



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2018-01153

**Keyword:** Organisational Information/Governance

**Subject:** Walker Report

### Request and Answer:

Your request for information has now been considered. In respect of Section 1(1)(a) of the Act I can confirm that the Police Service of Northern Ireland does hold information to which your request relates and this is being provided to you. We further consider the information you seek is exempt by virtue of sections section 23 (1) and 24 (1) (in the alternative) as well as section 31(1) and section 40 (2) of the FOIA. We have detailed our rationale as to why these exemptions apply and how they operation. 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

*The Irish News released an editorial on Wed 2nd May 2018, the article referred to an historic policy document that related to the Walker Report and a report commissioned by Jack Hermon and related to RUC Special Branch and how agents, informers & intelligence operated in 1981. The article stated the document "should not have been held back so long". The Deputy Chief Constable will release the documents within 7 Days and agreed to make the documents public. Drew Harris has agreed to make the document available after a release request to C.A.J. under FOI Act.*

*Please consider this correspondence as a request for a copy of the "Walker Report".*

*Clarification received: I am not seeking the report released to CAJ; I am seeking the complete report.*

### Answer

Please see copy of the Walker Report which was released to CAJ attached separately to this correspondence. This can also be accessed on the CAJ website at the following link:

<https://caj.org.uk/2018/07/02/ruc-walker-report-1980/>

This Report contains a small number of redactions. PSNI considers the following exemptions are engaged to support those redactions and our reasons for applying them are set out:

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 exemptions, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

**Section 23 (1) Information supplied by, or relating to, bodies dealing with security matters** – Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

**Section 24 (1) National Security** – information held for the purpose of safeguarding national security. Section 24 is a qualified exemption which means that the legislators have identified a public interest test should be carried out and PSNI consider the balance of those public interest considerations.

**Section 31 (1) Law Enforcement** - “(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

- a) the prevention or detection of crime
- b) the apprehension or prosecution of offenders
- c) the administration of justice”

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

**Section 40(2)(a)(b) by virtue of 40(3)(A)(a) Personal Information** – Information constitutes personal data and disclosure would contravene any of the Data Protection principles. Section 40 is an absolute exemption which means there is no requirement to consider whether there is a public interest in disclosure.

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

### **Section 23(1) and section 24 (1) ‘in the alternative’**

Sections 23(1) and 24(1) are mutually exclusive. This means they cannot be applied to the same request. However as it is clear PSNI holds this information and does not seek to apply an Neither Confirm nor Deny provision, PSNI considers that section 23 (1) applies to this request and in the alternative section 24 (1). The Information Commissioner’s guidance ‘how sections 23 and 24 interact’ provide for a situation where both exemptions can be cited in the alternative.

[https://ico.org.uk/media/for-organisations/documents/1196/how\\_sections\\_23\\_and\\_24\\_interact\\_foi.pdf](https://ico.org.uk/media/for-organisations/documents/1196/how_sections_23_and_24_interact_foi.pdf)

The ICO guidance states:

*“When a public authority cites sections 23(1) and 24(1) in the alternative, consideration needs to be given to the contents of the refusal notice. Technically, section 17(1) requires public authorities to specify the exemption they are relying on. However, it is important in these circumstances that the refusal notice effectively disguises which provision actually applies. Therefore, the Commissioner will accept a refusal notice which cites exemptions, stating that they are being cited in the alternative and then explaining why each one **could** apply. As section 24 is qualified, the refusal notice would also have to explain the application of the public interest test to that provision.”*

PSNI considers both exemptions could apply for the following reasons:

Section 23 is a class based, absolute exemption, which means there is no requirement to articulate any public interest considerations or for the disclosure to prejudice the work of any of the bodies it covers in any way. To engage section 23 (1), the requested information simply has to have been supplied directly or indirectly by one of the named security bodies, or relate to one of those bodies.

The exemption captures information supplied directly by a security body and information originating from a security body that is provided by a third party. In this way the exemption can protect intelligence as it is disseminated through different channels.

The exemption is also engaged where information “relates to” a security body. The term “relates to” is interpreted widely and includes any information concerning or linked to the activities of a security body.

The police service may engage at times with the bodies listed at Section 23 of the FOIA and on occasions there may be information provided to police from one of these bodies. In this case PSNI considers the information you have requested is absolutely exempt from the Freedom of Information Act by virtue of the exemption provided by section 23 (1) of the FOIA.

