

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2021-00251

Keyword: Crime

Subject: Investigation Material

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. 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.

Clarification - requester has confirmed he is seeking photographs, videos, radio calls as well as 999 calls and any interview tapes.

Request 1

The 2004 Jacqueline Crymble case will appear in their next series and they are trying to track down photographs, videos, radio calls etc. of Jacqueline and her lover Roger Ferguson which they can use for the program.

Request 2

Do you have the 999 calls on tape (played at the trial) that can be used and any interview tapes of Crymble or her lover Roger Ferguson?

Answer

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 30(1)(a) - Investigations and Proceedings Conducted by Public Authorities -

Information held by a public authority is exempt information if it has been held at any time 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 ascertained (i) whether a person should be charged with an offence.

Section 38(1)(a)(b) – Health and Safety – Endanger the physical or mental health of any individual

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.

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 (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 in relation to names, and therefore this information constitutes information which can identify individuals is '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. We have therefore considered whether the disclosure of this 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 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 PSNI would disclose such information of this nature about 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.

Section 30 is a class based and qualified exemption which means that there is no requirement to evidence the harm in release but that it is necessary to conduct a Public Interest Test.

Section 38 is a prejudice based qualified exemption which means that the legislators have identified that the harm (prejudice) in disclosure as well as the public interest considerations need to be evidenced and articulated to the applicant. In relation to the harm we consider would occur we have set out our views for Sections 30 and 38 below.

Harm

Whilst the PSNI recognise time has passed in relation to the incident to which your request relates, the prospect of a future investigation or pursuing evidential opportunity is not extinct and to release the information at this time into the public domain via the FOIA 2000 could compromise and undermine any future review or investigation into their death. There is also an expectation that any statements will remain within the domain for which they were provided and are made in the strictest confidence. PSNI considers it vital that we be able to approach witnesses in future and they not be dissuaded from giving evidence to us, including those who gave evidence at the time these events occurred.

Section 38 provides an exemption from disclosing information if such a disclosure would endanger

ANY individual and is wide enough to include those members of the general public including those family members of the deceased. It is our view (and that of the Information Commissioner) that in order to demonstrate a danger to mental health under Section 38, clinical evidence of a psychiatric condition is not necessary.

This has been confirmed by the Information Tribunal which in the PETA case (PETA v Information Commissioner & University of Oxford EA/2009/0076). It also explained however that the effect of the disclosure upon any individual's mental health must "go beyond stress or worry". Given how distressing and graphic some of the material is within these papers in particular PSNI consider by any reasonable standard that Section 38 is engaged. Releasing the information could jeopardise the physical and mental well-being of the family members of the deceased in relation to this case.

Public Interest Test

Factors Favouring Disclosure - Section 30(1)(a)

There is a strong public interest in ensuring that this and any other investigation is or has been undertaken professionally and rigorously by police. Disclosure of the requested information could promote public trust in providing transparency and demonstrating openness and accountability into how investigations take place. Releasing the information may better inform the public and encourage others to come forward with evidence that could assist in the detection and apprehension of an offender/s if they know a proper investigation will be undertaken. 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.

Factors Favouring Non-Disclosure - Section 30(1)(a)

Information gathered as part of the investigation should be protected should any further evidence come to light. Release of this requested information could prejudice any future investigation thus hindering the course of justice. There are examples in recent times of historical investigations being re-opened when police receive new leads/evidence. Any investigations may be prejudiced by premature release of information resulting in loss of evidence or alerting a suspect, therefore there is a strong public interest in protecting the ability of PSNI to carry out investigations including those legacy cases without fear of premature disclosure of information. Whilst there is some information already in the public domain the PSNI would not wish to provide any further detail, as they have a duty to protect the integrity of investigative information.

It would therefore not be in the public interest to release information which would in turn impact on police resources and lead to more crime being committed, placing individuals at risk and an investigation or the outcome of subsequent proceedings could be compromised.

There is a strong public interest in maintaining the Section 30 exemption in order to protect witnesses, and in not deterring potential witnesses from making statements for fear that their evidence might not be treated in confidence. Also for maintaining the independence of the judicial and prosecution process and preserving the criminal court as the sole forum for determining guilt.

Factors Favouring Disclosure - Section 38(1)(a)(b)

Public safety is of paramount importance to the PSNI and must always be considered so that the PSNI's ability to fulfil its core function of law enforcement is protected. PSNI would not wish to endanger the health and safety of any individual. Release of the information would promote openness and transparency of records held by PSNI.

Factors Favouring Non-Disclosure - Section 38(1)(a)(b)

PSNI consider that releasing the information into the public domain could cause distress to relatives of the deceased and would be likely to endanger the mental health of any individual viewing the material. Release under the FOIA is considered a release into the public domain and the PSNI will not release information which could or is likely to endanger the mental health of any individual. Releasing the information in particular any statements held within the file that could identify key

witnesses may lead to the identifying of witnesses and targeting them or their families and could jeopardise the physical and mental wellbeing of witnesses in relation to this case.

By disclosing the information the risks to individuals would be significant and there would be a loss of confidence in the police service to protect individuals.

Decision

The requested information is held as part of a police investigation and PSNI must ensure that any documents are not prematurely released as to do could potentially prejudice / hamper and could adversely affect any future evidence gathering opportunities. Whilst there is a public interest in the transparency of the law enforcement role of the police by providing assurance that the PSNI is appropriately and effectively dealing with crime the police service also has a greater duty of care to all individuals involved in any investigation. There is an expectation that information is provided in confidence. A release of this type of information containing personal information into the public domain would be a breach of this confidentiality and the perception that such statements could be made public may inhibit or dissuade some witnesses from giving statements or providing assistance to the police in future investigations and must take precedence over the important issues of public accountability and transparency. 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.

Although, it is acknowledged there is information already in the public domain in relation to this incident, the police service will not disclose material which could cause serious detriment to the mental health of an individual.

The release of information under FOI 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 how the information is shared with other individuals therefore a disclosure under FOI is considered a release to the world in general.

Whilst there is always a possibility of public/media criticism which could affect community confidence, as a result of all the points discussed above, it has been decided that the balance of the public interest, in this instance, is best served, by withholding the information at this time to which you seek access.

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 Corporate Information Branch, 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 Corporate Information Branch, 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.psnj.police.uk

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