



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F 2011 00449

Keyword: Crime

Subject: All information relating to the late Albert Henry Taylor

Request and Answer:

Please provide all information relating to the late Albert Henry Taylor.... (at various listed addresses..)

The information is to include any intelligence data provided to or received from the security forces during the troubles beginning in 1969.

Mr Taylor served a custodial sentence relating to firearms offences around 1973 to 1976.

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 (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.

Your request has been divided into two areas:-

1. Crime Data

Absolute Exemption

Section 44 (1) (a) Prohibitions on disclosure

Qualified Exemption

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

Section 44 is an absolute exemption and does not require the public interest or harm to be evidenced and articulated to the applicant. However, in this instance an explanation is outlined below. 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.

HARM

The information requested is personal data that will focus and relate to an individual but as it relates to a deceased person the legal obligations found within the Data Protection Act 1998 will therefore not apply.

Despite this, there are a number of points to be considered in a request of this nature. They include whether a duty of confidentiality could survive Albert Henry Taylor's death, the rights available to any next of kin or close family relatives and the impact any release will have on the health and wellbeing of any next of kin or relatives.

Section 38(1) (a) Health and Safety exempt information whose disclosure would or would be likely to endanger the physical or mental health or the safety of any individual (for example by means of shock or distress).

It is possible that disclosure of this information into the public domain may affect the health of a living relative, i.e. son, daughter, sister etc. This area has been carefully examined by the Information Commissioner and the Information Tribunal who have provided comments and guidance. It is accepted that a duty of confidentiality does continue after the death of an individual.

You have highlighted within your request submission, "Mr Taylor served a custodial sentence relating to firearms offences around 1973 to 1976" and you have provided a number of addresses where he lived. Police will always be conscious of the fact that surviving relatives of a deceased person may or may not be aware of the facts you refer to, which of course may also be incorrect. Any disclosure by the PSNI under Freedom of Information legislation will be released to the world at large and also published on the Police Service Northern Ireland (PSNI) disclosure log for anyone to view. Most family members will not find this appropriate or acceptable.

Publication of such detailed information could lead to unnecessary distress and hurt which will impact on a family member's health and well being. Public interest is another issue to be examined and in this instance I do not believe there is any public interest in disclosing or confirming the information you refer to. Even the disclosure of historical conviction data of persons involved in high profile criminal offences which are subject to high media attention will always be subject to public interest.

Section 44 (1) (a) exempt information where disclosure is prohibited by or under any enactment, including the Human Rights Act 1998 (the "HRA"). If disclosure of information relating to a deceased person would breach the right to a private and family life of a living person (as protected by Article 8 of the European Convention on Human Rights), it will be exempt under Section 44.

The PSNI have no evidence to the contrary, and therefore are satisfied there are surviving family members of Albert Henry Taylor. You have listed your name as Robert Taylor but the PSNI has no means to verify your identity or your relationship / association with Albert Henry Taylor. Police can also assume there are additional living relatives of Albert Henry Taylor who could be sufficiently adversely affected by the release of such information and this will justify the application of s.44 (statute bars) in relation to the Human Rights Act.

Any living family members have a right to privacy and that should include sensitive data about their next of kin or living relatives. As highlighted within the initial FOI response in R (On the application of Ellis) v The Chief Constable of Essex Police (2003), Publication of the Name and Conviction Details,

interference with the right to respect for privacy under Article 8 ECHR was considered. What is very relevant in that case is that in judgement the Lord Chief Justice of England and Wales commented that “the family and child of the individual also had rights under Art.8 which might be violated by such disclosure”. Although that case refers to the conviction data of a living individual it is being used by the PSNI to support that of a deceased person.

Balance

In conclusion, I must reiterate that any request made under the Freedom of Information Act 2000 (FOIA) will be treated as applicant blind. Although the public authority will have a name and address for correspondence this is not an overriding factor in arriving at any decision to release information.

Disclosure under FOI is into the public domain and although you have listed your name as Robert Taylor, the FOI legislation does not require that this information be verified and the PSNI will not seek to do so due to the very fact that any information to be released must be suitable for public consumption. Therefore, PSNI consider that it would not be in the public interest to release the requested information.

In accordance with the act, this letter represents a Refusal Notice for this particular part of your request.

2. Intelligence Data

The PSNI can neither confirm nor deny that it holds any further information you have requested.

Absolute Exemption

Section 23 (5) Information supplied by, or concerning , certain security bodies

Qualified Exemptions

Section 24 (2) National Security.

Section 26 (3) Defence.

Section 30 (3) Investigations.

Section 31 (3) Law enforcement.

Section 23 (5) is an absolute exemption and therefore I am not required to comment any further.

However Sections 24 (2), 26 (3), 30 (3) and 31(3) are qualified which means I am required to conduct a public interest test in relation to their usage in neither confirming nor denying the existence of any information.

Harm.

The PSNI's overall policing functions are governed by the Police (NI) Act 2000. The act states “it shall be the general duty of police officers –

(a) to protect life and property;

(b) to preserve order;

(c) to prevent the commission of offences;

(d) where an offence has been committed, to take measures to bring the offender to justice.”

