concerning terrorists. Providing any other response in this situation would itself disclose exempt information about one or more of the security bodies.

It is PSNI practice to liaise with other law enforcement and intelligence agencies and sharing intelligence with them in accordance with the law and established protocols.

Intelligence regarding terrorism is gathered for the preservation of national security and law enforcement. Within the context of the national security remit, any request for information concerning terrorist organisations which is made does not just ask for information, it seeks disclosure of the intelligence that has been gathered for the purposes of investigating activities that fall within this remit.

The question also asks for confirmation that intelligence exists in relation to terrorists within this remit.

Each and every FOI request is carefully considered on a case-by-case basis and a neither confirm nor deny response is only applied after due consideration. This assessment has been carried out and identified that this request engages the necessity to maintain a consistency of response by neither confirming nor denying by virtue of S23(5) and 24(2).

To confirm or deny that this level of policing activity has or has not occurred in any specific area would enable those engaged in criminal or terrorist activity or any form of domestic extremism to identify the focus of policing activity.

The release of such information would also reveal policing tactics regarding who was of interest to the police generally. This could be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public.

## **Public Interest Test**

Section 24

### Factors favouring confirmation or denial

The public are entitled to know how public funds are spent. It would also enable the public to be better aware of the scope of intelligence held on terrorist organisations.

Section 24

### Factors against confirmation or denial

By confirming or denying any policing arrangements of this nature would render security measures less effective. This would lead to the compromise of ongoing or future operations to protect the security or infra-structure of the UK and increase the risk of harm to the public.

Whilst there is a public interest in the transparency of policing operations and providing assurance that the police service is appropriately and effectively engaging with the threat posed by terrorists, there is a very strong public interest in safeguarding both national security and the integrity of police investigations and operations in the highly sensitive areas of which they work.

## **Balance test**

As much as there is public interest in knowing that policing activity is appropriate and balanced in matters of national security this will only be overridden in exceptional circumstances. The areas of police interest is a sensitive issue that reveals local intelligence therefore it is our opinion that for these issues the balancing test for confirming or denying that whether any such activities has taken place is not made out.

I am obliged to weigh up the above factors in order to determine whether the public interest lies in maintaining a neither confirm nor deny stance. In this case, the public benefit in being more aware is outweighed by the potential risk to national security, individuals and investigations.

This should not be taken as necessarily indicating that any information that would meet your question exists or does not exist.

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.