



FREEDOM OF INFORMATION REQUEST



Request Number: F-2017-03211

Keyword: Crime

Subject: Report on Homosexuality in the Greater Belfast Area 1976

Request and Answer:

Your request for information has now been considered. In respect of Section 1(1)(a) of the Freedom of Information Act 2000 (FOIA) I can confirm that the Police Service of Northern Ireland (PSNI) does hold information to which your request relates and information in relation to Request 2 is being provided to you. We consider the information you seek in Request number 1 is exempt by virtue of Sections 31 and 40 of the FOIA and have detailed our rationale as to why these exemptions apply. We have also provided you with links to guidance issued by the Information Commissioner's Office which we have followed in responding to your request.

Request 1

Under your stated obligations under the Freedom of Information Act could you please me the following RUC report? Homosexuality in the Greater Belfast Area (1976) which was written by (names supplied). I submitted an FOI about 18 months ago about the releasing the report which was declined. I am now submitting a fresh request as one of the factors has since changed. In the previous request which you gave a reference of (F-2016-00346) one of the reasons for the release of the reports being turned down was that they were of interest to the Historical Institutional Abuse Inquiry. Now that that inquiry has concluded and published its findings I would like the request to be considered again.

Answer

Section 17(1) of the FOIA requires the PSNI, 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 exemptions, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

Section 31(1) Law Enforcement (a) the prevention or detection of crime (b) the apprehension or prosecution of offenders.

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

The full text of exemptions can be found at www.legislation.gov.uk and further guidance on how they operate can be located on the Information Commissioners Office website www.ico.org.uk.

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 FOIA is a release of information to the world in general and not just to the individual applicant.

The information withheld by PSNI relates to persons who we consider could be identified from that information. The information within the reports constitutes the 'personal data' of those individuals. We have therefore considered whether the disclosure of this personal data is subject to the exemption at section 40(2) of the FOIA by virtue of S40 (3) (a)(i). If the disclosure of the personal data would contravene any of the eight data protection principles contained within the Data Protection Act 1998 (DPA), the exemption at section 40(2) of the FOIA will apply. Section 40(2) of the FOIA by virtue of section 40(3)(a)(i) states:-

“(2) Any information to which a request for information relates is also exempt information if a) it constitutes personal data which do not fall within subsection (1), and b) either the first or the second condition below is satisfied.

(3) The first condition is - a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the DPA is at the disclosure of the information to a member of the public otherwise than under this Act would contravene – i. any of the data protection principles ...”

The eight principles within the DPA, are principles of good information handling standards which PSNI must comply with in relation to how it handles personal information, including deciding whether to disclose it or not. In particular, the first principle requires personal data to be processed 'fairly and lawfully'. In considering whether it is 'fair' to individuals to release this information about them, PSNI considered the likely expectations of those individuals and the nature of the information involved.

The reports requested contain information which relates to individual's sexual lives and their sexual preferences which falls under 'sensitive personal data' within the definition of Section 2 (f) of the DPA because it relates to an individual's sexual life and Section 2 (g) the 'commission or alleged commission of a criminal offence' which was the case at the time.

Information constituting 'sensitive personal data' would have increased impact on an individual's privacy therefore PSNI is required to take greater care to protect such information and apply more exacting standards when considering whether to disclose it.

At Section 1 of the DPA, 'Personal data' means “data which relate to a living individual who can be identified – (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”

At Section 2 of the DPA, 'Sensitive personal data' sets out eight categories of personal data which the DPA requires must be given an enhanced level of protection. These eight categories of information relate to classes of information which can have a greater degree of impact on an individual and go to the heart of their privacy, they include information on health, religious views, sexual life and religious or political opinions. The Information Commissioner's Office 'Guide to the Data Protection Act', available at www.ico.org.uk states that in relation to 'sensitive personal data' “The presumption is that, because information about these matters could be used in a discriminatory way, and is likely to be of a private nature, it needs to be treated with greater care than other personal data.”

The reports requested contain details of suspects, family members, witnesses and other members of the public who would be identified if this information was to be released. By the nature of this information which is sensitive within the meaning of the DPA, these individuals would not have an expectation that the information would ever be released into the public domain.

