



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2011-01356

**Keyword:** Road Policing

**Subject:** Fatal Road Accident Report

### Request and Answer:

#### Question

Under the Freedom of Information Act 2000 please provide me with a copy (via email or as hard copy) of the police report on the fatal road accident that occurred on the Hollyhall Road, Derry between 2003 - 2006.

#### Answer

In accordance with the Act, this letter represents a Refusal Notice for this particular request. The Police Service of Northern Ireland can neither confirm nor deny that it holds the information you have requested.

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 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.

The Police Service of Northern Ireland (PSNI) can Neither Confirm Nor Deny that it holds the information relevant to your request as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the following exemptions:

- Section 30(3) - Investigations and Proceedings conducted by Public Authority
- Section 38(2) - Health & Safety
- Section 40(5) - Personal Information
- Section 41(2) - Information Provided in Confidence

Section 30 is a class based and qualified exemption. This means that it is not necessary to consider the harm in confirming or denying the existence of the requested information but it is necessary to consider the public interest. If the information were held it must fit into the class of information covered by this exemption. If the information were held it would be held for the purposes of investigation to determine whether an offence has been committed and therefore clearly falls within the class of information provided by this exemption.

Section 38 is a prejudiced based exemption and this means it is the Public Authority's responsibility to evidence the harm. It is also a qualified exemption and therefore a Public Interest Test must be carried out.

Although Section 40 is an absolute class-based exemption, a Public Interest Test is required for the purposes of NCND. The release of information under Freedom of Information is a release into the public domain, and not just to an individual. To confirm that the PSNI hold the requested information would in fact amount to a release into the public domain, of personal information about individuals involved in the road traffic collision. The individuals would have no expectation that these details would be released into the public domain, therefore their data protection rights would be breached by release.

Section 41 is a class based and absolute exemption and this means that the legislators have agreed that there would harm in disclosure. Although not qualified there is a requirement to conduct a Public Interest Test.

#### Harm – Section 38

Releasing information in relation to a fatal RTC has the potential to identify the victims (fatalities) involved. This would be likely to cause distress and upset to the families of those deceased.

### **Public Interest Test**

#### Factors Favouring Confirmation or Denial – Section 30

Confirming the existence of information would show that the PSNI conducted an investigation, which the public would expect.

#### Factors Against Confirmation or Denial – Section 30

Confirming or denying the existence of the requested information in relation to this alleged road traffic collision could hinder the prevention and detection of crime, as an investigation or the outcome of subsequent proceedings could be compromised.

#### Factors Favouring Confirmation or Denial – Section 38

If held, release of the information would promote openness and transparency. Disclosure would also demonstrate how the PSNI deal with incidents of this nature and the public would be better informed.

#### Factors Against Confirmation or Denial – Section 38

Disclosing details of an incident where a fatality may have occurred would be likely to identify the victims and subsequently cause distress and suffering to the families and surviving relatives.

#### Factors Favouring Confirmation or Denial – Section 40

Confirming or denying whether the PSNI hold this information would aid accountability in that the Public could see what action is or is not taken by police when an accident such as this is reported to

the police service.

#### Factors Against Confirmation or Denial – Section 40

Confirming or denying the existence of the requested information would contravene the first principle of the Data Protection Act which states that personal data shall be processed fairly and lawfully and that a public authority must handle people's personal data only in ways that they would reasonably expect. The breach of any individual's data protection rights would be caused by confirmation or denial. This is so whether or not the information is held.

#### Factors Favouring Confirmation or Denial – Section 41

This type information, if held would relate directly to the efficiency and effectiveness of the Service and its officers when investigating Road Traffic Collisions.

#### Factors Against Confirmation or Denial – Section 41

Information contained within road traffic collision reports if held will include statements etc which will have been given for the purpose of the investigation only. Persons involved will expect that their information will be treated in confidence. Police investigations are conducted with due regard to the confidentiality and privacy of victims, witnesses and suspects.

### **Decision**

Confirmation or denial of whether the PSNI hold information of this nature would amount to a release of information either on this occasion or on other occasions where a similar request is made. Whilst there is a public interest in the transparency of how the police deal with accidents and providing assurance that the PSNI is appropriately and effectively dealing with accidents reported, there is also a strong public interest in maintaining confidence in the PSNI with regard to its handling of individuals' personal data. No release under FOI should be made where an individuals data protection rights would be breached. Not only would this be a breach of Data Protection legislation by the PSNI, but it would also leave the PSNI open to action against it by individuals concerned.

Disclosure would be likely to identify those who have been killed and cause distress to surviving relatives. Information should not be released, if it is likely to endanger the physical or mental health of any individual.

A disclosure under the Freedom of Information Act is a release of information to the world in general and not just to an individual applicant. The public interest is not what interests the public but what will be of greater good, if released to the community as a whole. It is for these reasons that the public interest must favour neither confirming nor denying that the requested 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 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.