

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 October 2007

Public Authority: Police Service for Northern Ireland
Address: Police Headquarters
65 Knock Road
Belfast
BT5 6LE

Summary

The complainant requested information from the Police Service of Northern Ireland (the 'PSNI') relating to its policy on shotgun licensing. The PSNI released some information to the complainant, and released further information both before and after the Commissioner's intervention. However, the Commissioner was concerned that the PSNI had incorrectly applied the exemption under section 38 (health and safety) to some of the information, and had not conducted an adequate public interest test.

The Commissioner found that the PSNI had correctly applied the exemption under section 40(2) of the Act to some personal information identifying junior staff, but that the PSNI should release personal information identifying more senior staff. In addition the Commissioner found that the PSNI failed to respond within the statutory time limit, and failed to conduct an internal review.

The Commissioner requires the PSNI to release some of the withheld information to the complainant.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the 'Act'). This Notice sets out his decision.

The Request

2. The complainant has advised that on 14 September 2005 he requested the following information from the PSNI under section 1 of the Act:

“A copy of all police policy documents or other instructions (including internal guidance notes or office procedures) relating to restrictions and conditions applied to firearms and in particular those applied to semi-automatic and pump action shotguns in Northern Ireland issued since 14th March 1987.”

3. The complainant alleges that he wrote to the PSNI again on 6 October 2005, indicating that he had not received any response to his request, and asking when the request would be dealt with. The complainant telephoned the PSNI on 11 October and was advised to resubmit his information request in writing.
4. The PSNI wrote to the complainant on 25 November 2005, acknowledging his resubmitted request for information dated 12 October and received on 18 October 2005. In this response the PSNI provided the complainant with some of the information he requested and advised that certain pieces of information were being withheld in reliance on the exemptions under sections 38(1)(a), 38(1)(b) and 40(2) of the Act.
5. The complainant requested an internal review by letter dated 5 January 2006, and the PSNI acknowledged this letter on 11 January 2006. The PSNI did not conduct an internal review, but advised the complainant on 10 May 2006 that additional information had been located in relation to his request. The PSNI provided most of this additional information to the complainant, withholding a small portion under the exemptions outlined at paragraph 4 above.

The Investigation

Scope of the case

6. On 27 September 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to consider the time taken to deal with his request, and to decide whether the PSNI had wrongly withheld some of the information from him (the ‘withheld information’).
7. The complainant also asked the Commissioner to consider the PSNI’s delay in conducting an internal review. This issue is addressed in “Other Matters” at paragraph 45 below and does not form part of this Notice because the provision of an internal review is not a requirement of Part 1 of the Act.
8. By way of background the complainant advised the Commissioner that he had held a shotgun licence for many years. The PSNI had subsequently imposed conditions on the licence, which the complainant wished to appeal. The complainant had requested information relating to the PSNI’s licensing policy to assist his appeal.
9. The Commissioner contacted the PSNI on 15 December 2006 to advise it of the complaint, and to request sight of the withheld information.

10. The PSNI contacted the Commissioner on 22 December 2006. In addition to the provision of the unredacted information, the PSNI advised the Commissioner that it had re-considered the complainant's request and had decided to disclose further information to him. This was provided to the complainant by letter dated 15 January 2007.
11. The Commissioner contacted the complainant on 22 January 2007 to check whether he had received the additional information, and to discuss the possibility of informal resolution. The complainant remained dissatisfied with the PSNI's handling of his request, and requested that the Commissioner make a formal decision in the case. The complainant asked the Commissioner to decide whether any of the remaining withheld information ought to be disclosed to him.
12. The complainant also advised the Commissioner of his view that the PSNI had acted in bad faith in withholding information in response to his request that it later provided to him. The complainant provided further information to the Commissioner to put his request into context. The complainant advised that in January 2005 his local police station asked him to send in his firearms licence for scrutiny. When his licence was returned, the complainant noticed that a number of conditions had been added to the licence without his knowledge. The complainant decided to appeal these new conditions, which was why he had requested policy information relating to firearms licencing. The complainant felt that the PSNI had sought to withhold some of the requested information from him in the knowledge that it would assist his appeal.

