

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 18 October 2010

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

Summary

The complainant requested information that had been submitted to an inquest. The PSNI refused to release this information under sections 30(1), 30(2), 31(1), 38(1), 40(2) and 40(3) of the Act.

The Commissioner finds that section 30(1) was correctly applied to all of the requested information and that the public interest in maintaining the exemption outweighs the public interest in favour of disclosure. Therefore the Commissioner does not require any steps to be taken. The Commissioner also recorded a number of procedural breaches in relation to the PSNI's handling of the request.

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.

Background

2. The complainant requested information that was submitted to the Coroner's Court in relation to an inquest held in respect of a murder which took place in 2004. The inquest was opened, and adjourned to allow further investigation to take place, in August 2008.

3. The complainant is the mother of the murder victim. The complainant advised the Commissioner that her family had acquired information which suggested that the Police Service for Northern Ireland (the PSNI) may have been able to prevent the murder.

The Request

4. On 22 January 2009, the complainant submitted the following request to the PSNI:

"There was an Inquest held on 18/08/08 on behalf of my son, [name redacted]. I request all records related to this Inquest".

5. On 23 January 2009, the PSNI acknowledged receipt of the complainant's request.
6. On 19 February 2009, 5 March 2009 and 23 March 2009, the PSNI advised the complainant that it required further time to respond to her request. On each occasion the PSNI provided the complainant with a new timescale in which a response would be provided.
7. On 20 April 2009, the PSNI issued the complainant with a refusal notice. The PSNI advised that the information requested was considered exempt under sections 30(1), 30(2), 38(1), 40(2) and 40(3) of the Act.
8. The complainant lodged an application to the Commissioner's office on 20 April 2009. The Commissioner wrote to the complainant and advised her to request an internal review of the PSNI's decision.
9. On 13 May 2009, the complainant asked the PSNI to carry out an internal review of the decision to withhold the information requested.
10. On 22 June 2009 the PSNI advised the complainant that the internal review had been carried out and that the result was to uphold the previous decision to withhold the information requested on the basis of the exemptions already cited. The PSNI advised that it now also sought to rely on the exemptions at sections 31(1)(a), (b) and (c) in relation to the requested information.

The Investigation

Scope of the case

11. On 3 July 2009 the complainant contacted the Commissioner to complain about the PSNI's refusal of her request. The complainant was also unhappy about the time taken by the PSNI to provide her with a response to her request.
12. During the course of the Commissioner's investigation, the Commissioner asked the complainant to clarify what she meant by the phrase "*all records related to this Inquest*". The complainant confirmed that she had only requested the information that the PSNI submitted to the Coroner's Court for the purposes of the inquest. Therefore the Commissioner has only considered this information, not the entirety of the information held by the PSNI in relation to its investigation of the murder.

Chronology

13. Unfortunately there was a short delay before the Commissioner was able to begin his investigation. The Commissioner contacted the PSNI on 25 February 2010 and requested the withheld information together with representations regarding its initial handling of the case. The Commissioner also asked the PSNI to provide him with detailed arguments regarding the applications of the exemptions cited.
14. The PSNI responded to the Commissioner on 22 March 2010. Having considered this submission, the Commissioner wrote to the PSNI on 6 April 2010 to seek further arguments regarding the application of sections 30 and 31 to the requested information. The Commissioner also reminded the PSNI that he had yet to receive the withheld information.
15. On 12 April 2010 the PSNI provided the Commissioner with further representations as to why it believed that the information was considered exempt.
16. On 13 April 2010, the PSNI provided the Commissioner with some of the withheld information. On the same day, the Commissioner asked the PSNI for additional clarification regarding the application of section 30(2) together with specific details regarding the investigation of the murder.

17. On 16 April 2010, the Commissioner received the remainder of the withheld information from the PSNI. The PSNI confirmed that it had obtained confirmation from the Coroner's Court that this comprised all the information that had been submitted to the Coroner's Court for the purpose of the inquest. The PSNI explained that not all of the information within the actual police file was provided to the Coroner's Court.
18. On 28 April 2010 the PSNI provided the Commissioner with a further submission in relation to its application of exemptions. At this stage the PSNI also confirmed that it had incorrectly applied the exemption at section 30(2). Therefore the PSNI withdrew reliance on this exemption and the Commissioner has not considered it further.

