



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2014-04085

**Keyword:** Organisational Information/Governance

**Subject:** Outcome Of Case

### Request and Answer:

#### Question 1

Could you please disclose the outcome of the case taken against the PSNI on or around 23rd September 2013 by xxxxxxxx, xxxxxxxx and the widow of xxxxxxx. They are suing the PSNI and the Policing Board for alleged breach of a duty of care.

#### 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 41(1)(b) – Information Provided In Confidence

Section 42 (1) – Legal Professional Privilege

#### Section 41(1)(b) – Information Provided In Confidence

Section 41 is a Class based Absolute exemption which means it is not necessary to evidence the harm caused by disclosure and no public interest test is required.

This exemption specifically relates to information that has been obtained by the public authority from another person. The exemption is engaged where an actionable breach of confidence would occur should the information be disclosed i.e. where release could result in the provider or third party taking the public to court.

## **Breach of Confidence Test**

To determine whether a breach of confidence would occur if the information were to be disclosed, it is necessary to consider:

- If the information has the necessary quality of confidence;
- If the information was given in circumstances under an obligation of confidence; and
- If unauthorised use of the information would result in detriment (not always a prerequisite)

Having regard to the nature of the information requested and PSNI's duty of confidentiality we have considered the above issues and are satisfied that there is a duty of confidentiality in respect of the information requested.

All requests made under the FOIA are treated as applicant blind and any disclosure is effectively into the public domain. Thus the PSNI must have cognisance that any release of information will be potentially available to the general public at large. We are satisfied that disclosing the information requested could constitute an actionable breach of confidence and in the circumstances the absolute exemption is engaged.

## **Section 42 (1) – Legal Professional Privilege**

Section 42 is a qualified and class-based exemption which means that there is a requirement on the public authority to conduct a public interest test but a harm test is not required. As these matters were the subject of civil proceedings between the Plaintiffs and the Chief Constable of PSNI the exemption at FOIA s.42 'Legal Professional Privilege' ("LPP") is engaged in relation to this information. 'Litigation privilege' (a branch of LPP) attaches to confidential information arising from litigation. This includes the outcome of the proceedings in certain circumstances.

## **Public Interest Test**

### Factors Favouring Disclosure

The public may wish to know the outcome of civil claims against a public authority and expect transparency and an opportunity to inform public debate.

### Factors Favouring Non-Disclosure

To provide details of the outcome of the cases would require releasing confidential information which was the subject of legal proceedings. The result of the case is in itself an integral part of the litigation process and information provided in this process is subject to legal professional privilege. ICO guidance states that "The general public interest inherent in this exemption will always be strong due to the importance of the principle behind LPP: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice."

## **Decision**

While there is a public interest in knowing that the PSNI are open, accountable and professional in their duty of care to all police officers, staff and the public, the PSNI is of the view that this is not sufficient justification to override the significant public interest in maintaining the exemption. The Service will also not release information if to do so would result in an actionable breach of confidence or impact on the administration of justice. To provide the information requested would release information which was provided in confidence as part of the litigation process. As the exemptions at FOIA sections 41 and 42 are engaged in relation to the requested information we are unable to release this.

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.psni.police.uk](http://www.psni.police.uk)

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