Chronology

13. The Commissioner contacted the PSNI on 7, 12 and 26 February 2007, and 16 April 2007, to request additional information relating to the PSNI's handling of the complainant's request. The Commissioner requested clarification on a number of issues, namely the date of receipt of the complainant's request, and the conduct of the internal review. The Commissioner was particularly concerned because the PSNI's letter relating to the internal review it claimed to have carried out was identical in several respects to its original refusal notice. The Commissioner also requested further information on the PSNI's application of the exemptions applied to the withheld information. The Commissioner noted his concern that the PSNI had applied the exemption relating to health and safety to several pieces of information which were clearly not exempt under this provision.
14. The Commissioner noted that, whilst the PSNI had now released further information to the complainant, it was continuing to rely on the exemptions under sections 38 and 40(2) of the Act in relation to some of the withheld information. This included names and job titles of PSNI staff. The Commissioner requested further details on the PSNI's reliance on these exemptions, as he considered that neither the refusal notice nor the internal review letter contained sufficient detail in this regard.
15. The PSNI advised the Commissioner that it did not receive either the complainant's request of 14 September 2006, or his follow-up letter of 6 October

2006. The PSNI explained that the complainant had contacted it by telephone on 11 October and the PSNI had advised him to resubmit his request, which was received by the PSNI on 18 October 2006. The PSNI further confirmed that no internal review was in fact conducted. This was because additional information was located and provided to the complainant, and the PSNI assumed that an internal review was not therefore necessary.

16. The PSNI provided the Commissioner with a more detailed explanation of its reasons for relying on the exemptions noted at paragraph 13 above. The PSNI indicated that it was generally prepared to release the names of officers at the rank of Chief Inspector and above if the individual was still a serving police officer. The PSNI argued that it would be unfair to release the names of more junior officers, and all retired officers. The PSNI explained this view by asserting that senior officers would have a lesser expectation of privacy while serving, but on retirement the expectation of privacy would increase.

Criminal investigation

17. The Commissioner was not satisfied with the responses given by the PSNI in relation to his enquiries. In particular the Commissioner was deeply concerned at the PSNI's failure to explain adequately its decision to apply the section 38 exemption to information that was manifestly not exempt under that section at all. In light of the context of the complainant's request (explained at paragraph 12 above), the Commissioner had cause to suspect that an offence may have been committed under the Act. The Commissioner therefore undertook an investigation in relation to section 77 of the Act (this section is explained on page 12).
18. His conclusion is that there is insufficient evidence to justify a prosecution, but he has recorded further details of this investigation in Annex 2 (see page 12) .

Analysis

Procedural matters

Receipt of the request

19. The Commissioner has considered the issue of whether or not the PSNI received the complainant's letters of 14 September and 6 October 2006. The PSNI has not provided any reason for the non-receipt of the two letters, nor has it offered any explanation for its assertion that it received the complainant's re-sent request dated 12 October 6 days later, on 18 October 2006. The Commissioner is of the view that there is insufficient evidence for him to decide whether or not the PSNI did in fact receive the two letters of 14 September 2006 and 6 October 2006.
20. In light of the above, the Commissioner accepts 18 October 2006 as the date the PSNI received the complainant's request.

Time for compliance

21. In order to comply with section 10(1) of the Act, the PSNI ought to have responded to the complainant promptly, and in any event not later than twenty working days following the date of receipt. In this particular case the PSNI ought to have responded by 15 November 2006, but in fact it did not respond to the complainant until 25 November 2006. Therefore the PSNI failed to comply with the requirements of section 10(1) of the Act.