Findings of fact

19. The Commissioner has inspected the withheld information in this case, and notes that it comprises the following:
 - statements from members of the public who witnessed the murder;
 - statements from those who attended the scene in their official capacities (such as police officers, scene of crime officers and other individuals who carried out their professional duties);
 - photographs of the murder scene; and
 - maps of the murder scene.
20. The PSNI confirmed that in accordance with its obligations under section 8 of the Coroners Act (Northern Ireland) 1959¹, it decided what information should be submitted to the Coroner's Court. The PSNI confirmed that any statements not provided to the Coroner would have been those where the witness did not observe anything evidential or where the statement was provided for the purposes of confirming the existence of an exhibit of evidence.
21. At the time of the complainant's request the inquest had been commenced and subsequently adjourned. At the time of issuing this Decision Notice, the Commissioner notes that the Coroner's Court has yet to be reconvened and no decision has been made in relation to the outcome of this inquest.

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<http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&PageNumber=0&NavFrom=0&parentActiveTextDocId=2907373&ActiveTextDocId=2907373&filesize=86470>

Analysis

Exemptions

Section 30 – Investigations and proceedings conducted by public authorities

22. The PSNI stated that the exemption at section 30(1) applied to all of the requested information. Section 30(1) provides an exemption in cases where the information is held for the purposes of certain investigations and proceedings. The full details of section 30(1) are outlined in the legal annex attached to this Notice.
23. The PSNI stated that the exemption at section 30(1) was engaged in relation to all of the requested information. Despite the Commissioner's enquiries the PSNI did not explain which provision of this subsection it was seeking to rely on. Therefore the Commissioner has considered which provisions of this section apply to the requested information.
24. It appears to the Commissioner that the relevant provision in this particular case is 30(1)(a)(i). This is because the Commissioner is satisfied that the PSNI is a public authority that has a duty and power to carry out an investigation with a view to it being ascertained whether or not someone should be charged with an offence.
25. In order to engage the exemption at section 30(1)(a)(i) the information in question must relate to a specific investigation; not to investigations in general. The Act is also clear in that the exemption will be engaged in relation to information held *at any time* for the purposes of an investigation. Information can therefore be exempt under section 30(1)(a)(i) if it relates to an ongoing, closed or abandoned investigation.
26. The PSNI advised the Commissioner that all of the requested information was directly linked to an investigation which was still considered "*open*" at the time of the request. The information was directly related to a specific police investigation, ie a murder.
27. Section 30(1)(a)(i) is a class-based exemption. This 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. In this case the Commissioner is satisfied that the information was held in relation to a criminal investigation which the PSNI had a duty to conduct. Therefore

the Commissioner finds that the exemption at section 30(1)(a)(i) of the Act is engaged in relation to all of the withheld information.

Public interest test

28. However, section 30(1)(a)(i) is a qualified exemption and is therefore subject to the public interest test under section 2(2)(b) of the Act. Section 2(2)(b) provides that:

"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information".

29. 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*² 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".

Public interest arguments in favour of disclosing the information

30. The PSNI identified a number of arguments in favour of disclosing the withheld information. Firstly, the PSNI accepted that there was a general public interest in disclosure of the type of information requested. Disclosure would provide greater transparency and accountability as well as increased level of public confidence and trust in the PSNI and in the wider criminal justice system generally. The PSNI also argued that there is also a considerable public interest in the investigation of criminal cases in particular.
31. The information held by the PSNI was obtained and is held for the purpose of investigating the murder of the complainant's son, and the PSNI recognised that the complainant would have strong personal reasons for making her request. The PSNI acknowledged that there is a strong public interest in releasing information about the procedures adopted by the PSNI in relation to criminal investigations as it helps to instil public confidence in the PSNI that it is taking all measures available to investigate crimes and secure convictions.

² EA/2005/0027 para 8

32. The Commissioner notes that the police investigation is still continuing as no-one has ever been charged with any offence arising out of the murder. The Commissioner recognises that if information held by the police was to be released into the public domain this may encourage anyone with any information to come forward and provide information to the PSNI which may help to identify and charge those responsible for the murder.
33. The Commissioner recognises that disclosure of the requested information may help to further the interests of justice as it would improve the public's knowledge and understanding of the wider criminal justice process. This could help encourage the public to participate in this process which would be for the benefit of all members of the community.
34. The Commissioner has also considered the amount of information that was in the public domain at the time the information request was submitted. The Commissioner has identified a number of media websites which reported the actual murder, as well as details of the inquest. The Commissioner is aware that a number of witnesses gave evidence to the inquest which was also reported by the media thereby placing this information into the public domain. The Commissioner recognises that in addition to the amount of information already in the public domain through the media coverage, disclosure of further information could further public knowledge and understanding in relation to the investigation.