The public would reasonably expect such information to be held securely and not released into the public domain. Disclosure of this sensitive personal information and the potential harm release would cause to individuals involved would not be within those individuals reasonable expectations and would be unfair to them. Such a disclosure would be in contravention of the DPA and the information is therefore being withheld.

Section 31 is a qualified and prejudice-based exemption. This means it is necessary to evidence the harm in release and to conduct a public interest test.

Harm - Section 31

The information contained within the reports was gathered in confidence for the purpose of criminal investigations and release could hinder PSNI's ability to prevent and detect future crimes and apprehend offenders. Release of this information would deter the public from reporting matters of concern if they believed their involvement would later be released into the public domain, subsequently impeding the ability of the police to obtain information in confidence in the future.

Factors favouring release - Section 31

The disclosure of the 2 reports held by PSNI relating to 'Homosexuality in the Greater Belfast Area 1976' would provide the public with details of a historical investigation conducted by the RUC. There is a public interest in holding the police to account and for the public to be assured that the police competently performs its law enforcement function. Without such reassurance the public may lack confidence and trust that police effectively investigate crime and utilise appropriate investigative and information gathering methodologies.

Factors favouring retention - Section 31

There is a strong public interest in the police being able to protect the work it carries out and to protect society from the impact of crime. A key part of being able to do this is to protect evidence already gathered and to protect the techniques used. To reveal details around methodology, intelligence and police operations would seriously compromise PSNI's future ability to prevent and detect crime and apprehend offenders.

Decision

The release of information under the FOIA is a release into the public domain and not just to the individual making the request. Once information is disclosed by FOI there is no control or limits as to who or how the information is shared with other individuals, therefore a release under FOI is considered a disclosure to the world in general.

To release information provided in confidence, would undermine an important investigative tool still used by PSNI, who rely on the public's continued co-operation in enforcing the law. Individuals provide information to PSNI on the understanding that it will be kept confidential and releasing information which could undermine that process would have the effect of prejudicing the PSNI from preventing and detecting crime and apprehending offenders.

The PSNI has a duty to fulfil its law enforcement role and whilst there is a public interest in the transparency of policing activities and providing assurance that PSNI is appropriately and effectively dealing with crime, the protection of effective law enforcement techniques is a priority and it is vital to policing to protect information relating to investigative methodology, intelligence and police operations. It is therefore PSNI's view that the public interest favours non-disclosure of these reports.

In addition to the above exemptions, PSNI neither confirms nor denies that it holds any other information relevant to historical investigations into homosexuality by virtue of the following

exemption:

Section 23(5) - Information supplied by, or concerning security bodies

Section 23 is a class based absolute exemption and there is no requirement to consider the public interest in this case.

The full text of exemptions can be found at www.legislation.gov.uk and further guidance on how they operate can be located on the Information Commissioners Office website www.ico.org.uk.

'Neither Confirm nor Deny' (NCND)

There may be occasions when complying with the duty to confirm or deny under Section 1(1)(a) of the FOIA would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances the FOIA allows a public authority to respond by refusing to confirm or deny whether it holds the requested information.

The decision to issue a 'neither confirm nor deny' response is not affected by whether we do or do not hold the information but relates to the consequences of confirming or denying the information is held. The starting point and main focus in most cases will be theoretical considerations about the consequences of confirming or denying that a particular type of information is held. The decision to neither confirm nor deny is separate from a decision not to disclose information and needs to be taken entirely on its own merits.

PSNI follow the Information Commissioner's Guidance in relation to 'NCND' and you may find it helpful to refer to this at the following link:

[https://ico.org.uk/media/for-organisations/documents/1166/when to refuse to confirm or deny section 1 foia.pdf](https://ico.org.uk/media/for-organisations/documents/1166/when_to_refuse_to_confirm_or_deny_section_1_foia.pdf)

This should not be taken as necessarily indicating that any other information relevant to your request exists or does not exist.

Request 2

Could the PSNI also confirm if the reports were handed over to the Hart inquiry?

Answer

After contacting the Historical Institutional Abuse Inquiry (HIAI), PSNI can confirm the material requested was passed to the HIAI, however there is a legal Restriction order, restricting disclosure of evidence or documents provided to the Inquiry, unless they have been given in evidence at public hearing or published on the Inquiry's website, other than in accordance with the Chairman's direction. On this occasion we have confirmed with the Chairman that this confirmation may be released to you.

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.