

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2021-00354

Keyword: Crime

Subject: Murder Investigation

Request and Answer:

Your request for information has now been considered. In respect of Section 1(1)(a) of the Act we 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 pursuant to Section 30, 38 & 40 of the FOIA 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

I write to you with a view to making a formal request for the case files pertaining to the May 2017 murder of Bangor resident Colin Horner. As a judicial verdict has now been administered culminating in the sentencing of six people, I hereby make a request to access any evidential material amassed by the PSNI as part of the murder probe that was critical to the successful prosecution of the aforementioned 6, whether it be in the form of interviews, phone cite analysis, text messages/digital communications between the convicts, DNA exhibits, etc.

Answer

As previously mentioned, information is withheld by virtue of Section 30, 38 & 40 of the FOIA and the following explanation is provided.

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 30(1) 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) – Health & Safety – Information which would or would be likely to, 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 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.

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').

PSNI consideration on applying this exemption is subject to whether the disclosure of the information requested would lead to identifying living individuals linked to the murder investigation (including witnesses) and place information pertaining to them into the public domain. This constitutes personal data which would, if released, be in breach of the rights provided by the Data Protection Act 2018 and General Data Protection Regulations.

The six principles of the DPA 2018 govern the way in which data controllers must manage personal information. The first principle of the DPA provides that personal data must be processed lawfully and fairly. It states:

The first data protection principle

(1) The first data protection principle is that the processing of personal data for any of the law enforcement purposes must be lawful and fair.

(2) The processing of personal data for any of the law enforcement purposes is lawful only if and to the extent that it is based on law and either-

(a) the data subject has given consent to the processing for that purpose, or

(b) the processing is necessary for the performance of a task carried out for that purpose by a competent authority.

To comply with DPA 2018 and GDPR, PSNI must ensure that any disclosures of personal data, however obtained, are lawful and fair. Although there is a substantial amount of information concerning the murder and linked matters in the public domain, release of evidential material would however be unfair as it would reveal personal information linked to these matters and that the persons concerned would not reasonably expect the investigating force to publish this type of information. Such disclosure may lead to unwanted and unsolicited intrusion from the media or others interested in the facts of the matter and/or could lead to harm to the individuals concerned.

Section 30 of the Act is engaged if the information requested has been held by a public authority at any time for the purposes of any investigation with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it.

In relation to your request, the information relates directly to material used as evidence in the prosecution case. Such material will include an outline of the circumstance of the murder, including physical evidence, documentary evidence and responses to questions about events. All of this information forms part of the criminal case. Therefore, as all the material requested forms part of an investigation and the information is only held in order to determine whether a person should be charged for an offence or whether a person is guilty of an offence, Section 30 is engaged.

As this exemption is class based, the information being considered simply has to fit the description in order to be engaged. However, it is also a qualified exemption and so a public interest test needs to be conducted to ascertain whether or not the balance falls in favour of disclosure.

Public Interest Test

Factors Favouring Release – Section 30

This case has been publicly linked to that of a tragic murder. It could be contended that disclosure would demonstrate PSNI's commitment to openness and transparency in relation to this specific case and the investigation generally.

Disclosure would assist in showing how PSNI conduct thorough investigations. There is much public interest in ensuring that this and any other investigation is undertaken professionally and rigorously and release 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 to report criminal offences if they know a proper investigation will be undertaken.

All police investigations will involve the use of public funds and where this is the case there is always a public interest in ensuring that those funds are not used unnecessarily or unwisely.

Factors Favouring Retention – Section 30

It would be inappropriate to disclose information into the public arena which would have the tendency to adversely impact future investigations. Disclosure of this information, although possibly enabling accurate debate on sufficiency of the police investigation into the murder, would reveal established tactics and techniques that could be exploited and likely hinder PSNI's ability to investigate crimes of this nature in the future. An example of such would be suspect interviews. Disclosure would indeed highlight how robust interview and investigation techniques were. It would also enable those with ill-intentions to 'prepare' for future interviews that they may be subjected to. Disclosure of this information would potentially enable individuals who were intent on committing a similar crime to change their actions or behaviours in a way which may enable them to evade prosecution, hindering the effectiveness of established investigative processes. It would also be likely to render the interviewing techniques of the officer useless.

