

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2020-01204

Keyword: Organisational Information/Governance

Subject: Black Lives Matter Rally

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) we can confirm that the Police Service of Northern Ireland does hold information to which your request relates. The information you have sought access is subject to legal proceedings in which the Chief Constable is named as the respondent. The information attracts legal privilege as a result. At this point in time PSNI has applied an exemption in relation to legal proceedings under section 42 of the FOIA and has considered guidance issued by the Information Commissioner's Office in relation to this exemption. We have set out why we consider this exemption applies to the information you have requested

Request 1

I would like to receive copies of documentation in any form - including but not exclusively texts, emails, memos, minutes reports etc. - that relate to the legislation enacted by the NI Executive on June 5 which preceded the Black Lives Matter rally at Guildhall Square in Derry on June 6. The time period for all aspects of this request is June 5 to June 14 and should include documentation that is internal to the PSNI but also to and from the PSNI.

Request 2

I would also like such documentation that subsequently relates in any way to the actions of the PSNI that day in terms of issuing fines.

Request 3

It has been reported that police at the scene referred to acting on behalf of Unity of Purpose. I would like to receive copies of any documentation (as above) exchanged with this group or referring to it in any way.

Answer

You have sought information which is considered to attract Legal Professional privilege ('LPP'). LPP protects confidential communications between a lawyer and client. Section 42 of the FOIA provides an exemption for information protected by LPP. The concept of LPP protects the confidentiality of communications between a lawyer and client. This helps to ensure complete fairness in legal proceedings.

In *Bellamy v the Information Commissioner and the Secretary of State for Trade and Industry* (EA/2005/0023, 4 April 2006) the Information Tribunal described LPP as:

“a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and [third] parties if such communications or exchanges come into being for the purposes of preparing for litigation”

In the Bellamy decision , the Tribunal acknowledged that there are two types of privilege within the concept of LPP:

- Litigation privilege; and
- Advice privilege.

Litigation privilege applies to confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation. Litigation privilege can apply to a wide variety of information, including advice, correspondence, notes, evidence or reports. Advice privilege applies where no litigation is in progress or contemplated. It covers confidential communications between the client and lawyer, made for the dominant (main) purpose of seeking or giving legal advice.

In this case PSNI considers the information you have requested is covered by both litigation and advice privilege. As a result section 42 (1) of the FOIA is engaged. Section 42 (1) states:

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

.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. PSNI has also followed the Information Commissioner’s Office guidance on LPP which is available on their website at the following link:

https://ico.org.uk/media/for-organisations/documents/1208/legal_professional_privilege_exemption_s42.pdf

Section 42 (1) – Legal professional privilege

Section 42 is a class based exemption which carries a public interest test. This means that information has to fall within the class protected by the exemption for it to be engaged. In this instance there are communications between PSNI and its legal advisors within the information you are requesting. The public interest considerations that PSNI considered included:

Factors favouring release - Section 42

Providing information covered by legal professional privilege to the public could increase transparency for the public on the decision making processes of PSNI

Factors against release - Section 42

The material requested includes communications to which legal advices have been sought The PSNI’s ability to consider that advice and to determine its position could be compromised if this information were to be released. There is a high public interest in the ability for PSNI to seek legal advice freely and frankly in relation to an ongoing issue is imperative and PSNI sought that advice in confidence with the expectation it would not be further disclosed.

Balancing Test

PSNI has considered the public interest factors above, and taking all of the circumstances of this request into account considers that the balance of the public interest test favours withholding of the information in this instance.

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.psni.police.uk

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