



## FREEDOM OF INFORMATION REQUEST



**Request Number:** F-2020-01635

**Keyword:** Crime

**Subject:** HET Reports

### 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.

### Request

Under the Freedom of Information Act, I'm formally requesting the HET reports into the Abercorn bombing; the Donegall St bombing; and Bloody Friday?

### Answer

PSNI can advise that:

- **Abercorn Bombing:** Abercorn restaurant, Castle Lane, Belfast on 04 March 1972 has been reviewed by HET.
- **Donegall Street Bombing:** Donegall Street, Belfast on 20 March 1972 – There is no HET report in relation to this incident.
- **'Bloody Friday':** The Oxford Street bus station & the Cavehill Road shops bombings in Belfast on 21st July 1972 have been reviewed by HET.

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 23 (1) Information supplied by or concerning certain security bodies:** 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 which does not fall with section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purposes of safeguarding national security.

**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 or (ii) whether a person charged with an offence is guilty of it

**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](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 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. I 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 'lawfully and fair'. 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 23 is an absolute class based exemption and no evidence of harm or a public interest test is required.

Section 24 is a qualified prejudice based exemption and evidence of harm and a public interest test is required.

Section 30 is a class based qualified exemption which means that it is not necessary to show the harm that may be caused by release however consideration must be given as to whether there is a public interest in disclosure.

## **Harm**

This FOI request relates to a request for a copy of HET reports and whilst the PSNI recognise time has passed in relation to the incidents 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 these incidents. It is therefore extremely important for PSNI given the age of this material that all evidence is preserved so that all leads may be explored, this will include reviewing crime-scene evidence, witness accounts and medical reports. 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. Therefore release of this type of information into the public domain while an investigation is still ongoing and unresolved would be a breach of this confidentiality.

## **Public Interest Test**

### Factors Favouring Release – Section 24

The threat from national and international terrorism is ever present and the public are entitled to know how the police operate. In the current financial climate of cuts and with the call for transparency, disclosure would enable improved public debate. The public are entitled to know how public funds are spent and disclosure would lead to a better informed public.

### Factors Favouring Retention – Section 24

Disclosure would compromise any ongoing or future operations to protect the security and infrastructure of Northern Ireland. Security measures would be rendered less effective and the risk of harm to the public would be increased. Crucial to safeguarding national security in Northern Ireland is the ability to share information and intelligence. If such information was put into the public domain it could undermine work in this very important area and has the real potential to adversely impact upon national security.

### Factors Favouring Release- Section 30

The release of such information which is held for investigation purposes would provide an insight into the police service and enable the public to have better understanding of the effectiveness of the police investigative procedures. Disclosure of the requested information could promote public trust in providing transparency, demonstrating openness and accountability into how investigations take place. By releasing the information it 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 particular business area.

### Factors Favouring Retention- Section 30

To disclose information in respect of an investigation, including investigations alike which relate to the period in Northern Ireland commonly known as 'the Troubles', it would seriously compromise and undermine criminal investigations and hinder the ability of PSNI to take forward any future investigations, thus hindering the course of justice. 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. 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.

Also, any disclosure could infringe on a suspect's right to a fair trial and also the rights of the victims if a prosecution were to fail due to disclosure of the information. 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.

PSNI considers the balance of the public interest test favours maintaining the exemption in this case.

## **Decision**

Although there is a public interest in the transparency of these investigations there is also a requirement to safeguard the integrity of police within these investigations. 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.

As such a file would contain the personal information of individuals involved in the police investigation, along with any statements made to police, photographs and graphic details. There is an expectation that statements like those likely to be included within a file are 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.

**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](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.psni.police.uk](http://www.psni.police.uk)

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