A similar argument is considered in respect of crime scene forensics in that disclosure would expose the faults and flaws of the suspect's actions at the scene of the crime, information which could be useful for anyone considering committing a similar offence in the future.

In addition to the arguments above, such a disclosure may inhibit the ability to prevent and detect crime, as individuals may well be less inclined to co-operate with the police when interviewed (including witnesses), especially if they were aware that the information they provide would likely be disclosed to the world in circumstances sitting outside the criminal justice process.

Decision

It is the view of PSNI that when considering the public interest in maintaining the exemption at Section 30, it is necessary to be clear what that exemption is designed to protect. In broad terms the Section 30 exemption exists to ensure the effective investigation and prosecution of offences and protection of confidential sources. It recognises the need to prevent disclosures which would

prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings. In this particular case PSNI consider the public interest in maintaining the exemption is stronger than the public interest in releasing the information owing to any future investigative opportunities and activities that may arise.

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. Whilst there is a public interest in the transparency of policing and providing assurance that the Police Service is appropriately and effectively engaging with the threat of criminals there is also a very strong public interest in safeguarding the law enforcement role of police.

In conclusion, it is our assessment that favouring non-disclosure of the requested information outweighs favouring disclosure.

Harm – S38

Consideration may be given to any resultant harm to an individual which is likely to be caused following such a disclosure.

Section 38(1) provides an exemption from the disclosure of information which would, or would be likely to endanger the physical or mental health of any individual, or endanger the safety of any individual. When this exemption is applied, the harm in disclosure needs to be demonstrated and a Public Interest Test carried out.

ICO guidance on this exemption states:

Section 38 provides an exemption from disclosing information if it would endanger any individual (including the applicant, the supplier of the information or anyone else).

- The exemption does not necessarily deal with what are commonly thought of as health and safety matters such as establishing the cause of an accident.
- Section 38 focuses on two particular areas where disclosure of information would or would be likely to endanger:
 - i. the physical or mental health of any individual, or
 - ii. the safety of any individual.

As explained, disclosure of the evidential material will reveal the full details and circumstances of the murder (including crime scene/mortuary images of the deceased) and those individuals linked to the investigation. By doing so there is a real risk of causing distress and upset to individuals concerned, family or friends.

Public Interest Test

Factors Favouring Release – Section 38

Releasing the requested information would promote transparency and openness. Disclosure would improve the public's knowledge and understanding surrounding this incident and allow informed discussions on the matter.

Factors Favouring Retention – Section 38

It would be unfair to place into the public domain information which is likely to cause an individual, for example the victims partner or close family, distress as disclosure could cause unwanted contact from those interested in this case at a time when they seek to progress with their lives without further unwanted attention. Disclosure could result in a loss of confidence in the police service to protect

individuals.

Decision

It is recognised that transparency is the fundamental objective of the Freedom of information Act and this leads itself to a presumption of disclosure. However, this has to be balanced against the harm that would be likely to endanger the physical health and safety of any individual linked to the information being sought. Although there is a public interest in the transparency of investigations, the police service has a greater duty of care to all individuals involved in any investigation.

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.

The requested information is held as part of a police investigation. Such a file would contain personal information of individuals involved in the police investigation. Disclosure of such information may cause distress to family and friends of those involved and detrimentally impact their mental health.

PSNI must ensure that future investigations are not adversely impacted by the release of information. The requirement to withhold information relating to a criminal investigation together with personal information, the release of which may affect the health and safety of individuals, must take precedence over the important issues of public accountability and transparency. Therefore, the public interest, in this instance, is best served by not releasing the information 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.psnipolice.uk

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