

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 3 February 2016

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

Decision (including any steps ordered)

1. The complainant requested information relating to an investigation undertaken by the Historical Enquiries Team (HET), then part of the Police Service of Northern Ireland (PSNI). PSNI refused the request in reliance on sections 30(1)(a)(i) and 40(2). The Commissioner's decision is that PSNI was entitled to rely on the exemption at section 30(1)(a)(i) and he does not require any steps to be taken.

Request and response

2. On 6 January 2013 the complainant made the following request to PSNI:
"I would like to request a copy of all information/materials pertaining to the inquest into the murder of [named individual]."
3. PSNI issued a refusal notice on 8 February 2013 citing the exemptions at section 30(a), section 38(1)(a) and (b) and section 40(2) of the FOIA.
4. The complainant requested an internal review, which PSNI acknowledged on 11 February 2013. PSNI wrote to the complainant on 16 October 2014 to apologise that it had not yet progressed the internal review. PSNI provided the complainant with the outcome of the internal review on 26 November 2014. The outcome of the internal review was that PSNI upheld its original decision to refuse the request.

Scope of the case

5. On 17 December 2014 the complainant asked the Commissioner to investigate PSNI's handling of his request. The complainant

acknowledged that PSNI had issued a refusal notice promptly, but expressed dissatisfaction with the time taken by PSNI to complete the internal review, ie nearly two years. The complainant advised the Commissioner that he believed the requested information would assist him in obtaining justice for the murder victim, who was a family member.

6. The requested information in this case was held by the Historical Enquiries Team (HET), an investigation team set up by PSNI in 2005 to re-examine all deaths attributable to the security situation in Northern Ireland between 1968 and 1998. The HET also aimed to provide answers for the families of the deceased as to what happened to their relatives. The HET typically produced a "Review Summary Report" in respect of each review, which was given to the family of the deceased.
7. On 30 September 2014 PSNI announced that the HET would be closed as a result of financial constraints. Subsequently PSNI announced the establishment of a new Legacy Investigation Branch (LIB).¹ The LIB assumed responsibility for work previously undertaken by the HET in addition to cases involving murders that took place before the establishment of PSNI's Crime Operations Department in 2004.
8. The Commissioner has dealt with a number of cases involving requests for information held in connection with reviews undertaken by the HET. In each case the applicant has had understandable personal reasons for seeking access to the information in question, often as a relative of the victim. However the identity and motives of the applicant cannot generally be taken into account when deciding whether or not information can be disclosed under the FOIA. The Commissioner may only order the disclosure of information if it could be disclosed to any member of the public who requested it. The Commissioner cannot require PSNI – or any other public authority – to disclose information solely to a particular applicant, however legitimate their interest in the information.
9. Therefore the scope of the Commissioner's investigation was to determine whether PSNI was entitled to refuse to disclose the requested information. The Commissioner has commented on the time taken to complete the internal review at Other Matters below, since it is not a requirement of Part I of the FOIA.

¹ http://www.psni.police.uk/police_announce_new_unit_to_investigate_the_past_-_legacy_investigation_branch

Reasons for decision

Section 30 - investigations

10. Section 30(1)(a)(i) provides an exemption for information that has at any time been held by the public authority for the purposes of an investigation that the public authority has a duty to carry out with a view to it being ascertained whether a person should be charged with an offence. Engaging the exemption requires a number of tests to be satisfied, and the Commissioner has gone through each below.
11. In order for the exemption at section 30(1)(a)(i) to be engaged, the information in question must have been held for the purposes of an investigation. The Commissioner considers that "for the purposes of an investigation" may be interpreted broadly in terms of the information itself, although it must be held for the purposes of a particular investigation, rather than investigations in general. The investigation in question does not need to be live.
12. Section 30(1)(a)(i) is a class-based exemption, which means that it is not necessary to identify some prejudice that may arise as a result of disclosure in order to engage the exemption. All that is required is for the information to fall under the class in question, ie the requested information must be held for the purposes of a particular investigation. Arguments relating to potential prejudice may well be relevant to the consideration of the public interest.
13. The Commissioner has previously found that information held by PSNI for the purposes of a HET review will engage the exemption at section 30(1)(a)(i).² PSNI clearly has a duty to carry out investigations which fall under the exemption at section 30(1)(a)(i), and the HET functioned as part of PSNI.
14. In this case the Commissioner is satisfied that the information was held by PSNI for the purposes of a HET review, which led on from the original investigation at the time of the murder. Therefore the Commissioner finds the exemption at section 30(1)(a)(i) engaged and has gone on to consider the public interest.

² ICO case ref FS50373733, issued 16 November 2011

Public interest arguments in favour of disclosing the requested information

15. The complainant did not put forward any specific public interest arguments in favour of disclosing the requested information into the public domain. The complainant did say that he wanted to know all the facts about his relative's murder, as he felt this would help him in obtaining justice.
16. PSNI stated that disclosure of the requested information could promote public trust in providing transparency, demonstrating openness and accountability into how the investigation took place.
17. PSNI considered that disclosure of the requested information could allow the public to be satisfied that the investigation has been conducted efficiently and appropriately. It would also show that public funds were being used effectively.

