



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2013-04765

**Keyword:** Crime

**Subject:** Claudy Bomb Investigation

### Request and Answer:

#### Question 1

Did the PSNI, at any level, have any communication with the Public Prosecution Service to seek advice or guidance re; possible prosecutions in relation to or connected with the Claudy bomb investigation?

#### Question 2

Can PSNI confirm that forensic records show that the Claudy bomb was made by the same bomb maker that made two previous bombs, both of which were claimed by the IRA?

#### Question 3

Have the PSNI, at any level, held any meetings with the Roman Catholic Church in relation to or explicitly referring to the Claudy bomb incident?

#### Question 4

Have the PSNI received or initiated any communication with the British Government, any Government official and/or the Secretary of State or anyone connected to or part of her department in relation to the Claudy bomb investigation?

#### Question 5

Have the PSNI at any stage, made any contact either directly or in-directly with the self confessed former IRA Chief of Staff and 2nd in command of PIRA at the time of the Claudy bombing, Martin McGuinness?

### Answer

In accordance with the Act, this letter represents a Refusal Notice for this particular request. The Police Service of Northern Ireland can neither confirm nor deny that it holds the information you have requested.

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1)(a) is to confirm or deny whether the information specified in the request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held.

Where exemptions are relied upon Section 17(1) of FOIA requires that we provide the applicant with

a notice which

- a) states that fact,
- b) specifies the exemption(s) in question and
- c) states (if that would not otherwise be apparent) why the exemption applies.

The Police Service of Northern Ireland (PSNI) can Neither Confirm Nor Deny that it holds the information relevant to your request as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the following exemptions:

Section 23 (5) – Information relating to certain security bodies

Section 24 (2) – National Security

Section 30 (3) – Investigations

Section 40 (5)– Personal Information

Sections 23 and 40 are absolute exemptions. This means that the legislators have decided that there is no requirement to evidence harm or perform a Public Interest Test (PIT). Section 40, personal data, is governed by other law (The Data Protection Act 1998).

The release of information under Freedom of Information is a release into the public domain, and not just to an individual. To confirm that the PSNI hold the requested information would in fact amount to a release into the public domain of personal information about an individual therefore their data protection rights would be breached by confirming or denying the information requested.

Although Section 40 is an absolute class-based exemption, a Public Interest Test is required for the purposes of NCND.

#### Factors Favouring Confirmation Or Denial – Section 40

Confirming or denying whether the PSNI hold this information would aid accountability in that the public could see what action is or is not taken by police when an incident such as this is being investigated.

#### Factors Against Confirmation Or Denial – Section 40

The breach of any individual's data protection rights would be caused by confirmation or denial. This is so whether or not the information is held.

The rest of the exemptions are qualified which means the legislators have determined that a public interest test should be carried out in relation to the usage in neither confirming nor denying the existence of any information.

### **S24 (2) - National Security.**

#### Factors favouring confirmation or denial

To confirm or deny that the PSNI holds the requested information would allow the public to gauge how appropriately public funds are being used by the PSNI in carrying out their national security investigations. In addition it would provide appropriate transparency and reassurance that forensic tests have been effectively carried out at the scene and that any forensic information obtained was researched against previous bombing incidents in order to provide valuable intelligence/information.

#### Factors not favouring confirmation or denial

Confirmation or denial in this particular case would present a high risk in that those responsible for the bombings at the time would be able to act on the information released thereby jeopardising the security or infrastructure of the United Kingdom. They would be able to do this by identifying whether their actions have been detected and if links have or have not been made with previous incidents.

### **Section 30 (3) Investigations.**

### Factors favouring confirming or denying

The public interest will always be in providing appropriate information that police investigations are being carried out efficiently and effectively. Confirmation or denial that the requested information is held could promote public trust in providing transparency, whilst demonstrating openness and accountability into the level of investigations which took place at the time of the incident.

### Factors against confirming or denying

Routine confirmation or denial about the level of information held in any current police investigation could seriously undermine the investigation and adversely prejudice the detection of crime and the prosecution of offenders. This would lead to the investigation being prejudiced and would effect the PSNI's future law enforcement capabilities if such information was released before the investigation had been concluded.

The investigation into the Claudy Bombing is still open and ongoing and therefore the PSNI consider the release of any information which would identify whether this investigation had been linked to a previous incident would hinder the current investigation. Such a release could also undermine the right to a fair trial should any person be subsequently charged with any offence connected to this enquiry.

### Balance Test

Confirming or denying whether or not the PSNI hold information relevant to this request would amount to a release of personal data as well as giving important information to any terrorist group involved in the bombing. Whilst the PSNI would always wish to be transparent and accountable, no release under FOI should be made where an individuals data protection rights would be breached or where an ongoing investigation would be adversely affected.

In addition the public interest in confirming or denying is outweighed by the interest to present and future investigation being protected.

In this case, the public benefit in being more aware of the investigation details is outweighed by the potential risk to this and future investigations. The PSNI has therefore determined that in all the circumstances of the case the public interest in neither confirming nor denying outweighs the public interest in confirming whether or not information is held.

The Public Interest therefore must favour neither confirming nor denying that the information is held.

However, this should not be taken as conclusive evidence that the information you requested 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.psnipolice.uk](http://www.psnipolice.uk)

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