Refusal notice

22. Where a public authority refuses a request for information it is required under section 17 of the Act to provide the applicant with a 'refusal notice' detailing the refusal and explaining the exemption or exemptions relied upon.
23. In addition, where the public authority is seeking to rely on a qualified exemption (one subject to the public interest test) it must provide details of the public interest arguments considered for and against disclosure of the requested information. The authority must also explain the balance of these competing arguments.
24. The Commissioner noted that the PSNI's refusal notice of 25 November 2006 did not provide sufficient detail on the application of the exemptions to the withheld information. As required under section 17(1), the PSNI did identify the exemptions being applied to the withheld information. However, the refusal notice stated that

"The information you have requested contains data of a personal nature and as such Section 40, a class-based exemption, is applicable..."

Section 38(1)(a) & (b) is a prejudice based exemption and this means that it is the Public Authority's responsibility to evidence the harm."

25. The PSNI went on to provide details of a harm test, and indicated that this harm test applied to personal details of individuals contained within the requested information. It did not provide an explanation of how disclosure of the withheld information would, or would be likely to, endanger the physical or mental health, or the physical safety of any individual, and so did not explain how the exemption under section 38 was engaged. Nor did the PSNI explain why exemptions relating to personal information and health and safety of individuals were relevant to a request for policy documents.
26. For the reasons set out above, the Commissioner finds that the PSNI provided the complainant with an inadequate refusal notice. The notice did not explain why the exemptions cited were applicable to the information which was being withheld. Therefore the Commissioner is satisfied that the PSNI breached section 17(1) of the Act.

Exemptions applied

Section 38(1)(a) and (b): health and safety

27. The exemption under section 38 of the Act may be applied if the disclosure of the requested information would, or would be likely to endanger the physical or mental health or safety of any individual.
28. The Commissioner was concerned at the PSNI's application of the section 38(1)(a) and (b) exemption to innocuous information such as details of fees payable and cartridge allowances relating to firearms licences. This type of information would in fact be required by any applicant or licence holder, and disclosure would clearly not endanger any individual in any way.
29. The Commissioner was also particularly concerned that the PSNI had initially withheld two additional paragraphs under this exemption:

“In a case where an application was compelling in relation to a Franci SPAS type weapon it would be my intention to refer same to Deputy Chief Constable for his guidance.

...

I would not propose to place “Restriction Conditions” on persons currently holding Semi Automatic / Pump Action Shotgun which have large capacity magazine.

This would obviously mean a massive operation to prepare and serve 5,690 notices under Article 29 all of which give the FAC holder the right of appeal. This would not be a cost effective operation nor would it guarantee any improvement in public safety or Police public relationship”.
30. These extracts clearly refer to applications for firearms licences, and the second extract in particular to the right of appeal against conditions for firearms licences. The Commissioner is mindful that, following his intervention, this information was provided to the complainant. However it remains his clear view that the information ought to have been provided at the time of the complainant's request.
31. The PSNI was asked to comment on this aspect of the complaint, and responded by advising the Commissioner that its staff were “over-cautious” in the early days of information rights under the Act coming into force. This failure to provide an adequate explanation raises serious questions about the quality of the PSNI's request handling and decision making procedures at the time of the complainant's request. The Commissioner remains significantly concerned at the PSNI's apparent lack of reasoning behind its decision to withhold information, and would strongly recommend that the PSNI revisit its procedures to ensure proper records are kept in relation to the handling of future requests.
32. The Commissioner is of the view that basic training would have informed staff that exemptions ought only be applied to information which is reasonably considered exempt, and then under the most appropriate exemption. The Commissioner considers that the PSNI did not comply with the Act in two respects: firstly in its

incorrect application of the section 38 exemption itself, and secondly in its inadequate consideration of the public interest test. It is the Commissioner's view that, had the PSNI conducted an internal review, these errors may have been rectified without the necessity of the Commissioner's intervention. This issue is discussed in more detail in paragraph 45 below.

