



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2011-01809

**Keyword:** Operational Policing

**Subject:** Enniskillen Fusiliers Flute Band Parade

### Request and Answer:

#### Question

I am hoping you might be able to provide a copy of the 11/8 (POST PUBLIC PROCESSION RETURN) and 11/9 (PUBLIC PROCESSION REPORT) form from the Enniskillen Fusiliers Flute Band parade that took place in Enniskillen on 01/04/11.

#### Answer

I am writing to confirm that the Police Service of Northern Ireland has now completed its search for the information.

I have today decided to:

- disclose information in response to your request on the pages below numbered 1-5 subject to the deletion of information pursuant to the provisions of Sections 38 and 40 of the Freedom of Information 2000 (the Act).

The F District Operational Planning office have advised that there was no determination issued in this case and as such no 11/8 was completed.

Section 17 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/s, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

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

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

**Section 38 Health and Safety** is a prejudiced based exemption which means that the PSNI must demonstrate that it is satisfied that to release the information would be likely to endanger the physical or mental health of any individual.

It is also a qualified exemption which means that the PSNI must consider the balance of the public interest in releasing the information against the public interest in withholding it.

A summary of the Harm and Public Interest considerations for Section 38 is provided below:

### **Harm Test - Section 38**

Disclosure of the names of persons in various roles within PSNI could put these individuals at risk and impact on their safety. The Service is currently under threat from terrorists and releasing names of personnel could assist these terrorists in targeting individuals. In the last year police officers have been targeted on several occasions with under car booby trap devices. The Independent Monitoring Commission (IMC) in its 23<sup>rd</sup> report have stated that the Real IRA and the Continuity IRA were continuing to recruit and train members, acquire weapons and target potential victims, with police officers the main focus of their activities.

### **Public Interest Test**

#### **Factors Favouring Release**

Releasing the information would promote openness and transparency. When information disclosed relates directly to the efficiency and effectiveness of the service or its officers; in this case when referring to how the PSNI deal with policing of parades, the proper allocation of resources is a matter that the Service should hold up to public scrutiny to enhance accountability and justification.

#### **Factors Favouring Retention**

Releasing the names of persons who work within the PSNI into the public domain would assist terrorists and criminal elements to carry out attacks on these persons.

Release of this information would be likely to place at risk the lives of officers and the public. This is because the detailed information in question would be useful to terrorists planning to carry out attacks on police, which have in the past been known to be indiscriminate in nature, therefore endangering unsuspecting bystanders in addition to the intended target.

#### **Decision**

I have determined that the release of names of personnel into the public domain would not be in the public interest. The service is currently under severe threat from terrorists and disclosure of this information has the potential to assist those criminal elements seeking to carry out attacks against police officers and police premises. The safety of individuals is of paramount importance and the PSNI will not divulge any information which could put lives at risk.

**Section 40 Personal information** is an absolute exemption which means there is no requirement on the Public Authority 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).

To answer your request would require me to release personal details about individuals other than the applicant. The names of police officers could be used in conjunction with other information which may already be in the public domain or which may become available in the future to compromise their security. The PSNI have a duty of care to ensure the safety of police officers. A release under the Freedom of Information Act is considered to be a release to the public at large. This would be a breach of the Data Protection Act and is catered for within Freedom of Information by the exemptions under Section 40(2) as outlined below.

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.

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 released if disclosure would not breach any of the data protection principles.

Principle 1 is that personal data must only be processed lawfully and fairly.

Members of staff are entitled to protection under the Data Protection Act 1998. The Service would be failing in its lawful duty were it to breach the Data Protection Act in order to furnish a disclosure under the Freedom of Information Act 2000. The Service has a duty to protect the personal data of all individuals. Therefore, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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](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.



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## PUBLIC PROCESSION REPORT

<b>1</b>	<b>Report on</b>  (Name, Location and Date of Parade)	Notified parade by Enniskillen Fusiliers Flute Band. Enniskillen, Co Fermanagh. Friday 1st April 2011 at 20.00 - 23.30 hrs. Notified 23 bands invited.
<b>2</b>	<b>DCU</b>  (List affected DCUs in order parade enters)	The parade will take place entirely within Enniskillen Town, which is part of 'F' District Command.
<b>3</b>	<b>Notified Parade Route</b>  (Set out the notified route highlighting variations specific to the parade if applicable. A map should be attached where possible.)	The parade will assemble in Paget Lane Car Park and parade along Wellington Road, Belmore Street, East Bridge Street, Townhall Street, High Street, Church Street, Darling Street, Wesley Street and Wellington Road back to Paget Lane Car Park.
<b>4</b>	<b>Recent Parading History</b>  (A factual synopsis of sensitive parades at this venue for last 2/3 years should be given. Where there has been significant disorder or protests in a particular area this should be quoted. Human rights implications of previous police strategies should be included. Great depth of detail is not required. Reference should be made to other evidence that is available – for example, video footage.)	<p>There have been no parades held by this band in Enniskillen. This is the first parade held by this band.</p> <p>The history of all other parades in Enniskillen Town has been that there have been no problems at any others parades in the town.</p>

