



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2013-05358

**Keyword:** Crime

**Subject:** Murder Of Garda Officer Adrian Donohoe

### Request and Answer:

#### Question 1

Any correspondence there has been between the PSNI and An Garda Síochána relating to the murder of Garda Adrian Donohoe?

#### Question 2

The number of suspects currently under investigation in relation to the murder of Garda Adrian Donohoe?

Please provide me with a breakdown of all relevant information in regards to both questions?

#### Answer

Your request for information has now been considered and the decision has been taken not to supply the information you have requested.

Section 17(1) 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 30 (1) – Investigations

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

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). A disclosure under the Freedom of Information Act is a release of information to the world in general and not just to the individual applicant.

When an application is made for information other than the data subject, disclosure of the information will often constitute a breach of the Data Protection Act and is catered for within the Freedom of Information Act (FOIA) exemption under Section 40(2). Information relating to the applicant is exempt under Section 40(1).

All requests made under the 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, that personal information is processed lawfully and fairly. Individuals 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, both police personnel and members of the public. Therefore the names of police officers below the rank of Chief Inspector are exempt under Section 40 of the Freedom of Information Act.

Section 30 is a qualified and class-based exemption which means that the legislators have decided that a public interest test is necessary.

### **Public Interest Test**

#### Factors Favouring Release

There is high public interest in the transparency and accountability of police investigations and in ensuring that investigations are properly conducted. Releasing information on the number of suspects under investigation, or arrested, as well as details of correspondence between the PSNI and An Garda Síochána, would enable the public to see how the PSNI are engaging with their investigative duties and would reassure the public that criminals who are responsible for such crimes are being actively pursued.

#### Factors Against Release

Releasing the information requested would adversely affect ongoing investigations and could hinder the prevention and detection of those responsible for this crime by alerting someone to the possibility that they are a suspect. Release of the information may also adversely affect the administration of justice by undermining the rights of a suspect to a fair trial. More crime could be committed and individuals placed at risk.

#### Balance Test

The Investigative role is of paramount importance and the Police service will not divulge information if to do so could undermine the detection and apprehension of offenders and compromise the rights of a suspect to a fair trial as well as the right of justice for the victim's family. Whilst there is a public interest in the transparency of policing operations and in this case providing assurance that the police service is appropriately and effectively engaging with the threat posed by the criminal fraternity, there is a very strong public interest in safeguarding the integrity of police investigations and operations.

I am satisfied that in this case the public interest factors favouring retention outweigh those favouring release as the interests in accountability can rarely defeat the interests in a fair investigation and trial.

In addition, the PSNI neither confirms nor denies that it holds any other information relevant to your request by virtue of the following exemptions:

Section 23(5) - Information supplied by, or concerning, certain security bodies

Section 24(2) - National Security

Section 23 is an absolute class-based exemption and therefore there is no requirement to conduct a harm or public interest test

Sections 24 is a prejudice based qualified exemption and there is a requirement to articulate the harm that would be caused in confirming or denying that any other information is held as well as carrying out a public interest test.

#### Overall harm for the partial NCND

As you may be aware, disclosure under FOIA is a release to the public at large. Whilst not questioning the motives of the applicant, confirming or denying that any other information is held regarding the information requested would show criminals what the capacity, tactical abilities and capabilities of the force are, allowing them to adopt tactics to avoid detection when conducting their criminal/terrorist activities.

It is well established that police forces use covert tactics and surveillance to gain intelligence in order to counteract criminal behaviour. It has been previously documented in the media that many criminal and terrorist incidents have been thwarted due to intelligence gained by these means. Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both national security and law enforcement.

#### Factors favouring confirmation or denial for S24

The information if held simply relates to national security and confirming or denying whether it is held would not actually harm it. The public are entitled to know what public funds are spent on and what security measures are in place, and by confirming or denying whether any other information regarding the murder of Garda Adrian Donohoe is held would lead to a better-informed public.

#### Factors against confirmation or denial for S24

By confirming or denying whether any other information is held would render Security measures less effective. This would lead to the compromise of ongoing or future operations to protect the security or infra-structure of the UK and increase the risk of harm to the public.

#### **Balance Test**

The security of the country is of paramount importance and the Police service will not divulge whether any other information is or is not held if to do so would place the safety of an individual at risk, undermine National Security or adversely affect ongoing investigations. Whilst there is a public interest in the transparency of policing operations and providing assurance that the police service is appropriately and effectively engaging with the threat posed by various groups or individuals, there is a very strong public interest in safeguarding the integrity of police investigations and operations in the highly sensitive areas such as crime prevention and public disorder.

As much as there is public interest in knowing that policing activity is appropriate and balanced this will only be overridden in exceptional circumstances. It is our opinion that for these issues the balancing test for confirming or denying whether any other information is held is not made out.

However, this should not be taken as necessarily indicating that any information that would meet your request 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.