Section 40(2): personal information

33. The exemption under section 40(2) of the Act may be applied to personal information relating to third parties, ie people other than the applicant. The exemption is engaged if disclosure of the personal information would breach any of the data protection principles as set out in Schedule 1 to the Data Protection Act 1998 (the 'DPA'). Alternatively, the exemption may be engaged if disclosure of the information would contravene a 'Section 10' notice, issued by an individual who felt that disclosure would cause damage or distress.
34. The PSNI applied the exemption under section 40(2) to the identities of PSNI staff named in the information, and also to references to an ex-police officer who is now deceased. The references to the deceased officer were disclosed to the complainant in January 2007, following the Commissioner's intervention. The PSNI maintained its reliance on the exemption under section 40(2) in relation to the remaining information, comprising of PSNI staff names.
35. The PSNI advised the Commissioner that there was an expectation among PSNI employees that their personal information would not be disclosed as a matter of course. The PSNI's view was that it was considered implicit in an officer's contract of employment that their details would not be released into the public domain unless the officer was of a senior rank. The PSNI did not define 'senior rank', but the Commissioner noted that the individuals named in the information ranged in terms of seniority, from administrative and secretarial staff, to the Chief Superintendent.
36. The Commissioner finds that the PSNI acted correctly in considering the application of the exemption under section 40(2) to the identities of its staff. However, the PSNI failed to conduct a thorough analysis in relation to whether or not disclosure of any of these identities would in fact breach any of the data protection principles. The Commissioner is of the opinion that it would be unfair to disclose the identities of junior administrative staff, who probably would not have had decision making responsibilities in relation to the information. The Commissioner accepts that more junior members of staff would have a greater expectation of confidentiality than those at higher ranks. In reaching this view the Commissioner has been mindful of his guidance on the application of the exemption under section 40, as well as several decisions he has made on similar issues. In addition the Information Tribunal has supported this approach¹.
37. However, the Commissioner considers that PSNI officers above the rank of Inspector may be considered more senior staff. The Commissioner is of the view

¹ Corporate officer of the House of Commons v. Information Commissioner & Norman Baker MP (EA/2006/0015 and 0016)

that identifying these individuals by name and job title would not be unfair to them, especially given the age and nature of the information in question.

The Decision

38. The Commissioner's decision is that the PSNI did not deal with the request for information in accordance with the Act in a number of respects:
- section 1, in that the PSNI failed to communicate some of the information requested to the complainant;
 - section 10, in that the PSNI failed to respond to the complainant's request within the specified time limit;
 - section 17(1), in that the PSNI failed to explain why it was applying the exemptions under sections 38 and 40(2) to the withheld information
 - section 17(3), in that the PSNI failed to provide as part of its refusal notice, the reasons for claiming that, in all the circumstances of the case, the public interest in maintaining the exemption under section 38 outweighed the public interest in disclosing the information
39. The Commissioner finds that the PSNI correctly applied the exemption under section 40(2) to some information, namely the personal information relating to the more junior members of staff. However the Commissioner is of the view that the identities of the more senior staff, such as the Inspector, Chief Inspector and Chief Superintendent, ought to have been released to the complainant.

Steps Required

40. The Commissioner is mindful of the fact that the complainant has now received the majority of the information requested. However, the Commissioner is satisfied that the names of the PSNI officers above the rank of Inspector were withheld wrongly, and ought to have been disclosed to the complainant at the time of his request. The Commissioner also requires the PSNI to release a further piece of information to the complainant, which was withheld under section 38 of the Act, but which the Commissioner has decided is not in fact exempt information. The Commissioner has identified this information to the PSNI.
41. The Commissioner therefore requires the PSNI to provide the identified information to the complainant within thirty five days of the date of this notice.

Other matters

42. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

Internal review

43. The Commissioner is critical of the way the PSNI handled the complainant's request for an internal review, expressed in the complainant's letter of 5 January 2006.
44. Paragraphs 38 and 39 of the Code of Practice issued under section 45 of the Act state that:

“38. Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint, as should any written communication from a person who considers that the authority is not complying with its publication scheme. These communications should be handled in accordance with the authority's complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision or its handling of the application.

