



FREEDOM OF INFORMATION REQUEST



Request Number: F-2013-02465

Keyword: Organisational Information/Governance

Subject: Construction of Musgrave Street Police Station

Request and Answer:

Question

Under the Freedom of Information Act I am seeking all correspondence between political representatives and the PSNI about the construction of Musgrave Street station (the new building) and related quality issues.

Answer

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

I have today decided to:

- disclose information subject to the deletion of information pursuant to the provisions of Section 36(2)(b)(ii)(c), Section 38(1)(a)(b), Section 40(2)(a)(b) by virtue of Section 40(3)(a)(i), Section 41(1)(a) and Section 43(2) of the Freedom of Information 2000 (the Act)

Answer

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

- Section 36 (2)(b)(ii) - Free and Frank Discussion and;
- Section 36 (2) (c) – Prejudicing the Effective Conduct of Public Affairs
- Section 38(1)(a)(b) – Health & Safety
- Section 40(2)(a)(b) by virtue of Section 40(3)(a)(i) – Personal Information
- Section 41(1)(a) – Information provided in Confidence
- Section 43 (2) - Commercial Interests

Some of the information which falls within the scope of your request has been withheld. This information has been withheld or redacted on the basis that it is exempt under Section 36 (2)(b)(ii) and Section 36(2)(c) of FOIA. Information to which these exemptions apply are exempt information if, in the reasonable opinion of the qualified person, disclosure of this information under this Act would inhibit the free and frank exchange of views for the purposes of deliberation and in relation to section 36(2)(c) would otherwise prejudice, or would be likely to prejudice the effective conduct of public affairs.

For the purposes of FOIA, the qualified person with authority designated in respect of Section 36 within PSNI in this case is the Assistant Chief Constable for Operational Support Department. He has viewed the material in question and has given his view that disclosure of some material contained within the parameters of your request would be likely to prejudice the effective conduct of public affairs as well as inhibit the free and frank exchange of views for the purposes of deliberation. He confirmed that in his view, there is a need for PSNI to ensure that the building works at Musgrave Street can be guided to completion and there is space to allow any discussions with PSNI's Estate Services Business Unit to reach their conclusion.

However, this exemption is not absolute. When considering whether to apply it in response to a request for information there is a public interest test. That is PSNI must consider whether the public interest favours withholding or disclosing the information.

Section 36 is a prejudice based, qualified exemption which means that it is the Public Authority's responsibility to evidence the harm in release and carry out a public interest test.

A summary is provided below:

Harm

It is also necessary to consider the prejudice or harm that disclosure may cause, and its likelihood. It is possible that disclosure of the withheld information could result in the PSNI not being able to appropriately consult with individuals who may expect their information would remain confidential and would be less likely to offer such views in future decision making processes.

Public Interest Test

Factors Favouring Release – Section 36

Increased transparency in the way in which the PSNI ensures the completion of works within the PSNI estate.

Factors Favouring Retention – Section 36

In this case the withheld information includes correspondence received from parties with a close interest in this matter. The public interest in sharing PSNI's general approach to its estates programme but not sharing so much information as to jeopardise the ongoing discussions around any particular works.

The public interest in assuring individuals and organisations in correspondence with PSNI that the information they provide of varying degrees of sensitivity is managed responsibly and every effort taken to ensure the space for those to provide those views to PSNI and have that candour protected.

Decision

It is also necessary to consider the prejudice or harm that disclosure may cause, and its likelihood. It is important to remember that a disclosure under FOIA is to the world at large rather than the requester and this is an important factor for PSNI when looking at the prejudice or harm that may be caused by the release of this information. It is possible that disclosure of the withheld information could result in the PSNI not being able to appropriately consult with individuals who may expect their information would remain confidential and would be less likely to offer such views in future decision making processes.

Section 40 is a Class – based exemption, therefore it is not necessary to evidence the harm caused by disclosure. The data protection rights of a third party would be breached by disclosure. Section 40(2) is an Absolute exemption and therefore a Public Interest Test is not necessary. This is so because personal data is governed by other law (The Data Protection Act 1998)

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. 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 data protection principles.

Principle 1 is that personal data must only be processed lawfully and fairly. The personal details of individuals are contained within the retrieved documents. The Service has a duty to protect the personal data of all individuals. To process this information for any other purpose i.e. by releasing it under Freedom of Information would be unfair to the individuals concerned and therefore a breach of the principle. 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.