Public interest arguments in favour of maintaining the exemption

35. The Commissioner notes that the PSNI investigation is still live and the murder remains unsolved. Where investigations are still continuing or could be potentially reopened, the Commissioner considers that there will generally be a strong public interest in maintaining the exemption. The Commissioner recognises that it is in the public interest to safeguard the investigatory process, and the right of access should not undermine the investigation and prosecution of criminal matters nor dissuade individuals from coming forward to report wrongdoing.
36. The PSNI indicated that there remained the potential to identify new lines of enquiry, and there was also the possibility that new evidence and suspects could be identified. The Commissioner is of the view that this in itself does not mean that information relating to an investigation should never be released. However, the Commissioner is of the view that the public interest in avoiding disruption to a criminal investigation would carry considerable weight in favour of maintenance of the exemption.

37. The complainant expressed the view that, when the information was disclosed in the Coroner's Court, it was placed in the public domain. However, the Commissioner finds that even though some information may have entered the public domain, this does not necessarily mean that it will stay in the public domain. Very often this information is limited to those present during the court proceedings or to those who were directly connected to the actual investigation. In reaching this finding, the Commissioner has considered the findings of the Tribunal in the case of *Armstrong v Information Commissioner and HRMC* which stated that:

"..... even if the information had previously entered the public domain, that is not in itself conclusive of whether the public interest weighs in favour of disclosure, it is merely one consideration to be weighed in the public interest balance"³.

38. The Commissioner notes that the inquest was opened and adjourned in August 2008, some five months before the information request was made. Information usually has a short life-span subject to the amount of coverage it was granted, unless it has had a high level of interest. The Commissioner notes that the murder in this case attracted significant media attention, and there was also some media coverage of the inquest. However, the Commissioner notes that within the media coverage no reference was made to any of the steps taken by the PSNI in respect of its investigation. The Commissioner is also aware that there may be a difference between information reported in the media and evidence supplied to the police in the context of an investigation.
39. The Commissioner is aware that a significant proportion of the withheld information was provided by members of the public, with the expectation that it was provided for the sole purpose of the murder investigation and not for general disclosure to the public. Therefore disclosure of this information may result in witnesses being less willing to participate in the criminal justice system. This may diminish the likelihood of successful prosecutions, which the Commissioner accepts would not be in the public interest.
40. The Commissioner is mindful that the information has a very personal significance to the complainant, given the murder of her son. However, while the Commissioner understands the complainant's reasons for wanting disclosure of the requested information, he is unable to take into account the identity of the applicant or any

³ EA/2008/0026, paragraphs 85 and 86

personal reasons for wanting the requested information. The Commissioner must consider whether or not it is appropriate for the requested information to be released to the general public and not just to a particular private individual.

Balance of the public interest

41. The Commissioner has carefully weighed up the factors in favour of disclosure against the arguments in favour of maintaining the exemption at section 30(1)(a)(i). The Commissioner is mindful of the strong public interest in law enforcement agencies being accountable and transparent in their actions. The Commissioner also considers it important to allow the public to be able to scrutinise the manner in which criminal investigations are carried out so as to ensure that they are conducted in a thorough and impartial manner. The Commissioner therefore finds that there is a legitimate public interest in ensuring that the public has confidence in the criminal justice system and that all efforts are made to ensure that the perpetrators of crimes are brought to justice.
42. The Commissioner is mindful that the information in question is a number of years old, given that the murder took place in 2004. The complainant's request was made in 2009, some five years later. In theory, the risk of any prejudice resulting through the disclosure of this age of information could potentially be reduced. However, the Commissioner does not consider this to be the case in this instance, particularly as the PSNI investigation is still ongoing and is still considered active. In addition, the Commissioner is mindful of the fact that the information request was made six months after the inquest was adjourned. Therefore the Commissioner accepts that in this case, the age of the information carries very limited weight in favour of disclosing the information.
43. The Commissioner believes that there is a compelling and competing public interest in ensuring that live investigations are not jeopardised. The Commissioner notes that at the time of the request no-one had been charged in connection with the murder, and that the case had not been closed. The Commissioner therefore attaches a strong public interest to protecting the investigation in this case.
44. Having carefully considered all the circumstances of this case, the Commissioner is of the view that there are arguments both in favour of disclosing the requested information and in favour of maintaining the exemption at section 30(1)(a)(i). In balancing those arguments, however, the Commissioner concludes that the factors in favour of maintaining of the exemption far outweigh those in favour of

disclosure. Therefore the Commissioner finds that the information has been correctly withheld under section 30(1)(a)(i) of the Act.