39. The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue. Complaints procedures should be as clear and simple as possible. They should encourage a prompt determination of the complaint. “

45. The Commissioner has noted, and it is accepted by the PSNI, that no internal review was in fact conducted despite the complainant's request. The PSNI's letters of 25 November 2005 and 10 May 2006 were largely identical, with no more than a few words altered in the later correspondence. This suggests that no consideration was given to the section 45 Code of Practice, and the Commissioner is therefore minded to consider whether formal enforcement action may be appropriate in this case.

Remedial steps taken by the PSNI

46. The Commissioner is aware that, as a result of his investigation in this case, the PSNI has undertaken a review of its request handling policies and procedures. In addition the PSNI has agreed to meet with the Commissioner's Good Practice and Enforcement officers to discuss issues arising from this Decision Notice.

Failure to comply

47. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session

in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

48. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 29th day of October 2007

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex: Relevant statutory obligations

1. **Section 1(1)** provides that:

(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

2. **Section 38** provides that:

(1) Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.

3. **Section 40** provides that:

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

Annex 2: The Commissioner's investigation into the possible commission of a criminal offence

1. Section 77 of the Act states that:

“(1) Where –

- (a) a request for information has been made to a public authority, and
- (b) under section 1 of this Act or section 7 of the Data Protection Act 1998, the applicant would have been entitled (subject to payment of any fee) to communication of any information

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.

(2) Subsection (1) applies to the public authority, and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.”

2. As referred to in paragraph 17 of this Decision Notice, the Commissioner investigated the potential commission of a criminal offence by the PSNI. Under section 77 of the Act the Commissioner does have the power to bring a prosecution if he considers it in the public interest.
3. The Commissioner was particularly concerned in this case because it appeared to him that the PSNI had sought to withhold innocuous information from the complainant in reliance on the exemption under section 38(1)(a) and (b) of the Act. As part of the investigation into the potential section 77 offence, the Commissioner spoke with the complainant, and met with the PSNI on a number of occasions. When asked about this decision, the PSNI could not provide a more detailed explanation than that it was overcautious.
4. The Commissioner met with the complainant, who provided copies of correspondence between himself and the PSNI in relation to his firearms licence and appeal.
5. The Commissioner also met with the PSNI to investigate further how the decision to withhold the information from the complainant was made, and by whom. The Commissioner obtained copies of correspondence and documentation from the PSNI relating to the decision making process. He also conducted an interview under caution of a PSNI employee. Another PSNI employee was asked to attend an interview under caution, but declined to do so, instead providing the Commissioner with a sworn affidavit.

Information obtained by the Commissioner from PSNI staff

6. The Commissioner was advised that relevant PSNI staff had received formal training from an external consultant in relation to the Act in 2004, some staff had attended training delivered by the Association of Chief Police Officers ('ACPO')

7. The Commissioner was advised that the complainant's request was initially discussed both within the PSNI and with ACPO. The Northern Ireland Office was also made aware of the request.
8. The record holder in this case, PSNI Firearms Branch, recommended to the PSNI FOI Unit that some of the requested information be redacted, and the exemptions under sections 38 and 40 of the Act were considered in relation to that particular information. The PSNI advised the Commissioner that the FOI Unit considered that these exemptions applied to the information recommended for redaction, as there was a threat to PSNI officers from terrorists and criminals.
9. The PSNI accepted to the Commissioner that the some of the withheld information should not have been redacted, but remained of the view that PSNI staff had been "overcautious" in the early days of handling information requests under the Act. The Commissioner was advised that the PSNI staff responsible handling requests were inexperienced, and were therefore particularly cautious about releasing information relating to firearms.
10. The PSNI confirmed that it had advised the Commissioner by email on 20 April 2007 that the FOI unit was not aware that the complainant had requested the information in support of his firearms appeal. However, during the investigation the Commissioner ascertained that the FOI Unit had in fact been made aware of the request by Firearms Branch in November 2005.
11. The Commissioner noted that the complainant had requested a review of the PSNI refusal by letter dated 5 January 2006, and that the PSNI had both acknowledged receipt of this request, and advised the complainant that the request would take no longer than two months. The PSNI advised the Commissioner that Firearms Branch provided the FOI Unit with further information in February 2006, which it claimed to have discovered as a result of an office clearout.
12. The PSNI confirmed to the Commissioner that, contrary to its letter to the complainant of 10 May 2006, no internal review was in fact conducted. The PSNI advised the Commissioner that at that time it was felt that the additional information provided to the complainant would satisfy his request for an internal review.
13. The PSNI denied to the Commissioner that it had done anything to restrict the release of information that it knew the complainant ought to have received. The PSNI accepted that it had been remiss in failing to conduct an internal review of the refusal to provide the information, but stressed that there was no intention of deliberately withholding information which ought to have been disclosed to the complainant.
14. The Commissioner is under no doubt that the PSNI wrongly withheld information from the complainant, which might have assisted his appeal. However, the Act states that a criminal offence is committed only if certain criteria are met.

