



FREEDOM OF INFORMATION REQUEST



Request Number: F-2012-03210

Keyword: Crime

Subject: Investigation by PSNI

Request and Answer:

Question 1

A copy of the PSNI investigation file supplied to the Public Prosecution Service (PPS).

Question 2

Copies of all correspondence received by the PSNI from the SEUPB and DARD Central Investigation Service, to include minutes of meetings, emails, letters, memos, records of telephone calls etc.

Question 3

Copies of all statements and exhibits made in this case.

Question 4

Copies of all unused material.

Question 5

Copies of all interview transcripts with any person involved in the case.

Question 6

Can you confirm if advice was sought from the PSNI by xxxxxx, xxxxxx of DARD CIS (or any of xxx officers in this case). If so, what material did DARD supply to the PSNI? Is there a record of the advice given to xxxxxx in DARD?

Question 7

DARD CIS claim that advice was sought from the PSNI in this case. Can you confirm if this was the case and the date advice was given to DARD investigators along with a copy of the advice given.

Question 8

In the investigation carried out by CIS DARD into FAIR and xxxxxx it was recommended by CIS that a further investigation be carried out by Serious Crime Organisation at Knocknagoney, why?

Answer

PSNI can confirm that an investigation took place and that the Public Prosecution Service directed that there was insufficient evidence to show a criminal offence, therefore there will be no prosecution.

Details of your rights under the Data Protection Act are also included at the end of this Freedom of

Information response.

Under the Freedom of Information Act, your request has now been considered and the decision has been taken not to supply the information you have requested. The information would have been gathered for the purposes of an investigation and therefore exemptions are engaged.

Section 17(1) of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland (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 the Department considered when deciding where the public interest lies, are listed below:

The information requested would have been gathered for the purposes of an investigation and therefore the following exemptions are engaged:

Qualified Exemption

Section 30 Investigations (1) (a) (b)

Absolute Exemption

Section 40 (2) and S 40 (5) Personal Information

Section 30 (1) (a) (b) is a class based qualified exemption which means that the legislators have identified that the harm and public interest considerations need to be evidenced.

HARM

The release of information, under Freedom of Information (FOI), is a release of information to the world and not just to you the individual.

The essence of the work undertaken by the PSNI is to protect both individuals and society as a whole and it has an important role in countering the many threats against society. Release of the requested information could set precedence and undermine any other investigation as it would enable individuals/groups to become aware of police interest. This in turn would help any subjects avoid detection, inhibit the prevention and detection of crime and undermine the PSNI's ability to protect the community it serves.

Damage could be caused by the release of the requested information as it could assist individuals in establishing what information PSNI may or may not hold therefore increasing the risk of damage to any future investigation. Additionally, any released information could be interpreted alongside other information (eg current media stories) to damaging effect.

Section 30

A public authority is exempt from the duty to communicate information where that information has, at any time, been held for the purposes of any investigation which the public authority has a duty to conduct. As has been addressed above, the release of this material would seriously jeopardise the future prevention and detection of crime for the Police Service as a whole.

It could be argued that there is a public interest in the transparency of investigations carried out by the police to ensure they are being conducted appropriately and in line with current investigative guidelines. 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. The Police Service will not disclose information which could compromise any investigation.

There is an expectation that information relating to any investigation will remain within the domain for which they were provided ie in confidence. Release of this type of information into the public domain could impact on any investigation and this would be a breach of this confidentiality.

Taking on board this argument it is considered the harm in releasing the information would also undermine the PSNI's overall ability to conduct any investigation that it has the power to conduct.

Public Interest Test

Section 30

Factors Favouring Disclosure

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 effectively and efficiently. Disclosure would also show that public funds were being used appropriately.

Section 30

Factors Favouring Non-Disclosure

Information released into the public domain could undermine any investigation. It would therefore not be in the public interest to release information that may still be of assistance to the PSNI in relation to any investigation and therefore hinder the detection of crime.

It is the Association of Chief Police Officers approach that information relating to an investigation will rarely be disclosed under the provisions of the Freedom of Information Act. Whilst information may be released if it provides a tangible community benefit, for example to prevent or detect crime or to protect life or property, it is hard to see how the release of this information will do so.

Balancing Test

Whilst it is important that the PSNI are open and transparent, there is no benefit to the public in the release of the requested information as damage may be caused to any other investigation/s that the PSNI has the power to conduct. Therefore, currently, it is the PSNI's opinion that in relation to the above issues that the balancing test for non disclosure in relation to law enforcement and investigations is stronger than the argument for disclosure in relation to better public awareness and informed debate. Therefore, in relation to this request this case for disclosure is not made out.

Sections 40 (2) is an absolute exemption and does not require the public interest to be considered.

Section 40 (2) - 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).

Section 40 (2)

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).

This notice further acts as a refusal notice under the provisions of S17(4) of the Freedom of Information Act 2000. It is considered appropriate to neither confirm nor deny that PSNI hold sensitive personal data under the Freedom of Information Act as this is considered a release to the world in general and not just to an individual applicant.

Although Section 40 is an absolute exemption Section 40 (5) (a) is considered class based qualified exemption which means I am required to conduct a public interest test in relation to its usage in neither confirming nor denying the existence of any information.

Section 40 (5)

Factors favouring confirmation or denial

Confirmation or denial of whether information is held would provide the public with an awareness of what personal information is held.

Factors against confirmation or denial

If confirmation or denying that other information is held has the potential to identify an individual this would be a clear breach of 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 they would reasonably expect.

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.

Data Protection Act

If you feel the PSNI process your personal data, you may wish to request the information you require under Section 7 of the Data Protection Act 1998. This legislation allows a right of access to personal including sensitive personal data held by the PSNI Data Controller.

The Data Protection Act 1998 sets out that a request must be made in writing and a £10 fee payable by cheque or postal order. Copy identification information is also required, such as a passport or driving licence, which allows the PSNI Data Controller to be satisfied as to the identity of the person making the Subject Access Request. The Data Controller is not obliged to comply with the legislation unless he is supplied with the above elements. Section 7 (2) & (3) addresses this legal obligation. PSNI provide a specific form DAT1 to assist an individual wishing to request their personal data. Information may also be subject to exemptions under the Data Protection Act.

I have enclosed the web link below:

<http://www.psnipolice.uk/dat.pdf>

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.

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.