

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 2 February 2023

**Public Authority:** Police Service of Northern Ireland  
**Address:** Police Headquarters  
65 Knock Rd  
Belfast  
BT5 6LE

#### **Decision (including any steps ordered)**

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1. The complainant requested the provenance, dates and source of intelligence contained within an assessment used as a briefing in 1971. The Police Service of Northern Ireland (PSNI) refused to provide the information on the basis of sections 23(1) (security bodies), 30(1) (investigations), 38(1) (health and safety) and 40(2) by virtue of section 40(3)(a)(i) (third party personal data) of FOIA. The Commissioner is satisfied that the requested information is exempt from disclosure on the basis of section 23(1) of FOIA.
2. The Commissioner does not require PSNI to take any steps.

#### **Request and response**

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3. On 3 December 2020 the complainant requested the following information from PSNI:

“May I request the provenance, dates and source (with any names redacted, of course) of the intelligence contained within “Special Branch Assessment for the Period Ended 15<sup>th</sup> December 1971” which was used as a briefing at a Joint Security Committee meeting on 16<sup>th</sup> December 1971 (1971/Joint Sec/50), please.

Chief Constable Shillington and Assistant Chief Constable Johnston (Head of Special Branch) gave the briefing to the Northern Ireland Prime Minister and the General Officer Commanding.

I have the minutes and assessment if it helps but I am seeking proof of the assessment, Serial 5 which regarded the McGurk's Bar explosion of 4<sup>th</sup> December 1971 and alleged:

"Circumstantial evidence indicates that this was a premature detonation and two of those killed were known IRA members at least one of whom had been associated with bombing activities. Intelligence indicates that the bomb was destined for use elsewhere in the city."

Can you email me, please, proof that this was intelligence in police stores along with provenance, dates and source etc. For example:

- What circumstantial evidence indicated premature detonation (we know it was not)
- Which two of those killed were alleged to be IRA, which was an alleged bomber and where that information came from or if it existed (we know that police alleged one was IRA but not two)
- What was the intelligence that alleged it was destined for other premises and where did it come from or did that ever exist."

4. PSNI responded on 20 April 2021. It refused to confirm or deny that it held the requested information, citing sections 23(5) (security bodies), 24(2) (national security), 30(3) (investigations), 31(3) (law enforcement) and 40(5) (personal data) of FOIA.
5. Following an internal review PSNI wrote to the complainant on 24 June 2021. PSNI maintained its decision to refuse to confirm or deny that it held the requested information.
6. The complainant contacted the Commissioner on 9 July 2021 to complain about the way his request for information had been handled.
7. In anticipation of the Commissioner's investigation PSNI reconsidered the request and issued a revised response to the complainant on 5 May 2022. At this stage PSNI confirmed that it held information relevant to the request. It refused to disclose the information, citing the exemptions at sections 24(1) (national security), 30(1) (investigations), 38(1) (health and safety) and 40(2) by virtue of section 40(3)(a)(i) (third party personal data).

## Scope of the case

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8. The complainant confirmed to the Commissioner on 14 July 2022 that he wished to proceed with his complaint.
9. During the course of the Commissioner's investigation PSNI reconsidered its position and advised that it now sought to rely on section 23(1) (security bodies) rather than section 24(1). Therefore the Commissioner has considered PSNI's reliance on section 23(1).

## Reasons for decision

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### **Section 23(1) – information supplied by or relating to bodies dealing with security matters**

10. Section 23(1) of FOIA states:

“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)”.

11. To successfully engage the exemption at section 23(1), a public authority need only demonstrate one of the following:
  - that the information was supplied by any of the named security bodies, either directly or indirectly; or
  - that the information relates to any of the named security bodies.
12. The 'named security bodies' are listed at section 23(3)<sup>1</sup> of the FOIA.
13. To engage the exemption at section 23(1), a public authority need only demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3). This means that if the requested information falls within this class it is absolutely exempt from disclosure under FOIA.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/23>

14. There is no requirement on the public authority to demonstrate that disclosure of the requested information would result in harm. The exemption is absolute, ie not subject to the public interest test.
15. The Commissioner observes that the request itself refers to intelligence contained within "Special Branch Assessment for the Period Ended 15th December 1971", which had been used as a briefing at a Joint Security Committee meeting.
16. In the Commissioner's opinion the description of the requested information clearly indicates the involvement of Special Branch, which the Commissioner has previously accepted is an indicator that section 23 is relevant in a case.
17. The Commissioner is mindful of his comments in previous decision notices, informed by the First-tier Tribunal's findings in a number of related cases:

"22. The Commissioner is of the view that there will be very few instances where information relating to Special Branch does not also relate to a section 23(3) body, even if it was not directly or indirectly supplied by them, as the nature of the work of this type of police unit involves very close working with security bodies and regular sharing of information and intelligence".<sup>2</sup>

and

"10. The Commissioner adopts the approach taken by the First-Tier Tribunal (Information Rights), which has considered the application of section 23 in relation to a number of cases involving the Metropolitan Police.<sup>3</sup> In one case the Tribunal approved a consent order to dispose of the appeal on the basis of the following argument:

'... special branches work closely with security bodies and routinely share information with them such that, on the balance of probabilities, any information relating to the work of Special

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<sup>2</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2011/594300/fs\\_50265155.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2011/594300/fs_50265155.pdf)

<sup>3</sup> Appeal nos EA/2010/0008 and EA/2010/0117

Branch would relate to, or have been supplied by, a section 23(3) body."<sup>4</sup>

18. The Commissioner has also inspected the specific withheld information in this case. He is satisfied that the information in question does fall within the scope of section 23 on the basis that it relates to, or has been supplied by, a section 23(3) body. The Commissioner cannot set out further detail in this decision notice since to do so would defeat the purpose of the exemption.
19. In light of the above the Commissioner finds that PSNI was entitled to refuse the complainant's request in reliance on the exemption at section 23(1) of FOIA. Since all of the requested information is exempt under section 23(1) the Commissioner has not considered PSNI's application of the other exemptions cited.

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<sup>4</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014763/fs50640773.pdf>

## Right of appeal

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20. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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** .....

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**