Section 41 is an absolute class-based exemption which means that the legislators have agreed there would be harm if the information were released.

This exemption specifically relates to information that has been obtained or received by the public authority from another person or company. The exemption may be enforced only where an actionable breach of confidence would occur should the information be disclosed. This is where release could result in the provider or third party taking the authority to court. This exemption requires a Public Interest Test to be conducted on whether the common law duty of confidentiality can be overcome.

Breach of Confidence Test

To determine whether a breach of confidence would occur if the information were to be disclosed, it is necessary to conduct a Breach of Confidence Test. A breach of confidence will become actionable if:

- The information has the necessary quality of confidence;
- The information was given in circumstances under an obligation of confidence; and
- There was an unauthorised use of the information to the detriment of the confider (the element of detriment is not always necessary)

The information relevant to this request is subject to an obligation of confidence and any breach of confidence would be actionable by a third party, risking court action against the PSNI.

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. Thus the PSNI must be satisfied that any release of information will be potentially available to the general public. A release under the Freedom of Information Act is considered to be a release to the public at large. Disclosing this information could constitute a breach of confidence. The PSNI will not release information that would result in a third party taking the organisation to court.

Decision

I am satisfied there is an obligation of confidentiality, that the information does contain the necessary quality of confidence and the tests of confidentiality have been met. Therefore, explicit details contained in the correspondence have been withheld.

Section 38 is a prejudiced based, qualified exemption, this means that it is the Public Authority's responsibility to evidence the Harm and carry out a Public Interest Test.

Section 43 is a class based, qualified exemption which means the legislators have agreed there would be harm if this information was released and a Public Interest Test must be carried out. A summary of the Harm and Public Interest Test for Section 38 and Public Interest Test for Section 43 is provided below:

Harm

Releasing names of individuals or companies working for the Police Service, under the current level of security threat, has the potential to place individuals, their families and/or property at risk of terrorist attack.

Public Interest Test

Factors Favouring Release - Section 38

Releasing the information would promote openness and transparency and the public would be better informed.

Factors Favouring Retention - Section 38

Terrorist activity is a real and current threat and the PSNI has a duty of care to protect anyone working for the Service. The PSNI will not disclose any information which may increase the risk of harm to any employee or company providing a service to the PSNI.

Factors Favouring Release - Section 43

There is a keen public interest in how public authorities spend taxpayers' money and that value for money is achieved. Releasing this information would facilitate accountability and transparency.

Factors Favouring Retention – Section 43

The PSNI's commercial interests would likely be prejudiced if information which is deemed confidential was disclosed. Disclosure could discourage other companies from submitting commercially sensitive information and consequently undermine the ability of the PSNI to procure best value for public funds and to conduct a fair tender competition in the future. Companies may lose confidence in the PSNI, compromising their integrity and causing a detrimental impact on the reputation of the Service.

Decision

The Service is currently under severe threat from Dissident Republicans and disclosure of this information has the potential to assist those criminal elements seeking to carry out attacks against individuals or companies connected to the Service. The safety of individuals is of paramount importance and the PSNI will not divulge any information which could put lives or property at risk. Disclosure has the potential to adversely impact on the process of current and future business contracts. There is a likelihood of prejudice to the commercial interests of both the authority and a third party, where the relationship between them is itself in the commercial interests of one or both parties and where disclosure could damage that relationship and hence those interests. Although there is a keen public interest in how a public authority uses public funds for development, I have decided that releasing details of confidential correspondence in relation to such a project is not considered to be in the public interest.

Please see the relating correspondence at the end of this document.

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.

Message: 0816972

From: BEST David
To: declanoloanmla [REDACTED]
Cc: [REDACTED] zComsec1, zFSSecretariat **s.F38**
Sent: 29/3/2011 at 13:13 **s.F38(1)**
Received: 29/3/2011 at 13:13 **s.F38(1)(a)**
Subject: 1.NOT PROTECTIVELY MARKED-All Networks:: FW: Handover of Musgrave Street Police Station (10\7458) **s.F38(1)(b)**

Dear Declan

I refer to your e mail of 15 March. Please see response to your queries below:- **s.F40(2)(a)**

What was the contractual, or otherwise scheduled, or expected, or planned date for the handover of Musgrave Street Police Station or any part of it from the contractor to the PSNI? **s.F40(2)(b)**
s.F40(3)(a)
s.F40(3)(ai)

The target contractual completion date for the Musgrave Street new build project was January 2012. The Main Contractor is in discussion with the PSNI in relation to an extension of time to the contract and it is anticipated that the completion date will be May 2012.

