



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2011-01042

Keyword: Crime

Subject: Murder of Lorraine McCausland

Request and Answer:

Question

We confirm that we act on behalf of the family of the late Lorraine McCausland. Our clients advise that they have met recently with the Director Mr Cox and another member of the Historical Enquiries Team (name unknown).

Unfortunately our clients have not found clarity and comfort from the report and if anything your report raises further questions which they are in the process of formulating.

Our clients believe that they would be able to assist the Historical Enquiries Team and PSNI in their enquiries if they are given access to all the materials that were available in the compilation of your report.

We are formally making a freedom of information request on their behalf to have such access and we would be obliged if you would give serious consideration to same. We believe that this is in the best interests of everyone and will hopefully lead to the arrest and prosecution of the perpetrators of this dreadful murder.

Answer

The Historical Enquiry Team has reviewed the material held and consulted with the senior investigating officer, who reviewed the case. It has been decided not to release the information you have requested.

In every case, information will be released under FOIA into the **public domain** and therefore the Police Service of Northern Ireland (PSNI) must be satisfied and content with a number of issues relating to any harm that may be caused by disclosure and the public interest.

The Historical Enquiries Team (HET) has prepared a report concerning the death of Lorraine McCausland and the family has possession of this.

Section 17(1) of the Freedom of Information Act 2000 requires the 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 PSNI considered when deciding where the public interest lies, are listed below:

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

Public authorities are in general, exempt from the Act's duty to provide access to 'personal data' (as defined in the Data Protection Act 1998).

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 as a result of Section 40 (2).

The information you have requested contains personal data that relates to individuals who may be identified from this data. Details of the persons named in the Review Summary Report (RSR) and contained within the case papers have therefore been exempted pursuant to the provisions of Sections 40 (2) (a) (b) by virtue of Section 40(3)(a)(i) of the Freedom of Information Act.

This is an absolute exemption, which means there is no requirement 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). There are a number of elements to the Section 40 exemption and the second element is relevant in this instance. It is engaged if the request is for the personal data of someone other than the applicant.

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 refused if disclosure would breach any of the data protection principles.

I examined whether the information you requested is personal data as defined within the provisions of the Data Protection Act and I particularly focused on the following: -

- Does this data relate to, or focus on, or is it about a living individual?
- Could someone be identified from that data?
- As an incidental consequence could you learn something about an identifiable individual?
- Does the data impact on their privacy either in their work or family life?

In this instance I am satisfied the information is personal data as it is about living individuals and what they witnessed at this particular time. If this data were to be released as a public disclosure, I have no doubt it would impact on the privacy of the individual concerned in their private life.

As already highlighted, any disclosure under FOIA is a public disclosure and release of the personal data of an individual relating to their actions, would breach principles 1 and 2 of the Data Protection Act 1998.

Principle (1) - that personal data is processed lawfully and fairly. Personal data of this nature is initially imparted and recorded for the purposes of investigation or review of an incident by the PSNI. It will be treated in a highly confidential manner. Any public disclosure will be unlawful if there is a breach of that law of confidentiality.

Principle (2), that personal data is processed for a specific purpose and not further processed in any manner incompatible with that purpose. As previously mentioned, personal data in this instance was gathered and is processed for a specific investigation. Once personal data has been publicly disclosed, it will in many cases be used for a purpose other than for what it was initially obtained.

These individuals do not expect their personal data to be used for another purpose. If released into the public domain it may be used for a totally incompatible purpose, which could lead to intrusive attention from others.

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.

Section 40 is an absolute exemption and does not require the public interest or harm to be evidenced and articulated to the applicant.

Section 30 (1) (a) (b) (c) Investigations and proceedings conducted by the public authority

Section 38 (1) (a) (b) Health & safety

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.

Section 38 is a prejudice based qualified exemption which means that the legislators have identified that the harm in disclosure as well as the public interest considerations need to be evidenced and articulated to the applicant.

Harm

The release of information at this time could jeopardise the well being, physically and mentally of any individual involved.

The Police Service 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 Police Service will not disclose information which could compromise an investigation, future investigation or HET review.

Section 38 of the Freedom of Information Act 2000 also protects an individual's physical health and mental well being whether the harm is real or perceived. Therefore, the PSNI consider that by releasing the information you have requested relating to the investigation around the death of Mrs McCausland may have the potential to identify different person/s and would not be in keeping with the Act.

Public Interest Test

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 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

The information requested relates to a review conducted by the Historical Enquiry Team into the death of Mrs McCausland.

If the details of the investigation were to be released, the ability of the HET review team to progress enquiries would be hampered and undermined if new witnesses or new information were identified in other cases being reviewed by the HET. Release of details of the review may affect the confidence of witnesses in other cases to engage with the HET. Confidence in the HET by victims' families could also be severely dented if its ability to interview witnesses were to be reduced.

It would therefore not be in the public interest to release information that may still be of assistance to the PSNI or HET.

Section 38 - Factors favouring 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.

Section 38 - Factors favouring non disclosure

Release of information that could identify key witnesses may lead to those responsible or other factions within the community, identifying the witnesses. Some witnesses are also members of the public and it would not be in their interests to expose them to the risk of identification. Further release of this information could also identify previous suspects who have been arrested but never been charged or convicted. There still exists a situation in Northern Ireland whereby others could use this information to intimidate or cause physical harm to witnesses, previous suspects or their families, if their identity was disclosed.

By disclosing the information, the risks to individuals would be significant and there would be a loss of confidence in the police service to protect individuals.

Balance Test

The requirement to withhold information relating to a criminal investigation or review into the death together with personal information, the release of which may affect the health and safety of individuals, must take precedence over the important issues of public accountability and transparency. This means that, at this time, it would not be in the public interest to release that information.

The HET considers that until all the deaths attributable to The Troubles are investigated, further investigative opportunities may exist and investigative opportunities may be severely hampered by the release of any of this material until the reviews are complete. Release could also jeopardise possible judicial process.

In accordance with the Freedom of Information Act 2000, this letter should be considered as a Refusal Notice and the request has therefore been closed.

In compliance with Section 16, Duty to Assist - Information that may be of interest to you, relating to the work of the HET, can be accessed via the link below:

<http://www.psni.police.uk/historical-enquiries-team/het-introduction.htm>

If you have any queries regarding your request or this 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 can 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.