“Intelligence data provided to or received from the security forces”, would constitute national security information, and may include information which relates to one or more of the bodies listed at section 23(3) of the Act. Guidance from the ICO notes that a wide interpretation can be applied to the term ‘national security’, identifying that national security interests go beyond directly preventing attacks on the UK to include the safety of UK citizens abroad and the protection of the democratic constitution. Significantly, the guidance explicitly recognises the effective operation of national security bodies as being in the interests of national security, and it is this that I consider to be the key factor in the application of the section 23(5) and section 24(2) exemptions in this instance.

To demonstrate how this would occur in practice, I will review the range of possible responses that may be put forward as a result of a request for Intelligence data about a named individual.

Possible responses are as follows:

- Intelligence Branch holds no information, and they respond by confirming this. Therefore, the inference is that no security bodies has or had involvement with the individual and no information has been shared with them.
- Intelligence Branch holds information which comes from/relates to a section 23 body, and they respond by exempting the information by virtue of section 23 only (as section 23 and 24 cannot be applied to the same information unless in the application of a neither confirm nor deny response). This clearly indicates that information has been shared with a security body and that the information clearly relates to them.
- Intelligence Branch holds information, and they respond by exempting the information by virtue of section 24 only. This indicates that while the information falls within the national security remit of Intelligence Branch, in this case, no security body has or had an involvement or interest in the requested information. A similar inference could be drawn if the PSNI responded by applying section 31 only.
- Intelligence Branch holds information, and they disclose it. This would damage national security and law enforcement as it would reveal the extent of the police (and potentially other bodies) knowledge about a given subject.

In summary, to confirm or deny if the requested information is held, whichever course of action is taken, will itself disclose exempt information, and will result in damage to national security and law enforcement as confirming or denying whether information is held would give an indication of the interest of the police and potentially of a security body, now or in the past, in the requested information.

Public Interest Test.

Sec 24(2) National Security.

Factors favouring confirmation or denial :

Confirming or denying that these powers have been used would increase public scrutiny of police actions and in turn hold the police service to account.

Confirmation as to whether the information is or isn't held could provide a better awareness to the general public that the use of police funds is being dealt with appropriately.

Factors not favouring confirmation or denial:

Confirming or denying whether information is held would damage national security as it would reveal the level of police interest in a specific individual.

NCND must be applied consistently. In order for the police and other bodies to protect national security they must be able to maintain secrecy around specific targets of interest (whether these be people, properties etc). A confirmation or denial in this case would undermine future NCND responses by enabling comparisons between responses to be made.

Sect 26(3) Defence

Factors favouring confirmation or denial

Confirming or denying whether security forces and the police service share information in such situations would enable the public to have a better understanding as to the level of engagement that may exist between partner agencies.

Factors not favouring confirmation or denial:

Confirming or denying if information is or is not held would reveal the level of security interest in a specific individual.

Sec 30 (3) Investigations.

Factors favouring confirmation or denial

The PSNI is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. Whilst there is a public interest in the transparency of police investigations and providing assurance that the PSNI is appropriately and effectively dealing with investigations, there is also a strong public interest in maintaining confidence in the PSNI with regard to its handling of investigations which PSNI has a duty to conduct. Confirmation as to whether the information is or isn't held could provide a better awareness to the general public that the use of police funds is being dealt with appropriately.

Factors not favouring confirmation or denial:

Routine confirmation or denial about the level of intelligence data held could seriously undermine any investigation and prejudice the detection of crime and prosecution of offenders.

If the information were held it would be held for the purposes of investigations to determine whether offences had been committed and therefore clearly falls within the class of information provided by this exemption.

PSNI will be less effective in preventing and detecting crime. It is only by the consistent application of a neither confirm nor deny approach that this situation can be avoided. This again impacts on the ability and efficiency of PSNI to perform their statutory duties.

The importance of, and public interest in, protecting the working relationship between the security bodies and Intelligence Branch by maintaining the application of the neither confirm nor deny approach to certain requests – on one level, any breakdown in this relationship undermines the protection of national security; on another, it means that it will be more difficult for PSNI to conduct investigations. Any drop in efficiency or capability by the police service as a result of such disclosures would contribute to the likelihood that threats to national security and investigations and proceedings would be successfully realised.

Sec 31(3) Law Enforcement.

Factors favouring confirmation or denial

Better awareness may lead to improved information in the public domain.

Factors not favouring confirmation or denial

PSNI consider, because of the prejudice that would be likely to be caused by providing a response that confirms or denies that the requested information is held, would reveal exempt information relating to the involvement or otherwise of a security body. This in itself will impact on the law enforcement role of Intelligence Branch.

For Intelligence Branch, safeguarding national security equates directly to 'law enforcement', as it is within this remit that they exercise their statutory duty and powers. Intelligence Branch gather intelligence and evidence with a specific view to preventing crimes from taking place and identifying and arresting those who have committed criminal acts.

The public will always be interested in knowing that police investigations are being carried out efficiently and effectively. However routine confirmation or denial about the level of information held or not held in a police investigation could seriously undermine PSNI's future law enforcement capabilities.

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.

The PSNI has therefore determined that in all the circumstances of the case the public interest in maintaining the exclusion of the duty to neither confirm nor deny outweighs the public interest in confirming whether or not 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 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.psnipolice.uk

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.