Other exemptions claimed

45. The Commissioner notes that the PSNI claimed a number of additional exemptions in relation to the withheld information. As the Commissioner has found that section 30(1)(a)(i) is engaged in relation to all of the withheld information, it is not necessary to consider the application of the other exemptions.

Procedural Requirements

Section 17(1) – refusal notice

46. Section 17(1) of the Act states that:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies”.*

47. In this case the original request was made on 22 January 2009. The PSNI acknowledged the request on 23 January 2009. The PSNI contacted the complainant on 19 February 2009 and 5 March 2009 advising that it required further time to provide a response to the request. On 5 March 2009 the PSNI wrote to the complainant advising that further time was needed in order to consider the public interest test.

48. Whilst section 10(1) of the Act states that a public authority must respond to an information request within 20 working days, section 17(2) allows a public authority to extend the time limit where it is still considering the public interest as long as certain measures are taken. Section 17(2) states that the refusal notice

“must indicate that no decision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached”.

49. The effect of this is that a public authority must reach a decision about whether or not a qualified exemption is engaged within twenty working days. If it determines that the exemption is engaged, then a refusal notice that complies with section 17(1) must be issued within twenty working days. The public authority is only permitted to extend the time for compliance in order to consider the public interest test.
50. The Commissioner has also considered his own published guidance in relation to the application of the public interest test⁴. The Commissioner is of the view that public authorities should aim to conduct the public interest test within 20 working days. In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but in the Commissioner's view the total time taken should in no case exceed 40 working days. However, public authorities should still issue a refusal notice containing details of the exemptions that it wishes to rely on with an explanation that they require more time to consider the public interest test.
51. The Commissioner notes that in this case the PSNI failed to highlight what exemptions they wished to rely on until 20 April 2010, some 56 days after the request was submitted by the complainant. Accordingly the Commissioner finds that the PSNI to be in breach of section 17(1) of the Act.
52. In accordance with section 17(1)(b), public authorities must state which subsection of the exemption they are seeking to rely upon. The Commissioner is of the view that it is not enough to merely cite the section. The PSNI claimed that the withheld information was exempt under section 30(1), but failed to specify which particular provision of this subsection it relied on. The Commissioner is satisfied that the appropriate exemption in this case is section 30(1)(a)(i), and this is what the PSNI ought to have cited in its refusal notice. The Commissioner therefore finds the PSNI to have breached section 17(1)(b) in relation to this aspect of the refusal notice.
53. The Commissioner also notes that the PSNI failed to explain why section 40(2) and 40(3) applied to the withheld information. The Commissioner believes that the PSNI did not fully address why some of the information was personal information or consider how it would breach the data protection principles. The Commissioner therefore finds that the PSNI failed to comply with the requirements of section 17(1)(c) of the Act in relation to this matter.

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_4.pdf

The Decision

54. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The PSNI correctly withheld all of the requested information under section 30(1)(a) of the Act.

55. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The PSNI breached section 10(1) by failing to provide the complainant with a refusal notice within 20 working days of receipt of the request; and
- The PSNI breached section 17(1)(b) and 17(1)(c) in failing to provide the complainant with an adequate refusal notice.

Steps Required

56. The Commissioner requires no steps to be taken.

Right of Appeal

57. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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

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.

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 18th day of October 2010

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Freedom of Information Act 2000

Section 1 – General right of access to information held by public authorities

1(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.

Section 10 – Time for compliance with request

10(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

Section 17 – Refusal notice

17(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1)), give the application a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

17(2) Where –

- (a) in relation to any request for information, a public authority is, as respect any information, relying on a claim –
 - (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exemption information only by virtue of a provision not specified in section 2(3), and

- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

Section 30 – Investigations and proceedings conducted by public authorities

30(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of –

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.

Section 31 – Law enforcement

31(1) 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,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,

- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

Section 40 – Personal information

40(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 second condition below is satisfied.

(3) The first condition is -

- (a) in a case where the information falls within any of the 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.