



FREEDOM OF INFORMATION REQUEST



Request Number: F-2013-06047

Keyword: Organisational Information/Governance

Subject: HET Cases

Request and Answer:

Question 1

Clarification provided: This FOI request is specifically relating to cases under the remit of the HET.

The information I require is the criteria regarding the selection of cases and categorised as exempted subsequently taken out of chronological order.

Question 2

Humanitarian Reasons - has humanitarian reasons extended and been applied to recent cases where the victim was the mother of young children? Has this reason also extended and been applied to cases where the victim was an agent of the state?

Question 3

Public Interest - has the public interest been applied to cases where the victim was an agent of the state at the time of death? And, if so how many?

Question 4

Previously Opened - how many cases were under this category at the time of the establishment of the HET? What criteria applied to cases investigated by the PSNI Serious Crime Review Team prior to the establishment of the HET?

Question 5

Linked Cases - has the linked cases category been extended and applied to cases where the victim was a state agent and the killing was linked to the involvement of other state agents?

Answer

Section 17(5) of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland, when refusing to provide such information (because the cost of compliance exceeds the appropriate limit) to provide you the applicant with a notice which states that fact.

It is estimated that the cost of complying with your request for information would exceed the "appropriate costs limit" under Section 12(1) of the Freedom of Information Act 2000, which is currently set by the Secretary of State at £450 (18 hours).

The Historical Enquiries Team has a remit for all terrorist murders and security force related deaths which occurred between 1969 to the signing of the Belfast Agreement in 1998. This involves 2,555 incidents involving 3,260 victims.

It would be extremely difficult to establish the requested information without individually manually examining each homicide file on a case by case basis. The records for the requested period would be generally paper based case files many of which are archived.

The information requested would also be difficult to collate accurately, as it is not recorded in the format or regulation manner outlined in the request. The PSNI also do not use the term "state agents" or "agent of the state" nor categorise the incidents in that format.

It is clear this request is actually referring to what is known as Covert Human Intelligence Sources (CHIS) formally referred to as informants. With a total of 2,555 incidents it is likely that there may well be intelligence material relating to the use of CHIS in some of the incidents.

It is a well established principle that protects the identity of intelligence sources from disclosure unless there is a genuine need to know such information. Furthermore, the Regulation of Investigatory Powers Act 2000 (RIPA) section 29 (5) (e) states:

'...that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.'

The request is not for the identity of the source to be confirmed but for confirmation (or otherwise) that a named person is, or has at some time been, a source. It should be borne in mind when considering such a request that there is no comprehensive central record of persons who are, or have been, registered as CHIS or (prior to October 2000) an 'informant'. Thus, the difficulties of proving a negative are self-evident. A law enforcement agency which handles a CHIS owes the CHIS a duty of care to prevent the inappropriate disclosure of his role – for example *Swinney v Chief Constable of Northumbria* [1996] 3 All ER 449.

To locate, recover and search these records for the requested information would exceed the appropriate cost limit. Estimating a conservative figure of 2 hours per incident, retrieval of the information would equate to 5,110 hours, grossly exceeding the 18 hour cost limit.

In accordance with the Freedom of Information Act 2000, this letter should be considered as a Refusal Notice, and the request has therefore been closed.

You may wish to submit a refined request in order that the cost of complying with your request may be facilitated within the 'appropriate limit'. In compliance with Section 16 of the Act, I have considered how your request may be refined to bring it under the appropriate limit. **Subject to any relevant exemptions it may be possible to provide information specific to a particular incident unrelated to Covert Human Intelligence Source or "state Agent" as referred to by you and an extract of the HET Exemption Policy.**

Submission of a refined request would be treated as a new request, and considered in accordance with the Freedom of Information Act 2000, including consideration of relevant Part II exemptions.

If you have any queries regarding your request or this 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.