



FREEDOM OF INFORMATION REQUEST



Request Number: F-2013-05519

Keyword: Operational Policing

Subject: Kincora Report

Request and Answer:

Question

Please could you send me the Report on Kincora authored by Superintendent Richard Flenley mentioned in the Terry Report redacted were necessary to protect victims

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 44 (1)(c) - Information Covered By Prohibitions On Disclosure

Section 41 (1)(a)(b) - Information Provided In Confidence

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

Section 38 (1)(a)(b) - Health & Safety

Section 30 (1)(a) - Investigations

Sections 44 and 41 are absolute, class based exemptions and this means the legislators have agreed that there is harm in release.

In relation to Section 44, information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it, would constitute punishment as a contempt of court. The Inquiry into Historical Abuse (NI) Act 2013 requires PSNI to provide all relevant material to the HIA Inquiry which includes the requested information, therefore it is now sub-judice and under judgement to the end of 2015. In addition, the findings of the Historical Institutional Abuse Inquiry will be published around the end of 2015 - including their findings on this institution which is a confirmed

module being examined within their public hearings.

Section 41 specifically relates to information that has been obtained 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)

When the originator imparted this information they did so on the understanding that it would be used for the purpose for which it was supplied, namely the investigation into abuse at Kincora Boy's Home, and that it would be treated confidentially.

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. A release under the Freedom of Information Act is considered to be a release to the public at large. Disclosing these confidential details 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 that there is an obligation of confidentiality and that the information does contain the necessary quality of confidence and the tests of confidentiality have been met.

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). A disclosure under the Freedom of Information Act is a release of information to the world in general and not just to the individual applicant.

Section 40 (3) (a) (i) of FOIA provides an exemption from the right to know where the information requested is personal data and is protected by the Data Protection Act if its disclosure to a member of the public would contravene any of the Data Protection Principles (section 40(3)(a)(i)). This particular exemption is absolute, which means there is no requirement on the PSNI to consider an additional public interest test.

Taking into account all of the circumstances relating to your request PSNI considered whether any of the Data Protection Principles would be breached if this information was to be released. We specifically considered the first data protection principle which requires PSNI to only release information if it is 'fair and lawful' to do so. By providing you with the report, we would be revealing personal information about individuals. Taking into account the nature of the information and the consequences such a disclosure may have, we are of the view it would not be within their reasonable expectations that we would do this. PSNI have therefore determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached.

Section 38 Health and Safety is a prejudiced based exemption which means that the PSNI must demonstrate that it is satisfied that to release the information would be likely to endanger the physical or mental health of any individual. It is also a qualified exemption which means that the PSNI must consider the balance of the public interest in releasing the information against the public interest in withholding it.

Section 30 is a qualified and class-based exemption which means that the PSNI is required to carry out a public interest test.

The Harm test for Section 38 and the Public Interest Tests (PITs) for sections 38 and 30 are outlined below.

Harm

Section 38 - releasing information which would identify individuals involved in this sensitive child abuse investigation into the public domain and disclosure of their details could put them at risk and impact on their mental and physical health.

Section 30 - this information is held by PSNI for the purpose of investigation and release of this information would prejudice the Historical Institutional Abuse Inquiry.

Public Interest Test

Factors Favouring Release – Section 38

Releasing the information would promote openness and transparency. The public would be better informed about the investigations into Kincora.

Factors Favouring Release – Section 30

Releasing the information requested in relation to Kincora Boy's Home would lead to a better informed public and a more accountable service. The public interest would be satisfied in knowing that the investigation was undertaken thoroughly and professionally. The public are entitled to know how public funds are being spent.

Factors Favouring Retention – Section 38

Releasing the names and or details of individuals into the public domain who may have been involved in abuse or provided information to police could adversely impact on the mental health of these persons and their families.

Factors Favouring Retention – Section 30

This information, if released could be linked with other accessible information to gain knowledge about an investigation into a particular offence. This would prejudice ongoing investigations, affect the PSNI's future law enforcement capabilities and hinder the prevention and detection of crime.

Decision

I have determined that the release of the requested information into the public domain would not be in the public interest. The health and well being of individuals is of paramount importance and the PSNI will not divulge any information which could increase the stress on any individual and put at risk their mental health.

The PSNI will not divulge information if to do so would adversely affect an ongoing or future investigation. Whilst there is a public interest in the transparency of the law enforcement role of the police service and providing assurance that the PSNI is appropriately and effectively dealing with crime, there is a strong public interest in safeguarding the integrity of police investigations. In addition, the Historical Abuse Inquiry will be publishing a lot of information when they have concluded their inquiry.

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.