



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2011-00278

Keyword: Organisational Information/Governance

Subject: DNA Related Information - Previous Request F-2010-02443 Refers

Request and Answer:

I write in connection with your request for information dated January 4, 2011.

I have today decided to:

- disclose information relating to questions 2a - 11 in full; and
- fully exempt information relating to questions 1, 2 and 12 pursuant to the provisions of Section 30 and 38 of the Act.

Question 2a

How many of the 15 people who have had DNA samples taken have been i) arrested? ii) charged? (Previous request F-2010-02443 refers).

Answer

All of them.

Question 3

How many weapons are held by the authorities relevant to the 2563 cases?

Answer

The HET is unable to say how many weapons are held by the PSNI regarding each case until it has conducted the review. This will not become apparent until **all** the reviews have taken place. It is only when the HET has examined each individual case that it will be able to establish if a weapon was ever recovered, if it is still in police possession or whether it has been destroyed.

Question 4

How many of these weapons have had ballistics records uploaded?

Answer

In your previous FOI request the HET stated that of 1040 cases uploaded, details of 2086 weapons were recorded. These figures are indications that weapons were used but until each case is examined the data cannot be verified until their use is evidenced. The HET has found examples of

data that is incorrect or cannot be substantiated. It required liaison with Forensic Science Northern Ireland by the HET on a case by case basis to establish if evidence of the weapon's (a) recovery in that case and (b) linkage to a crime exist.

Question 5

How many weapons held by the authorities have been tested for DNA?

Answer

One firearm. DNA analysis was first used in 1989 which clearly excludes weapons recovered prior to that period. Until this analytical process was introduced packaging and storage of exhibits did not conform to the strict guidelines in place today to ensure the integrity of items against contamination or cross contamination. Weapons recovered prior to this, if they still exist, were not preserved and stored with DNA considerations.

The HET with the exception of exempted cases has not commenced reviews into cases from 1989 onwards.

Question 6

How many fingerprint records do the authorities have relevant to the 2563 cases?

Answer

At present the HET is unable to say how many fingerprint records are held by the PSNI regarding each case to be reviewed. This will not become apparent until all the reviews have taken place only then will the HET know if these records are still in police possession, whether or not they have been destroyed or whether they are of evidential value.

Question 7

How many of these have been uploaded?

Answer

Please refer to answer 6 above.

Question 8

Aside from exempted cases, what is the date of the cases for which ballistics records have been uploaded?

Answer

Aside from exempted cases the HET is currently reviewing cases up to 1975.

Question 9

Aside from exempted cases, what is the date of the cases for which DNA records have been uploaded?

Answer

Please refer to answer 5 above.

Question 10

Aside from exempted cases, what is the date of the cases for which fingerprint records have been uploaded?

Answer

Aside from exempted cases the HET is currently reviewing cases up to 1975.

Question 11

Please give the year of death / terrorist offence for each of the exempted cases which have been i) completed ii) opened by HET?

Answer

YEAR	OPENED	COMPLETED
1972	8	7
1973	9	9
1974	23	15
1975	29	22
1976	39	23
1977	14	10
1978	12	6
1979	14	11
1980	9	7
1981	13	7
1982	11	6
1983	14	6
1984	9	4
1985	7	5
1986	5	2
1987	12	4
1988	12	8
1989	13	6
1990	24	13
1991	16	8
1992	25	10
1993	13	9
1994	22	15
1995	6	6
1996	7	7
1997	9	8
1998	7	5
	382	239

Questions 1, 2 and 12 have been exempted under Section 30 and 38 of the Act.

At the outset, I must advise 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.

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 etc.

Question 1

In how many cases were people arrested or charged in part on grounds of DNA evidence?

Answer

The HET will not discuss the evidence against those arrested or charged. In the case of those charged (with the exception of Robert and David Stewart, their evidence is in the public domain as they pleaded guilty) the HET would be in breach of Sub Judice rules as they have not been tried. Clearly this could prejudice the trials of those accused. With regard to those arrested but not charged the murder cases remain unsolved and are now the subject of review by the HET. This information will not be given and exemptions will be applied.

Question 2

In how many cases were people arrested in part on grounds of DNA intelligence / leads?

Answer

The HET will not discuss the small number of uncharged cases as these remain unsolved and minimum analysis could identify the evidence in such a small number of cases.

