

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: F-2020-02011

Keyword: Organisational Information/Governance

Subject: Troubles Incident in 1972

Request and Answer:

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

Request

I am writing on behalf of my client, [Named Person] regarding an incident that involves his late father.

In 1972 his father, [Named Person], was driving to work on the Cullyhanna Road, Newtownhamilton when he was allegedly shot at by individuals lying in wait. His father was travelling to his place of employment in his vehicle and he was inside it when the shots were fired. My client seeks to know if there is any information that can be sought from the PSNI regarding the incident.

Clarification sought

To assist PSNI in determining what information we hold can you confirm any further detail re when in 1972? i.e. month? Or time of year?

Clarification received

I am unable to provide any further details.

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 38(2) – Health & Safety – the duty to confirm or deny does not arise if it would or would likely endanger the physical or mental health of any individual.

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](https://ico.org.uk/media/for-organisations/documents/1166/when_to_refuse_to_confirm_or_deny_section_1_foia.pdf)

Section 38 is a prejudice based qualified exemption and there is a requirement to evidence the prejudice (harm) in disclosure and consider the public interest to ensure neither confirming or denying that information is held is appropriate.

Harm

Under the FOI Act a request is treated as applicant blind, as proof of identity is not required under the legislation. Your request is seeking information regarding a named person whom you have stated is now deceased. As Section 40 is only appropriate for living individuals, it is not engaged for this part of your request and therefore Section 38 is relied upon.

Public Interest Test

Factors Favouring Confirmation or Denial – Section 38

Confirmation or denial of the existence of the information would promote openness and transparency.

Factors Against Confirmation or Denial – Section 38

Confirmation or denial of information relating to a deceased person would identify the individual and could subsequently cause distress and upset to close family and friends.

Decision

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 under 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.

Confirmation or denial of whether the PSNI hold information of this nature would amount to a release of information either on this occasion or on other occasions where a similar request is made. Whilst there is a public interest in the transparency of any information recorded by police, there is also a strong public interest in maintaining confidence in the PSNI with regard to its handling of information. Information should not be released, if it is likely to have a detrimental effect on the physical or mental health of any individual. 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 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.psnipolice.uk

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