

Keeping People Safe



FREEDOM OF INFORMATION REQUEST



Request Number: FOI-2020-02248

Keyword: Operational Policing

Subject: Funeral of Bobby Storey

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

Please send me all records of Information/exchanges between PSNI and the organisers of the Bobby Storey wake and funeral, both prior to the event and on the day itself.

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.

The exemptions, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

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

Section 31(1)(a)(b – Law Enforcement – Information which would be likely to prejudice (a) the prevention or detection of crime.

Section 38 (1)(b) – Health & Safety – Information is exempt information if its disclosure under this Act would, or would be likely to (b) endanger the safety 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.

Section 40 (2)

Section 40 (2) of the FOIA is an absolute exemption which means there is no requirement on PSNI to consider whether there is a public interest in disclosure, PSNI must however consider if information can be released into the public domain. Section 40 is an interface exemption which means we must consider whether release of the information would the Data Protection Act 2018 ('DPA'). Within the material requested are details of individuals (including officers and staff and persons outside the organisation that PSNI has consulted with who can be identified from this material). This information is the 'personal data' of those individuals as defined under Data Protection legislation.

PSNI must consider whether disclosure therefore would contravene any of the six data protection principles contained within the 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 'fairly and lawfully'. 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 about them into the public domain. We further consider it would be 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 PSNI has made the decision to withhold that information

Section 31(1) (a) (b)

Section 31(1) Law Enforcement - Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to prejudice (a) the prevention or detection of crime (b) the apprehension or prosecution of offenders.

Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but, before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.

The exemption is split into three main sections. Sections 31(1)(a) – (f) provide protection for information which would prejudice, what will be referred to for the purposes of this guidance as, general law enforcement activities.

The term 'law enforcement' should be interpreted broadly. In the case of *William Thomas Stevenson v the Information Commissioner and North Lancashire Teaching Primary Care Trust* the Upper Tribunal commented that "*it is plain from reading the activities listed in s.31(1) and the purposes specified in s.31(2), that they include activities and purposes which go beyond actual law enforcement in the sense of taking civil or criminal or regulatory proceedings. They include a wide variety of activities which can be regarded as in aid of or related to the enforcement of (i) the criminal law, (ii) any regulatory regime established by statute, (iii) professional and other disciplinary codes, (iv) standards of fitness and competence for acting as a company director or other manager of a corporate body (v) aspects of law relating to charities and their property and (vi) standards of health and safety at work*" (paragraph 75).

In this case PSNI considers the information requested engages matters in relation to law-enforcement.

In this case PSNI considers the information requested engages matters in relation to law-enforcement. PSNI has then consider the harm or prejudice in the release of material

Harm/Prejudice Test.

PSNI considers release of material which relates to policing law enforcement methodology including use of tactics and engagement with others on matters of law enforcement would educate criminals in police methods and would assist in weakening policing mechanisms, compromising the law enforcement role of police. A disclosure under FOI is considered a release to the world in general and not just to the applicant 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. PSNI also considers disclosures of e-mail addresses and direct dial phone numbers of police officers and staff which are contained within the requested information but are not in the public domain and sit outside published contact points could compromise the PSNI's law enforcement abilities by creating a possibility that the public would not use the appropriate contact channels which are manned 24 hours a day for the public. This could mean that police officers and staff would be engaged in answering calls and individuals being placed at risk by important calls and information not getting through appropriate and established channels for call handing.

Releasing correspondence of those that have a working environment involving PSNI would likely place them at risk of attack. The threat level from terrorism in Northern Ireland is currently assessed as Severe so the release of any information that could be of use to criminals and terrorists increases the risk of harm to the public.

PSNI consider the exemption at section 31 is engaged and the harm test is met. PSNI then considered the public interest test:

Factors Favouring Release - Section 31

The PSNI is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve and there is a public interest in the transparency and effectiveness of the methodology employed to achieve this. There is a public interest in increased transparency in use of police resource.

Factors Favouring Retention - Section 31

There is a public interest in PSNI being able to engage with individuals and employ its law enforcement methodologies that are used to uphold PSNI's law enforcement functions. There is a strong public interest in the PSNI being able to protect this function.

PSNI also considers in relation to ensuring the use of dedicated contact points that there is a strong public interest in not misdirecting the public to internal contact points not designed to handle public calls appropriate call handling detail.

Decision

In this case the PSNI considers the balance of the public interest favour the non-disclosure of the requested information.

Section 38 (1) (b)

Section 38 (1)(b) is a prejudiced based, qualified exemption which means the PSNI must demonstrate harm in disclosure and consider the balance of the public interest in releasing the information. Information held by PSNI which could prejudice its law enforcement function, identify individuals and could put individuals at risk as a result PSNI considers the exemption at section 38 is engaged. PSNI considers a risk of harm would occur as a result. PSNI then considered the balance of the public interest test.

Factors Favouring Release - Section 38

PSNI considers there is a public interest in increasing transparency in relation to how it carries out its law enforcement role and keeps people safe.

Factors Favouring Retention – Section 38

There is a strong public interest in protecting individuals and keeping them safe, providing details which could put individuals at risk will never be in the public interest. PSNI is under a positive obligation to protect life and uphold public safety,

Decision

The Police Service will not disclose information that may put individuals' lives at risk as their safety is of paramount importance. In this case PSNI considers the public interest favours upholding the exemption.

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.