



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2013-05112

**Keyword:** Operational Policing

**Subject:** Please Send Me A Copy Of The Report Into Kincora In 1980

### Request and Answer:

#### Question

Please could you send me a copy of the report RUC Inquiry into Kincora in 1980 that led to the trials of McGrath, Mains and Semple?

#### 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)(a)(b) – Investigations

Section 38(1)(a)(b) – Health & Safety

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

Section 30 is a qualified, class based exemption which means that the public authority must consider the balance of the public interest in releasing the information against the public interest in withholding it. The public interest considerations are outlined below.

Section 38 is a qualified and prejudice-based exemption which means that the public authority needs to conduct both a harm test and a public interest test.

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).

To fully answer your request would require the release of personal details about individuals other than the applicant. 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. Release of this information would be a breach of the Data Protection Act and is catered for within Freedom of Information by the exemptions under Section 40(2) as outlined below.

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 is that personal data must only be 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.

### **Harm Test For Section 38**

The requested documents contain descriptions of sexual abuse of children and even after many years this will bring back painful memories for both parents of the abused and the children who were the victims of that abuse. Not only would the victims and the families suffer emotional distress if this information was released but the witnesses may also be affected.

### **Public Interest Test For Section 30**

#### Factors Favouring Release

Disclosure of the information would improve the public's knowledge and understanding of the investigatory process and, as all police investigations are publically funded, would show how public funds are being spent. The Kincora investigation was highly emotive and attracted a large media interest but is now effectively finished and therefore disclosure of the information would show why this investigation reached the conclusion it did as well as showing if the investigation had been conducted properly.

#### Factors Favouring Retention

Disclosure of the requested information would prejudice how investigations are carried out in the future as they would contain information about how the investigation was conducted. This would hinder the prevention and detection of crime and affect PSNI's law enforcement capabilities. Disclosure would inhibit the co-operation of witnesses to all crimes and undermine the partnership approach to investigations. The RUC Inquiry into Kincora in 1980 that led to the trials of McGrath, Mains and Semple is also subject to a Public Inquiry by the Historical Institutional Abuse Inquiry Team presided over by Judge Harte. This is an ongoing Inquiry and all the information is relevant and has been requested by the Inquiry team as part of their investigation.

### **Public Interest Test For Section 38**

#### Factors favouring disclosure for Section 38

Disclosure of the information would lead to better informed public awareness on how the police conduct investigations and the use of public funds ensuring transparency in the activities of the public authority. This was a high-profile case and some information is already in the public domain.

#### Factors against disclosure for Section 38

Disclosure of the information would cause significant distress to the family. This is evidenced by the adverse detrimental reaction which the family displayed recently when there was an unwanted approach by a journalist after the renewed media publicity. Releasing the information could also jeopardise the physical and mental well being of witnesses in relation to this case. Disclosure of the information would therefore result in a loss of confidence in the public authority to protect the well-being of the family and local community.

## Decision

The PSNI will not divulge information if to do so would adversely affect an ongoing investigation or inquiry or reveal personal information that would breach the Data Protection Act. Whilst there is a public interest in the transparency of the law enforcement role of the police service and providing assurance that the RUC appropriately and effectively dealt with the Kincora investigation, there is a strong public interest in safeguarding the integrity of the current inquiry.

## Partial NCND

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 Kincora 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 or undermine National Security. 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. The areas of police interest is a sensitive issue

that reveals local intelligence therefore 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.