Have these dates been honoured?

We should note that the main build station has now been completed and handed over to the PSNI [REDACTED]

[REDACTED]

If not, what is the reason for the delay?

[REDACTED]

s.F43
s.F43(2)

Are there any issues known to you regarding the finishing out of the custody suite and associated areas?

[REDACTED]

What is now the planned or expected date of the handover of Musgrave Street Police Station or any part of it?

As stated above, discussions on the final completion date are ongoing between the Main Contractor and PSNI Estate Services Business Unit. At this point in time, the target completion date is May 2012. Any extension of time agreed at the request of the Main Contractor between the PSNI Estate Services Business Unit and the Main Contractor will be at the financial liability of the Main Contractor, in accordance with standard GC Works 1 Design and Build Contract Terms and Conditions.

Regards

David Best
Director of Finance and Support Services

s.F38
s.F38(1)
s.F38(1)(a)
s.F38(1)(b)
s.F40
s.F40(2)
s.F40(2)(a)
s.F40(2)(b)
s.F40(3)(a)

From: [REDACTED]
To: [REDACTED]

CC: [REDACTED]
Subject: Handover of Musgrave Street Police Station
Date: Tue, 15 Mar 2011 13:43:14 +0000

To : Mr Matt Baggott, Chief Constable PSNI
(via [REDACTED] PA to Chief Constable)

Mr Baggott,

I have previously enquired about the finishing out and handover of Musgrave Street Police Station. I wish to renew that enquiry in the following terms :

What was the contractual, or otherwise scheduled, or expected, or planned date for the handover of Musgrave Street Police Station or any part of it from the contractor to the PSNI?

Have these dates been honoured?

If not, what is the reason for the delay?

Are there any issues known to you regarding the finishing out of the custody suite and associated areas?

What is now the planned or expected date of the handover of Musgrave Street Police Station or any part of it?

I would appreciate an early response to these questions, and an acknowledgement of receipt in the first instance.

With thanks and regards,

Declan

Declan O'Loan MLA
Constituency Office
64 William Street, Ballymena, County Antrim, BT43 6AW
Tel: 028 2565 6841 Mobile: [REDACTED] Fax: 028 2565 6844

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s.F38
s.F38(1)
s.F38(1)(a)
s.F38(1)(b)
s.F40
s.F40(2)
s.F40(2)(a)
s.F40(2)(b)
s.F40(3)(a)
s.F40(3)(ai)

Message: 0753557

From: [REDACTED]
To: zComsec1
Cc: [REDACTED]
Sent: 12/11/2010 at 18:02
Received: 12/11/2010 at 18:02
Subject: : FW: Enquiry to Chief Constable ref. Musgrave Street

Please trim and action. I have acknowledged.

s.F38
s.F38(1)
s.F38(1)(a)
s.F38(1)(b)
s.F40
s.F40(2)
s.F40(2)(a)
s.F40(2)(b)
s.F40(3)(a)
s.F40(3)(ai)

[REDACTED]
 Senior Personal Secretary
 to Chief Constable

From: Declan O'Loan MLA [REDACTED]
 Sent: 12 November 2010 16:44
 To: [REDACTED]
 Cc: Declan O'Loan MLA
 Subject: Enquiry to Chief Constable ref. Musgrave Street

[REDACTED]

I would be grateful if you would bring this enquiry to the attention of the Chief Constable.

I would like to know if the new PSNI station at Musgrave Street has been brought into use, or if not, when it will be. I would also like to know if the holding cells in the custody suite at the new station have been brought into use, or if not, when they will be.

This relates to a letter which I have written to the Minister of Justice, the matter of which may have come to the attention of Mr Baggott already.

Many thanks,

Declan

Declan O'Loan MLA
 Constituency Office
 64 William Street, Ballymena, County Antrim, BT43 6AW
 Tel: 028 2565 6841 Mobile: [REDACTED] Fax: 028 2565 6844

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