



FREEDOM OF INFORMATION REQUEST



Request Number: F-2013-04601

Keyword: Organisational Information/Governance

Subject: Minutes and Correspondence of Meetings

Request and Answer:

Question 1

Under the Freedom of Information can you please provide the following information: Minutes of meetings with Assistant Chief Constable Kerr or Inspector Dodds and Mervyn Gibson or Loyalist paramilitary and community representatives during the month of January 2013.

Question 2

Correspondence between Assistant Chief Constable Kerr or Inspector Dodds and Mervyn Gibson or other Loyalist paramilitary and community representatives during the month of January 2013.

Answer

Your request for information has now been considered. PSNI does hold information relevant to your request. Given the important need to preserve the ability of individuals or organisations to speak frankly and candidly to the PSNI, the decision has been taken not to supply the information you have requested. The reasons for this are set out in more detail below.

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 PSNI considered when deciding where the public interest lies, are listed below:

Section 36 (2)(b) (i) – Free and Frank provision of advice
Section 36 (2) (b) (ii) - Free and Frank Discussion and;
Section 36 (2) (c) – Prejudicing the Effective Conduct of Public Affairs
Section 31 (1)(a) – Law Enforcement – The Prevention or detection of crime
Section 40 (2)(a)(b) by virtue of Section 40(3)(a)(i) – Personal Information

Section 36 Exemption

Some of the information to which your request relates has been withheld on the basis that it is

exempt under Section 36 (2)(b)(i)(ii) and Section 36(2)(c) of FOIA. Information to which these exemptions apply are exempt from disclosure 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 and advice 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 of the 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. Section 36 (2) is expressed in broad terms and in order for the opinion to be reasonable the qualified person in this case considered it was clear that the prejudice or inhibition would arise. PSNI is aware that the term 'inhibit' is not defined in the FOIA and we have considered it to mean, to restrain, decrease or suppress the freedom with which opinions or options are expressed.

Prejudice/Harm Test

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.

Throughout the year PSNI regularly meet with community groups and individuals, key to ensuring that PSNI can deliver personal, professional and protective policing to the people of Northern Ireland. This is embodied in the Policing with the Community Strategy available on the PSNI website. Key to policing in all communities is the need to build confidence through effective engagement with individuals, community groups and organisations across Northern Ireland.

Many of our communities in Northern Ireland are meeting with PSNI for the first time. Others are meeting PSNI at times when there is a need for open and frank discussion to ensure that the rule of law can be followed and a meaningful engagement develops, that enables and encourages communities and individuals to become involved in helping their areas to become safer. At times, as has been evidenced recently in Northern Ireland with periods of unrest and a rise in attacks directed at PSNI, there have been significant challenges for PSNI. Key however to ensuring the effective delivery of policing has been the need to provide a safe space for individuals to engage with PSNI. The ability to preserve this candour and to talk about often very sensitive issues is absolutely crucial to PSNI in order to continue to engage with all sections of the community and to explore ways of ensuring Northern Ireland remains a safe place for all of its citizens.

In this case the information in question contains details expressed, which are given honestly and openly by those who engage with PSNI. PSNI has provided advice to those individual(s) and given their views as a part of the process of deliberation and discussion. There is a risk, real harm or prejudice would occur if the withheld information was disclosed. This could result in PSNI not being able to effectively consult with individuals and communities in future who trust the police to keep their information confidential. Such individuals would be less likely to offer such views in future decision making processes and as a result this would prejudice the effective conduct of public affairs by PSNI not being able to engage effectively with individuals and communities during those periods when it most needs to.

When considering whether to apply it in response to a request for information there is the need for a public interest test. The qualified person has considered whether the public interest favours withholding or disclosing the information. In this case the qualified person considered the following factors:

Public Interest Factors Favouring Release – Section 36

(i) There is a public interest in making this information available in order to increase transparency in the way PSNI engages with community groups, individuals and organisations.