Public interest arguments in favour of maintaining the exemption

18. PSNI acknowledged the passage of time since the murder, but confirmed that the case in question remained open. PSNI argued that if the requested information was disclosed into the public domain there was a real possibility of prejudice to the investigation. PSNI argued that there was a strong public interest in allowing PSNI the ability to detect and investigate crimes, therefore potential prejudice should be avoided.
19. PSNI pointed out that three men were arrested in February 2015 in connection with the murder. Although these individuals were released unconditionally PSNI was of the view that the arrests demonstrated that the case was still live. PSNI expressed concern that disclosure of the requested information would inform not only the public, but also those involved in the murder, as to the progress of the investigation and the evidence obtained to date. This could assist individuals in evading justice, which would not be in the public interest.
20. Finally PSNI argued that the disclosure of information comprising depositions would be seen as a breach of confidence and could discourage witnesses from providing valuable information. Again PSNI was of the strong view that there was a clear public interest in avoiding this.

Balance of the public interest arguments

21. In considering where the public interest lies, the Commissioner is guided by the Information Tribunal in the case of *Toms v Information Commissioner & Royal Mail*³ where it stated that:

"..In striking the balance of interest, regard should be had, inter alia to such matters as the stage or stages reached in any particular investigation or criminal proceedings, whether and to what extent the information has already been released into the public domain, and the significance or sensitivity of the information requested".

22. The Commissioner acknowledges the complainant's arguments in favour of disclosing the requested information. However the Commissioner cannot take them into account when considering where the public interest lies. The Commissioner can only decide whether the requested information ought to be disclosed into the public domain. The FOIA does not prevent PSNI from disclosing such information as it considers appropriate, and the Commissioner is mindful that PSNI has provided information to the family in this case that it would not have put into the public domain, which is what a disclosure under the FOIA would have required. Thus the Commissioner is unable to identify any compelling public interest argument in favour of disclosing the requested information into the public domain.
23. The Commissioner has considered several cases relating to live police investigations, including HET reviews. The Commissioner recognises that PSNI, like other police forces, requires protection from public scrutiny that might inadvertently prejudice an investigation. There is a strong public interest in protecting PSNI's ability to investigate effectively, and this extends to the review carried out by the HET. Consequently the Commissioner has consistently found that significant weight should be attached to the public interest in maintaining the exemption at section 30(1)(a)(i) so as to protect information in such circumstances.
24. The Commissioner agrees with PSNI's arguments in respect of avoiding prejudice to the investigation in this particular case. The exemption at section 30(1)(a)(i) is qualified and it is therefore possible that in some cases the public interest in disclosure may be exceptionally strong. However, in many cases the Commissioner – and the Tribunal – has found that the public interest in maintaining the exemption is overwhelmingly strong.

³ Appeal no EA/2005/0027 para 8

25. In this particular case, for the reasons set out above, the Commissioner is satisfied that the public interest in maintaining the exemption is sufficiently compelling to outweigh the limited public interest in disclosing the requested information into the public domain. The Commissioner therefore finds that PSNI was entitled to refuse to disclose the requested information under section 30(1)(a)(i), and he is not required to make a decision in respect of the exemption at section 40(2) in respect of the same information.

Other matters

26. Although it does not form part of this decision notice the Commissioner also wishes to address the complaint about the time taken to complete the internal review. Although there is no statutory time limit for the internal review the Commissioner expects reviews to take no longer than 20 working days, or 40 working days in exceptional circumstances.
27. The complainant in this case requested an internal review which was acknowledged by PSNI on 11 February 2013. The complainant did not receive any further correspondence from PSNI until 16 October 2014. At this point PSNI explained that it had not in fact progressed the internal review. This was because PSNI had amended its internal procedures, and had transferred a number of outstanding internal reviews from one unit to another. Unfortunately the complainant's internal review had not been transferred.
28. The Commissioner expects public authorities to keep adequate records of all stages of request handling. However the Commissioner understands that this can only reduce the risk of mishandling information, it cannot prevent all instances of human error. The Commissioner also notes that PSNI proactively contacted the complainant as soon as it identified his outstanding internal review. PSNI apologised and offered to prioritise the internal review.
29. The Commissioner understands that the delay in receiving the outcome of the internal review will have been frustrating for the complainant. The Commissioner would advise requesters to contact the public authority if they are concerned that they have not received a response to a request, or the outcome of the internal review. This should provide an opportunity for the authority to identify and address any errors or undue delay.
30. Having considered PSNI's explanation the Commissioner is of the view that he could not have required PSNI to take any further action in this regard. He is therefore satisfied that PSNI acted appropriately once it became aware of the issue.

Right of appeal

31. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Gerrard Tracey
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