



FREEDOM OF INFORMATION REQUEST



Request Number: F-2014-00058

Keyword: Crime

Subject: Claudy Bombing

Request and Answer:

Question

I wish to know if Martin McGuinness is named either in the HET file or any other Policing file associated with the investigation into the 1972 Claudy Bombing regarding:

- (i) in any capacity either directly or in an overseeing role about the atrocity itself or
- (ii) in connection with being questioned about the event either in its planning or aftermath.

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

Section 23 is an absolute class-based exemption which means that the legislators have decided that there is no requirement to evidence harm or perform a Public Interest Test (PIT).

Section 40 is also an absolute class-based exemption. 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.

Section 24 is a qualified and prejudice based exemption which means that the legislators have determined that a Harm Test and a Public Interest Test are required. Section 30 is a qualified and class based exemption and legislators have determined that it is only necessary for the public authority to conduct a public interest test.

The harm test and public interest tests are detailed below.

Harm for Sections 24 and 30

The essence of the work undertaken by the PSNI is to protect both individuals and society as a whole. The requested information if held relates to National Security and may contain detail about operational methodology and intelligence assessment. Confirmation or denial that the requested information is or is not held would also have an adverse impact on the ability of the PSNI to protect the community, who are at risk from the current terrorist threat. In addition by confirming or denying what is held would adversely impact on ongoing investigations. Premature release of information, whether held or not, may lead to trial by media.

S24 (2) - National Security.

Factors favouring Confirming or Denying

To confirm or deny that the PSNI holds the requested information would allow the public to gauge how appropriately the PSNI is carrying out their national security responsibilities. It would provide appropriate transparency and reassurance that any information has been effectively followed up and that anyone suspected of involvement was fully investigated.

Factors Against Confirming or Denying

Confirmation or denial would present a high risk in that those responsible for the bombing 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 gain an understanding of how much or how little intelligence the PSNI has in relation to this bombing.

Section 30 (3) Investigations.

Factors Favouring Confirming or Denying

There is a high public interest in knowing 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. The investigation into the Claudy Bombing is still open and ongoing and therefore the PSNI consider that the release of any information which would identify whether or not someone was of interest to the PSNI in this investigation would lead to the investigation being

prejudiced. And adversely affect the PSNI's future law enforcement capabilities.

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 individual involved in the bombing. Whilst the PSNI would always wish to be transparent and accountable, no release under FOI should be made where an individual's data protection rights would be breached or where an ongoing investigation would be adversely affected.

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.

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.

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.