



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2011-00450

Keyword: Organisational Information/Governance

Subject: Documentation in Relation to the death of Police Officer

Request and Answer:

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

I have decided today to:

- disclose information in response to question 2 in full and;
- fully exempt information in response to questions 1 and 3, pursuant to the provisions of Section 30(1)(a)(b)(c), Section 38 (1)(a)(b)(c) & Section 40(2)(a)(b) of the Act.

Question

Re: Detective Constable Robert Stuart Nicholl (deceased) Freedom of Information Request

We are instructed by the family of the above in relation to his death on Friday 13th October 1972. Please provide all available documentation and in particular can you confirm if you are aware of the current whereabouts of the military officers involved. I am aware that one of the three main soldiers involved in the incident is now deceased. Please advise the name of the deceased soldier.

I have broken the request down into three parts;

1. A request for the case papers.
2. Is the HET aware of the whereabouts of the military involved?
3. A request for the name of the deceased soldier.

The Historical Enquiry Team (HET) has completed a Review Summary Report which has been given to the family.

The Police Service of Northern Ireland has reviewed the material held and has consulted with the senior investigating officer reviewing the case and has considered your request for information. It has been decided not to release the information you have requested at 1 and 3.

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.

Question 1

Request for Case Papers

Question 3

Request for the name of the deceased soldier

Answer

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

Section 40(2)(a)(b) – Personal Information

Section 30(1)(a)(b)(c) – Investigations and Proceedings Conducted by Public Authorities

Section 38 (1)(a)(b)(c) – Health & Safety

Section 40 (2)(a)(b) Personal information

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

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) 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 & 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 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 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.

Harm

Section 38

The release of information at this time could jeopardise the well being physically and mentally of witnesses or potential witnesses. Section 38 of the Freedom of Information Act 2000 also protects any individual's physical health and mental wellbeing whether the harm is real or perceived and this would include the relatives of the deceased soldier. Therefore the PSNI consider that by releasing the information you have requested relating to the investigation around the death of Detective Constable Nicholl may have the potential to identify different person/s and would not be in keeping with the Act.

Public Interest Test

Factors Favouring Release - Section 30

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.

Factors Favouring Retention - Section 30

The information requested relates to a review that was conducted by the Historical Enquiries Team into the death. 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 victim's 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.

Factors Favouring Release - Section 38

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. The PSNI would not wish to endanger the health and safety of any individual.

Factors Favouring Retention - Section 38

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. There still exists a situation in Northern Ireland whereby others could use this information to intimidate or cause physical harm to witnesses 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.

Decision

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.

Question 2

Is the HET aware of the whereabouts of the military involved.

Answer

The HET is aware of the whereabouts of the military personnel however any further disclosure would be exempt under Sections 38 and 40.

I consulted with the SIO in this case and he has informed me that at a meeting and presentation with the family on March 30, 2010 the name of the deceased soldier was disclosed to them.

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.