<p><b>5</b></p>	<p><b>Compliance with The Codes of Conduct</b></p> <p>(The Parades Commission has issued a Code of Conduct for parade and protest organisers, copies of which have been distributed within the Police Service of Northern Ireland. Clear breaches of the Code on previous occasions should be included here.)</p>	<p>The Organisers of the parade have been involved with other parades held in Enniskillen and have on these occasions complied with all aspects of the Codes of Conduct.</p>
<p><b>6</b></p>	<p><b>Public Disorder or Damage to Property which has occurred previously</b></p> <p>(This part must include details of factors that the Parades Commission must take into account when making their determination. Actions which infringed the law by those parading or protesting, must be included under the two subheadings.)</p> <p>(Parades – the extent to which participants gave rise to the disorder or damage to property and the likelihood that the behaviour of participants directly caused or led to the disorder. Numbers of participants and details of arrests/prosecutions should be quoted.)</p>	<p><b><u>Parade participants</u></b></p> <p>There have been no instances of disorderliness or damage to property associated with other parades in Enniskillen Town over the last few years.</p>
	<p>(Protests – the extent to which the protesters gave rise to the disorder or damage to property and the likelihood that the behaviour of protesters directly caused or led to the disorder. Numbers of protesters and details of arrests/prosecutions should be quoted.)</p>	<p><b><u>Protestors</u></b></p> <p>There have been no protests at any of the others parades that have taken place in Enniskillen Town over the last number of years.</p>
<p><b>7</b></p>	<p><b>Community Impact Assessment</b></p> <p>Impacts within the community should cover the degree to which a parade or parades have already caused or might cause division between communities. Where pertinent historic reasons exist why a parade is sensitive and if relevant they should be included. Relevant tension indicators should be quoted.)</p>	<p>Band Parades in Enniskillen Town have caused little or no division within the local community.</p>
	<p>(Disruption to the life of the community would include adverse effects the procession would cause to normal everyday life.)</p>	<p>There is minimal impact in terms of disruption to traffic, or inconvenience to the local community due to the fact that there is another route that can be taken by residents or persons transiting the area. This is not a long diversion route.</p> <p>Shops within Enniskillen Town Centre close at approx 18.00 hrs any that don't will have access along the backs of their premises.</p>

<p><b>Consider the Rights outlined below and make a judged assessment of how police strategies might affect the rights of individuals who may be affected.</b></p>	
<p><b>Police use of Force</b></p> <p><b>Article 2 of the European Convention on Human Rights (incorporated into UK Law by the Human Rights Act 1998)</b></p> <p>Individuals' right to life</p> <p>Everyone's right to life shall be protected by law. Deprivation of life which results from the use of force which is no more than absolutely necessary for a specified purpose does not contravene this Article.</p> <p>Article 2, in general, concerns the use of lethal or potentially lethal force.</p> <p><b>Article 3 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998)</b></p> <p>No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p> <p>Article 3, in general, concerns the use of non-lethal force. It also extends to police tactics in public order situations. Any use of force by the police must be no greater than is made necessary by the person's conduct. Non-lethal force used by the police must be no greater than reasonably necessary in the particular circumstances of the case.</p>	<p><b><u>Article 2 Human Rights Act 1988</u></b></p> <p>Police tactics will be graduated, proportionate and only used as necessary. Minimum force will be used to achieve our objectives. Policing intentions will be:</p> <ul style="list-style-type: none"> <li>• To uphold any determination that may be issued by the Commission with regard to the parade and its permitted route</li> <li>• To facilitate any peaceful and legitimate protest, by those opposed to it.</li> </ul> <p><b><u>Article 3 Human Rights Act 1988</u></b></p> <p>If disturbances do arise police may need to create physical separation of opposing groups. The use of this tactic may be considered necessary; however it will be proportionate to the situation and to the policing objective.</p>
<p><b>Article 5 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998)</b></p> <p>Individuals' right to liberty.</p> <p>This will cover issues such as detentions and arrests.</p> <p>It also covers the wider issues of restricting individual's freedom of movement by creating sterile zones etc.</p>	<p><b><u>Article 5 Human Rights Act 1998</u></b></p> <p>Depending on the attitude/intentions of any protestors, police may be required to create separation zones between protestors and parade participants. Access to local housing developments will not be affected or intentionally inhibited.</p> <p>This right must be balanced against the mood and anticipated intentions of the protest group. Our actions will be governed by our desire to protect life, property, prevent crime and prevent breaches of the peace. The creation of sterile separation areas (if necessary) will not be intended to inhibit access to homes.</p>
<p><b>Article 8 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998)</b></p> <p>Individuals' rights to respect for private and family life.</p> <p>Disallows interference by a public authority of this right except as is in accordance with the law and is necessary in the interests of national security, public safety, economic well being of the country, prevention of disorder and crime, protection of health and morals or the protection of rights and freedoms of others.</p>	<p><b><u>Article 8 Human Rights Act 1998</u></b></p> <p>This right must be balanced against the mood and anticipated intentions of the protest group. Our actions will be governed by our desire to protect life, property, prevent crime and prevent breaches of the peace. The creation of sterile separation areas (if necessary) will not be intended to inhibit access to homes.</p> <p>If disorder is likely or anticipated, police evidence gathering teams will be deployed to gather best evidence for prosecution purposes. These tactics are proportionate, legal and necessary if public order problems arise, or might be anticipated.</p>