Question 12

Please describe each item for which HET has asked for DNA examination to date?

Answer

The HET has examined 79 exhibits. The exhibits include items of various descriptions. However the HET will not discuss or describe each item as some of these may include items relative to those charged or reported to the PPS and remaining unsolved cases. The revelation of such could, with analysis identify individual cases which could jeopardise investigations being conducted.

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:

Qualified Exemptions.

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 (prejudice) in disclosure as well as the public interest considerations need to be evidenced and articulated to the applicant.

Exemption 30 (1), Investigations, FOIA – this will focus on information that has **at any time** been held for the purposes of a specified criminal investigation and proceedings, which the PSNI has to conduct with a view to ascertaining whether someone should be charged with an offence, whether a person charged is guilty of that offence and for criminal proceedings against that person.

In relation to the information to you request.

The legislators have decided that information falling into this exemption is not subject to any specific requirement to prove that its disclosure would cause prejudice but that it must be examined with a view to the balance of public interest. This means, is it in the public interest to make available information regarding DNA evidence/intelligence in relation to persons arrested or charged as a result of an HET review.

A significant factor in examining this exemption lies in the importance of public confidence in police investigations, reviews and further proceedings. Confidence can be increased by transparency but that confidence also requires the investigation process should be effective for the delivery of justice. Release of details involving discussing evidence surrounding the arrests and charges if disclosed, other than required by courts may have a detrimental affect on current and future investigation processes. It is in the interests of both the individuals concerned and integrity of an investigation process that material relating to live, completed investigations and reviews can be kept confidential.

All disclosures made under the FOIA are made into the **public domain** and the PSNI must examine the potential positive and negative effects of the disclosure and always consider the seriousness of the specific matter investigated. As this request focuses on investigative opportunities, any disclosure into the public domain could have harmful consequences for current and future reviews and investigations.

I do believe public disclosure would have a harmful affect on the administration of justice and current and future HET investigations.

Harm

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. This includes the victim's their families and suspects or persons charged. The Police Service will not disclose information which could compromise an ongoing investigation, review, future review or have an impact on any criminal proceedings against any individual.

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

Of those charged it is in no ones interest to have justice perverted. All are entitled to a fair trial and the public have a right of expectation that those charged will be prosecuted fairly. In the main those charged revolve around mutual or associated crimes in a specific geographical area of Belfast. Disclosure of evidence and descriptions of DNA and publication could certainly prejudice forthcoming court proceedings. If the DNA numbers were high anonymity of the items could generally be achieved, this is not the case here. The release of such information could impact on the safety of some of those charged or witnesses. Further release could enable others to prepare false accounts or explanations prior to interview or arrest and lead to intimidation of witnesses.

Public Interest Test

Section 30 - Factors favouring disclosure.

Disclosure could promote public trust in providing transparency, demonstrating openness and accountability into how investigations, reviews and criminal proceedings take place. It could allow the public to be satisfied that these are conducted efficiently and appropriately. It could further show that historical murder reviews are embracing modern technological advances which were unavailable at the time the incidents occurred.

Section 30 -Factors favouring non disclosure.

The information requested relates to reviews and court proceedings being conducted by the HET and the Public Prosecution Service.

Release of this information may well educate those who seek to prevent themselves from arrest and future prosecution.

The HET is precluded by law from discussing or disclosing evidence of those who have been charged or informed they may be prosecuted and have not yet stood trial. As suspects are still outstanding in other case reviews which have not yet commenced or are still open then the HET details of the investigations will not be disclosed.

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 jeopardise any forthcoming trial or the health and safety of a suspect or witnesses in that trial, also bearing in mind the presumption of innocence of those accused, would not be in the public interest. 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 and could hinder future witnesses from coming forward.

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

Balance Test

The requirement to withhold information relating to a criminal investigation, review or judicial proceedings the release of which may affect its outcome is of paramount importance in the HET's role. These processes must take precedence over the important issues of transparency and public accountability. This means that, at this time, it would not be in the public interest to release that information

Section 16 Advice and Assistance

Information that may be of interest to you, relating to the work of the HET can be accessed by clicking on the below link:

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

If you have any queries regarding your request or the decision please do not hesitate to contact the Freedom of Information Team, on 028 90700164. When contacting 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.