



FREEDOM OF INFORMATION REQUEST



Request Number: F-2018-03084

Keyword: Crime

Subject: Summary Of Events Andersonstown 1970s

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. The decision has been taken not to supply the information you have requested and the reasons for this are set out in more detail below. 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

Under the Freedom of Information Act, I would like to request the following information: A copy of reports summarising activities/events sometimes known as Duty Officer reports, from Andersonstown RUC station for the following dates:

October to November 1973
October 1974 to January 1975.

1st Clarification

You were informed that Duty Officer Reports are not specific to an individual station. You the requester asked if there was a log made at the time by individual police stations. Yes, a C6 Register is a log specific to an individual police station. You the requester asked for copy of C6 Register for Andersonstown RUC Station for the dates requested above.

2nd Clarification

You the requester have clarified that you were seeking C6 entries from Andersonstown RUC Station in relation to the disappearance of John Rogers and Thomas Spence who disappeared in November 1974.

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 30(1) Investigations and Proceedings Conducted by Public Authorities - Information held by a authority is exempt information if it has at any time been held by the authority for the purposes of :

- (a) Any investigation which the public authority has a duty to conduct with a view to it being
- (b) ascertained (i) whether a person should be charged with an offence.

Section 38 (1) Health & Safety - Information is exempt if its disclosure under the Act would, or would be likely to (a) endanger the physical or mental health of any individual.

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

We have explained below why these exemptions are engaged and the full text of exemptions can be found at www.legislation.gov.uk . Further guidance on how they operate can be located on the Information Commissioners Office website www.ico.org.uk.

Section 40 - Personal Information

Section 40, is an absolute exemption which means there is no requirement on PSNI to consider whether there is a public interest in disclosure. It is an interface exemption and we must consider whether release of the information would breach the General Data Protection Regulations ('GDPR') or the Data Protection Act 2018 ('DPA'). The information requested contains third party personal information which can identify individuals and constitutes their 'personal data' under the GDPR (Article 4) and DPA (Part 1 s.3).

Under the FOIA, PSNI must consider if information can be released into the public domain. 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)(a). As this information is 'personal data', PSNI considered whether disclosure would contravene any of the six data protection principles contained within the GDPR or DPA.

The six data protection principles are 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 any individual to release information about them, PSNI considered the likely expectations of those individuals and the nature of the information involved. Individuals must have confidence that their information is treated sensitively and appropriately by PSNI. We consider those individuals would not have any reasonable expectation that we would disclose information about them, that it would be extremely unfair to those individuals and therefore a breach of the first principle of data protection legislation.

The information is therefore exempt under Section 40 (2) of the FOIA as it contravenes data protection legislation to release it and PSNI has made the decision to withhold it.

Section 30 is a class based qualified exemption which means there is no requirement to evidence the Harm that may be caused by releasing the information however it is necessary to conduct a Public Interest Test.

Section 38 is a prejudice based qualified exemption which means there is a requirement to evidence the Harm that may be caused by releasing the information and it is also necessary to conduct a Public Interest Test.

Harm

This request relates to information held for the purpose of a missing persons investigation, which is currently with Legacy Investigation Branch of the PSNI. The release of investigative material has the potential to prejudice the prevention and detection of crime and compromise opportunities to bring

offenders to justice, in this and other cases. The PSNI have statutory obligations in respect of material held and have to act in accordance with such statutory obligations, therefore material relating to the investigation cannot be disclosed to the public, except following the direction of a court, or production of a court order.

Public Interest Test

Section 30 - Factors Favouring Disclosure

There is a strong public interest in ensuring that this and any other investigation is or has been undertaken professionally and rigorously by PSNI. Disclosure of the requested information could promote public trust in providing transparency and demonstrating openness and accountability into how investigations take place. Release of the information may encourage individuals to come forward with evidence that could assist in the investigation. All police investigations involve the use of public funds and this information could allow the public to make informed decisions about police procedures and the money spent in this business area.

Section 30 - Factors Favouring Non-Disclosure

The information requested is held for the purpose of an investigation and release at this time could undermine any future review of the case. Evidence needs to be preserved and not prematurely released so that the course of justice is not impeded should any new evidence come to light. Disclosure of any such information could infringe not only on a suspect's right to a fair trial if a criminal offence was committed but also on the rights of a victim if a prosecution were to fail due to disclosure of the information.

The Information Commissioner has previously confirmed that information held by PSNI's Historical Enquiries Team which is subject to a further review by Legacy Investigation Branch will engage Section 30(1)(a)(i) of the FOIA. The Commissioner accepted that there was a need to allow PSNI to properly detect and investigate without that ability being impeded.

Section 38 – Factors Favouring Disclosure

The information requested relates to a missing persons investigation. Release of this information would lead to a better informed public thus demonstrating transparency and accountability.

Section 38 – Factors Favouring Non-Disclosure

Release would lead to a loss of confidence in the PSNI's ability to protect individuals. PSNI would not wish to endanger the health of any individual.

Balance Test

Although there is a public interest in the transparency of investigations, PSNI has a greater duty of care to all individuals involved in any investigation. The requested information is held as it was part of a police investigation and will form part of any future review of this case. There is an expectation that information gathered for the purpose of this investigation would remain confidential therefore a release of this type of information into the public domain would be a breach of this confidentiality which would dissuade individuals from providing assistance to the police in future investigations. This lessening of public assistance would hamper the investigation and detection of crimes and adversely affect the course of justice. In time it could also lead to a reduction in the public's confidence in the criminal process.

PSNI will not disclose information which could prejudice any future review of this case or negatively impact on the health of any individual. As a result of all the points discussed above, it has been decided that the balance of the public interest favours withholding the information at this time.

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.

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