<p><b>Article 9 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998)</b></p> <p>Right to freedom of thought, conscience and religion.</p> <p>Gives individuals freedom to manifest religion in worship, teaching, practice and observance. Limitations prescribed by law only by interests of public safety, public order, health or morals or for protection of rights and freedoms of others.</p>	<p><b><u>Article 9 Human Rights Act 1988</u></b></p> <p>Those wishing to attend worship will not be inhibited. Local police as part of the Community Impact Assessment will consult local clergy prior to the parade.</p> <p>Attempts are currently being made to contact local clergy.</p>
<p><b>Article 10 of the European Convention on Human Rights (incorporated into UK Law by the Human Rights Act 1998)</b></p> <p>Right to freedom of expression.</p> <p>Freedom to hold opinions and to receive or impart information and ideas without interference by public authorities and regardless of frontiers. The exercise of these freedoms, since they carry duty and responsibility, may be limited as prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity, public safety, prevention of disorder and crime, protection of health or morals, protection of the reputation or rights of others, preventing disclosure of confidential information or to maintain the authority and impartiality of judiciary.</p>	<p><b><u>Article 10 Human Rights Act 1998</u></b></p> <p>If a determination is made by the Commission, police will have to balance the rights of both groups, against our overarching duty to protect life, prevent crime and uphold the peace. If a legitimate and peaceful protest arises, police will facilitate this, however if the protest becomes unruly and the peace is threatened, police may need to create separation zones between the groups, in order to preserve the peace and to prevent the Commission of public order type offences.</p>
<p><b>Article 11 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998)</b></p> <p>Right to freedom of assembly and association.</p> <p>Everyone has the right to freedom of <b>peaceful</b> assembly and association with others.</p> <p>Can only be restricted as prescribed by law and as are necessary in a democratic society in the interests of national security, public safety, prevention of disorder or crime, protection of health or morals or for the protection of the rights or freedoms of others. This shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, the police or the administration of the State.</p>	<p><b><u>Article 11 Human Rights Act 1998</u></b></p> <p>If assembled protestors are peaceful, no difficulties should be encountered, however if the intent of those opposed to the parade is to inflame or provoke, we could not allow them freedom to intermingle with the Orange Order crowd as this would undoubtedly lead to problems and a potential for breaches of the peace. Police will facilitate peaceful and legitimate protest. Sterile separations zones will be considered and created if necessary.</p>
<p><b>Article 14 of the European Convention on Human Rights (incorporated into UK law by the Human Rights Act 1998)</b></p> <p>Prohibition of discrimination.</p> <p>All the rights and freedoms in the Convention shall be enjoyed without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, natural or social origin, association with a national minority, property, birth or other status.</p>	<p><b><u>Article 14 Human Rights Act 1998</u></b></p> <p>All rights are qualified and must be balanced against the rights of others. Police intentions will be to uphold the decision/determination of the Commission. If a protest occurs and it is lawful/peaceful, police actions will be proportionate and appropriate to the circumstances.</p>

(This section should contain any other relevant information, which has been obtained through community contacts etc. A professional assessment of the value of such information must be given.)

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**Signature**

This report should be signed by the DCU Commander or if crossing police boundaries by the senior officer responsible.

**(Name, Location and Date of Parade)**

  
Area Commander.

**s.F38(1)**

**s.F38(1)(a)**

**s.F38(1)(b)**

**s.F40(2)**

**s.F40(2)(a)**

**s.F40(2)(b)**

**s.F40(3)(a)**

**s.F40(3)(ai)**