### **Section 24 (1)**

As you will see from those parts of the Walker report made available to you, the report was commissioned by the Chief Constable of the RUC looking at the interchange of intelligence between PSNI’s Special Branch and CID units within its Crime Branch. In broad terms the exemption at section 24 (1) of the FOIA provides that information is exempt from disclosure if it is required for the purposes of safeguarding national security. PSNI is aware there is no definition of ‘national security’ within the FOIA but have reviewed the guidance issued by the Information Commissioner’s Office on the section 24 exemption (‘Safeguarding National Security, available at [www.ico.org.uk](http://www.ico.org.uk)). In that guidance the Information Commissioner’s Office states:

*“The exemption applies where withholding the information is “required for the purposes of safeguarding national security”. Required is taken to mean that the use of the exemption is reasonably necessary...the Commissioner’s interpretation is informed by the approach taken in the European Court of Human Rights where interference to human rights can be justified where it is ‘necessary’ in a democratic society for safeguarding national security. ‘Necessary’ in this context is taken to mean something less than absolutely essential but more than simply being useful or desirable, so we interpret ‘required’, in this context, as meaning ‘reasonably necessary’”*

PSNI considers the redacted material within this report is reasonably necessary to safeguard national security. It relates to intelligence handling and could be of use to terrorists today. Any disclosure by PSNI which places the country or individuals at risk will have an adverse effect on national security. PSNI therefore considers the exemption could apply in this case and is therefore engaged.

PSNI has considered the public interest factors.

### **Factors Favouring Disclosure**

PSNI recognises that there is a general public interest in transparency and openness in how a police service operates and how it uses its resources to protect the public and safeguard national security.

### **Factors Favouring Non-Disclosure**

There is a significant public interest in safeguarding national security. Crucial to safeguarding national security in Northern Ireland is the ability to share information and intelligence and have

effective intelligence handling structures in place. The current threat against PSNI officers and staff is currently set at 'Severe'. Placing information into the public domain which could increase this risk has the real potential to adversely impact upon national security.

### **Decision**

Whilst the PSNI is tasked with protecting the community we serve and being open and transparent regarding its operations and police investigations, there is a strong need to protect individuals and ensure the safety of the public.

The release of information under the Freedom of Information Act is a release into the public domain and not just to the individual requesting the information. 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.

The security assessment for terrorism in Northern Ireland at this time is rated as 'Severe'. Placing information into the public domain which could adversely impact on national security could compromise law enforcement activity. The balance of the public interest therefore favours withholding the requested information.

### **Section 31(1)**

#### **Section 31 harm**

The Walker Report was commissioned by the Chief Constable of the RUC looking at the interchange of intelligence between PSNI's Special Branch and CID units within its Crime Branch. Information being exempted is capable of identification of methodologies which could be of assistance to criminals and put individuals at risk. It is established that Police services gather intelligence including from human intelligence sources. Placing information into the public domain which would diminish this ability or place individuals at risk would prejudice the law enforcement activity this exemption is designed to protect.

#### **Factors favouring disclosure**

The information requested relates to a specific area of Policing. There is a public interest in the community being made aware of all the facts relating to the intelligence handling practices of a Police service in order to ensure openness and transparency and to show justice being served by individuals being held to account for criminal activities.

#### **Factors favouring non-disclosure**

The release of the requested information would compromise the current and future law enforcement role of the PSNI. To divulge details of relating to intelligence handling practice which could prejudice PSNI's future ability to protect individuals, gather information for crime prevention and detection is not in the public interest. This would lead to more crime being committed which would have a detrimental impact on police resources.

### **Decision**

In this case PSNI considers the balance of the public interest favours non-disclosure of this information.

### **Section 40 (2)**

Section 40 (2) of the FOIA is an absolute exemption which means there is no requirement on the 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') Third party personal information constitutes 'personal data' under the GDPR (Article 4) and DPA (Part 1 s.3).

Under the Freedom of Information Act, PSNI must consider if information can be released into the

public domain. Redacted from the report is personal information which can identify individual(s). We have therefore considered whether the disclosure of personal data is subject to the exemption at Section 40(2) of the Freedom of Information Act 2000 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 individual(s) 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 PSNI would disclose such information of this nature about them and which could identify them. We consider it would be extremely unfair to those individuals and therefore a breach of the first principle of data protection legislation. This information is therefore exempt under section 40 (2) of the FOIA as it contravenes data protection legislation to release it and the PSNI has made the decision to withhold that information.

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.psnipolice.uk](http://www.psnipolice.uk)

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