Public Interest Factors Favouring Retention – Section 36

(i) In this case the withheld information includes those engaging with PSNI, conveying their views to them. It includes PSNI's advice in respect of those views. PSNI consider there is a strong public interest in protecting such discussions. If individuals considered their views would be published as a result of such discussion, they may modify their views, not express them so freely or indeed not engage at all. If individuals were not to engage with PSNI, there is a severe risk this could hamper PSNI being able to ensure the rule of law is followed and Northern Ireland remains a safe place for all of its citizens.

(ii) The public interest in assuring individuals and organisations engaging 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 who provide those views to PSNI have that candour protected and will continue in future to engage with PSNI.

(iii) The public interest in PSNI not having its policing function compromised by putting at risk a vital component of being able to engage on occasions with individuals and groups on a confidential basis.

Decision – Section 36

It is important to remember that a disclosure under FOIA is to the world at large rather than the requester. It is very 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. PSNI therefore considers the exemption at Section 36(2)(b)(c) is engaged and the public interest favours withholding the information.

Section 31(1) (a) – Prejudice to the Prevention or Detection of Crime

Section 31(1)(a) is a prejudiced based, qualified exemption. This means it is the PSNI's responsibility to evidence the risk of prejudice occurring and carry out a Public Interest Test.

A summary of the Harm and the Public Interest Test is provided below:

Harm/Prejudice

PSNI consider there would be a very real risk of harm occurring in this case, if this information were to be released. PSNI consider there is a direct, casual link between their ability to prevent crime and advising on crime prevention in local areas and being able to engage effectively with local communities and organisations. Many organisations and individuals from across Northern Ireland meet with PSNI. Engagement with communities is an important part of PSNI's ability to manage public order and carry out its policing functions in upholding the rule of law and public safety.

Public Interest Test

Public Interest Factors Favouring Release – Section 31(1)(a)

(i) Disclosure would promote openness and transparency in how PSNI engage with individuals, communities and organisations in order to ensure the rule of law is upheld.

Public Interest Factors Favouring Retention – Section 31(1)(a)

(i) There is strong public interest in PSNI being able to ensure that by engaging with individuals and communities it can effectively plan its operational activity taking account of such discussions with local individuals, groups or organisations. Disclosing this information may have the potential to undermine legitimate policing objectives in respect of that.

(ii) There is a public interest in PSNI being able to maintain the confidentiality with those it engages with, so that it can carry out its operations and put in place resources, as is appropriate to a given need. PSNI consider that dialogue is an important part of ensuring they can carry out their policing functions to ensure their operational activities in upholding the rule of law can continue effectively.

Decision

PSNI considers that in order to maintain confidence in its ability to carry out its law enforcement functions that the public interest in this case favours withholding the requested information.

Section 40 (2) exemption – Personal Information

Section 40 (2) is a 'class – based' exemption, therefore it is not necessary to evidence the harm caused by disclosure or carry out a public interest test. Under Section 40(2) PSNI are obliged to consider whether it would breach the Data Protection Act 1998 and any of the Data Protection Principles to release the personal information of those third party individual(s) mentioned within the requested information

Within the requested information are the details of PSNI staff plus those it has engaged with, who can be identified from the information.

Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles found at Schedule 1 of the Data Protection Act 1998.

The PSNI considered the First Data Protection Principle and whether the disclosure of the personal information in this case would be fair to those involved. In considering whether disclosure of personal information is fair PSNI considered :

- (i) the individual's reasonable expectations of what would happen to their information;
- (ii) the consequences of disclosure, (if it would cause any unnecessary or unjustified damage or distress to the individual concerned) and;
- (iii) the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

PSNI consider that the individuals identified from this information would have a very strong expectation that their personal information would remain confidential. PSNI considers disclosing information where individual(s) have a reasonable expectation of confidentiality would be unfair to them and could cause them distress.

In light of this and the nature of the information in question, PSNI is satisfied that to release the requested information would potentially cause unnecessary and unjustified distress to the individuals in this case. PSNI considers it would be unfair to those individuals involved and therefore would breach the first principle of the Data Protection Act. PSNI considers therefore, the exemption is engaged and the personal information in this case should not be disclosed.

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.psnipolice.uk

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.