15. Firstly, a request for information must have been made to a public authority. This criterion is met, as the complainant submitted his request on 14 September 2005, and re-submitted it on 12 October 2005.
16. Secondly, the applicant must have been entitled to receive the requested information, either under the Act or under the DPA. Again, this criterion is met because the Commissioner is of the view that the PSNI ought to have provided the complainant with all of the information he requested (with the minor exception of the identities of some junior administrative staff).
17. So, if the applicant has made a request for information, and he is entitled to receive that information, a public authority is obliged to provide it to him. A criminal offence is committed if the authority alters, defaces, blocks, erases, destroys or conceals any information with the intention of preventing the applicant from receiving any of the information he is entitled to receive.
18. In this case the PSNI wrongly applied exemptions to information that the applicant, ie the complainant, was clearly entitled to receive. The question then, is whether the PSNI knew that the information ought to be disclosed to the complainant, and acted with the intention of preventing the release of the information to the complainant.
19. The PSNI has acknowledged that the information ought to have been disclosed to the complainant at the time of his request. However, the PSNI has failed to provide the Commissioner with a satisfactory explanation as to who made the decision to withhold the information from the complainant, and on what grounds. The Commissioner has ascertained that Firearms Branch recommended the redaction of the withheld information, but has been unable to confirm with the PSNI the grounds on which this decision was taken.
20. The commission of an offence under section 77 continues for as long as the applicant is prevented from receiving the information to which he is entitled. Therefore the Commissioner has considered at what stage the PSNI became aware that the complainant was entitled to receive the information he had requested.
21. The Commissioner notes that the complainant requested an internal review on 5 January 2006. The PSNI has confirmed that it decided not to conduct an internal review as a result of additional information being identified by Firearms Branch. However, the Commissioner notes that a large amount of previously redacted information was at this stage unredacted and released to the complainant, along with the additional information provided by Firearms Branch. The PSNI failed to explain to the Commissioner how, in the absence of an internal review, it was decided that the exemptions no longer applied to these pieces of information.
22. When contacted by the Commissioner in December 2006, the PSNI advised that it had reviewed the case again, and that some information had been wrongly withheld. The PSNI confirmed to the Commissioner in an email dated 22 December 2006 that the information released in May 2006 did not contain any

details which would cause any risk of harm to the health and safety of any individuals.

23. The Commissioner finds the PSNI's explanation of overcautiousness unsatisfactory, and is not persuaded that the PSNI acted in good faith towards the complainant. The Commissioner is not satisfied that knowledge of the complainant's appeal was not allowed to influence the PSNI's decision making process in relation to the request.
24. In light of the above, the Commissioner has considered whether he ought to exercise his powers under section 77 of the Act in relation to the possible commission of a criminal offence. The Commissioner has concluded that, while he is satisfied that information was wrongly withheld from the complainant in relation to his request; there is insufficient evidence for the Commissioner to be confident of securing a conviction. Therefore the Commissioner has not proceeded with a prosecution in this case.