



FREEDOM OF INFORMATION REQUEST



Request Number: F-2022-01478

Keyword: Policing Themes, Operations and Investigations Investigations and Operations

Subject: Radio Comms of Sean Grahams' Bookmakers Incident

Request and Answer:

Your request for information has now been considered and we apologise for the delay in responding to you. In respect of Section 1(1)(a) of the Freedom of Information Act (FOIA) I can confirm that the 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.

You made the following request to PSNI:

"I understand that PONI investigated 2 PSNI Officers who attended an alleged incident at Sean Graham's bookmakers Ormeau Road, Belfast.

This was on the 5 Feb 2021. I understand from News reports that one male was arrested at the scene. It appears that the PPS later directed no prosecution of the Officers concerned. I would conclude that you will have reviewed the Police radio transmissions just before the incident, during the incident and perhaps up to the time the arrested male was released.

I wish to make application to be supplied with a transcript of the actual radio activity at that time or be provided with the actual audio file. I would expect that all names and addresses will be removed as necessary."

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.

PSNI considered the following exemptions apply to this requested information:

Section 30 (1) (a) (c) – Investigations by Public authorities

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 (1) - Investigations

Section 30 (1) (a) (c) of the FOIA states:

“ Information held by a public 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 ascertained (i) whether a person should be charged with an offence, or (ii) whether a person charged with an offence is guilty of it

(c) any criminal proceedings which the authority has power to conduct”

PSNI have consulted with the office of the Police Ombudsman in respect of material requested by you and taken on board their views. PONI have confirmed that their investigation into this incident on the 5th February 2021 has not concluded. The material requested by you is relevant to their ongoing investigation.

Section 30 (1) of the FOIA can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence, or the power to conduct such investigations and/or institute criminal proceedings. The powers available to PONI are set out at Part VII of the Police (NI) Act 1998. Section 30 is a class based exemption which means that information which has been held at any time for the purposes of these investigations and proceedings will be exempt. Information simply has to fit the description contained in section 30 to be exempt. The ICO guidance on section 30 states:

“Section 30(1) provides an exemption from the duty to disclose information that a public authority has held at any time for certain investigations or proceedings. As long as the other requirements of the exemption are satisfied, the exemption will apply to information even if it was not originally obtained or generated for one of those purposes and it will continue to protect information even if it is no longer being used for the specified investigation or proceeding. It is only necessary for the information to have been held at some point for those purposes.”

(Paragraph 8 available at: <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>)

In this case the information you have requested has engaged this exemption. Section 30 is subject to a public interest test. In applying the public interest test it is important to recognise that the purpose of the exemption is to protect the effective investigation and prosecution of offences. PSNI considered the following public interest test factors:

Factors Favouring Release – Section 30

In a democratic society it is important that matters can be effectively investigated. The ICO guidance

on section 30 at paragraph 53 states:

“In broad terms the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that 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 case PSNI considered the public interest factors favouring release of material may assist in further promoting transparency, scrutiny of decision making and informing public debate. PSNI is aware there has been a high degree of public interest in policing during the Covid pandemic and the PSNI approach to this. This has been extensively covered in the media and there has been a high level of public debate.

Factors Favouring Retention – Section 30

There is a public interest in allowing the office of the Police Ombudsman to carry out their investigation, forming viewpoints without premature disclosure of materials which may hinder that process. There is a strong public interest in maintaining this exemption as this matter has not yet concluded.

Decision – Section 30

Given there is a live investigation PSNI considers the balance of the public interest favours upholding the exemption. There is a strong public interest in safeguarding investigations and proceedings conducted by public authorities and ensuring the effective administration of justice at all stages of the process. In this case PSNI considers the exemption applies and the public interest favours

Section 40 (2) Personal information

The information being withheld contains the personal information of third parties who can be identified from that information. Section 40(2) is an absolute exemption which means there is no requirement on PSNI to consider whether there is public interest in disclosure. It is an interface exemption and we must consider whether release of this information would breach the UK General Data Protection Regulations 2018 ‘GDPR’ as well as that personal data held for our law enforcement activity under Part 3 of the Data Protection Act 2018. Third party personal information in this case constitutes ‘personal data’ under the GDPR (Article 4). As this information is ‘personal data’ PSNI considered whether disclosure would contravene any of the six data protection principles contained within the Data Protection legislation.

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. The first principle requires personal data to be processed in a ‘lawful and fair’ manner. 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. Given the reasonable expectations of those individuals we consider it would be unfair to disclose this information into the public domain under FOIA and therefore it would be a breach of the first principle of data protection legislation. In this case PSNI is satisfied that section 40(2) of the FOIA is engaged and is withholding that personal information to which it relates.

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 remain dissatisfied with the handling of your request, you may make a complaint to the Information Commissioner's Office, under Section 50 of the Freedom of Information Act, 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', or use the ICO self-service portal available at www.ico.org.uk/make-a-complaint/officialinformation-concerns-report/official-information-concern/

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 their 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.