

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2020-01917

Keyword: Organisational Information/Governance

Subject: Mull of Kintyre Accident, June 1994.

Request and Answer:

In relation to this request Police Service of Northern Ireland is providing an NCND response and will explain this further in the response below.

Request 1

Regarding the loss of Chinook HC Mk2 on 2 June 1994, killing 29 including ten RUC officers.

Background: The RAF Air Staff have stated that 'police or security services' removed personal electronic devices, such as laptops and phones, from the scene. They were not made available to investigators, and MoD has no details of what the devices were.

Could you please say if RUC officers attended the scene and, if they did, how many, by what means, when they arrived, and when they departed?

Request 2

Did they remove, or assist in the removal, of said devices?

Request 3

If so, where are the devices now, and could you provide details of them (not their content, which I accept is classified). For example, 'Orange' or 'One to One' phones.

Answer

In accordance with the Act, this letter represents a Refusal Notice for this particular request. The Police Service of Northern Ireland can neither confirm nor deny that it holds the information you have requested.

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1)(a) is to confirm or deny whether the information specified in the request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held.

Where exemptions are relied upon Section 17(1) of FOIA requires that we provide the applicant with a notice which

a) states that fact,

- b) specifies the exemption(s) in question and
- c) states (if that would not otherwise be apparent) why the exemption applies.

The Police Service of Northern Ireland (PSNI) can Neither Confirm Nor Deny that it holds the information relevant to your request as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the following exemptions:

Section 23(5) – Information Supplied By Or Concerning Certain Security Bodies

Section 24(2) – National Security

Section 30(3) – Investigations And Proceedings Conducted By Public Authorities

Section 31(3) – Law Enforcement

Section 23 is an absolute exemption and as such no public interest test is required.

Sections 24 and 31 are qualified exemptions and as such there is a requirement to articulate the harm and conduct a test of the public interest in confirmation or denial.

Section 30 is a class based exemption and consideration must be given as to whether there is a public interest in neither confirming nor denying the information exists is the appropriate response.

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.

‘Neither Confirm nor Deny’ (NCND)

There may be occasions when complying with the duty to confirm or deny under section 1(1) (a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the Act allows a public authority to respond by refusing to confirm or deny whether it holds the requested information.

The decision to issue a ‘neither confirm nor deny’ response is not affected by whether we do or do not hold the information but relates to the consequences of confirming or denying the information is held. The starting point and main focus in most cases will be theoretical considerations about the consequences of confirming or denying that a particular type of information is held. The decision to neither confirm nor deny is separate from a decision not to disclose information and needs to be taken entirely on its own merits.

PSNI follow the Information Commissioner’s Guidance in relation to ‘NCND’ and you may find it helpful to refer to this at the following link:

<https://ico.org.uk/media/for-organisations/documents/1166/when-to-refuse-to-confirm-or-deny-section-1-foia.pdf>

Overall harm for the NCND

The security of the country is of paramount importance and the PSNI will not divulge whether information is or is not held if to do so would undermine national security. Whilst there is a public interest in the transparency of police investigations operations and providing assurance that the police service is appropriately and effectively engaging with the said investigations, there is a very strong public interest in safeguarding both national security and the integrity of police investigations and operations in the highly sensitive areas of which they work.

Modern-day policing is intelligence led, and intelligence changes on a day-by-day basis. Confirming or denying whether any information is held relevant to the request would show where

policing interest has or has not occurred in any specific area which would enable those engaged in criminal activity to identify the focus of policing targets. Any information identifying the focus of this activity could be used to the advantage of terrorists or criminal organisations to plan an attack on the more vulnerable parts of the UK. Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both national security and law enforcement.

The PSNI works in partnership with other police forces and agencies in order to combat issues such as terrorism and organised crime. Confirming or denying that information exists relevant to this request would seriously undermine this partnership approach.

Public Interest Test

Factors favouring confirmation or denial for Section 24

Confirmation or denial that any other information exists relevant to the request would lead to a better informed public. The public are entitled to know how public funds are spent especially with regards to safeguarding national security

Factors against confirmation or denial for Section 24

Other organisations outside the Police Service may, or may not, have an active interest in the subject of the question above. By confirming or denying that any information exists relevant to the request would harm the close relationship that exists between the PSNI and other organisations. To confirm or deny whether the force hold any information relevant to the request would allow inferences to be made about the nature and extent of national security related activities which may or may not take place in a given area. This would enable terrorists or organized criminal groups to take steps to counter intelligence, and as such, confirmation or denial would be damaging to national security.

Factors favouring confirmation or denial for Section 30

There is a public interest in the transparency of policing operations and providing assurance that the PSNI is appropriately and effectively dealing with crime. This is particularly pertinent in high profile situations where there is a high degree of media speculation. Confirming or denying whether any information is held would allow the public to make informed decisions about these matters

Factors against confirmation or denial for Section 30

Whilst there is a public interest in the transparency of policing operations and providing assurance that the PSNI is appropriately and effectively dealing with crime, there is a strong public interest in safeguarding the integrity of police investigations and operations and in maintaining confidence in the Police Service. Confirmation or denial that any information is held relevant to the request would undermine any investigative process and compromise the integrity of any operations.

Factors favouring confirmation or denial for Section 31

By confirming or denying whether any information is held in respect this request would allow the public to see where public funds are being spent. Better public awareness may reduce crime or lead to more information from the public as they would be more observant in reporting suspicious activity.

Factors against confirmation or denial for Section 31

By confirming or denying whether information is held in respect this request law enforcement would be compromised which would hinder the prevention and detection of crime. This would result in more risk to the public and consequently require the use of more police resources.

Balance Test

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. The security of the country is of paramount importance and the PSNI will not divulge whether information is or is not held if to do so would place the safety of an individual at risk, compromise law enforcement or undermine National Security.

Whilst there is a public interest in the transparency of policing operations and providing assurance

that the PSNI is appropriately and effectively engaging with the threat from terrorists and criminals, there is a very strong public interest in safeguarding both national security and the integrity of police investigations and operations in this highly sensitive area.

It is for these reasons that the Public Interest must favour neither confirming nor denying that the requested information is held. However, this should not be taken as necessarily indicating that any information that would meet your request does or does not exist.

The release of information under Freedom of Information (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 who or how the information is shared with other individuals, therefore a release under FOI is considered a disclosure to the world in general.

However, this should not be taken as conclusive evidence that the information you requested exists or does not exist.

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.