

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 November 2011

Public Authority: Police Service of Northern Ireland (incorporating the Royal Ulster Constabulary)

**Address: 65 Knock Road
Belfast
BT5 6LE**

Summary

The complainant sought from the public authority case papers regarding its investigation of a double murder that had occurred in January 1975. The public authority refused the request by relying on the exemptions under the Act at sections 40(2), 30(1)(a)–(c) and 38(1)(a) and (b). After considering the withheld information the Commissioner's decision is that section 30(1)(a) is engaged and that the public interest test favoured maintaining the exemption. Accordingly he did not go on to consider the applicability of the other cited exemptions.

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. In Northern Ireland, in 1975, a double murder occurred which was investigated by the Royal Ulster Constabulary. However no person or persons have yet been charged in connection with the murders.
3. On 4 November 2001, the Royal Ulster Constabulary's name was changed, by the Police and Northern Ireland Act 2000, to the "Police Service of Northern Ireland (incorporating the Royal Ulster Constabulary)" (the "public authority"). The public authority in 2005 established a unit tasked with reviewing and/or investigating over

3,000 unsolved murders that occurred between 1968 and 1998 in or connected with Northern Ireland. The unit is known as the Historical Enquiries Team ("HET").

The Request

4. The complainant on 3 December 2010 requested from the public authority information that comprised the RUC'S case papers regarding the investigation of the double murder. At the time of the request, the double murder case was being reviewed by the HET.
5. The public authority provided its response on 6 January 2011. It refused to disclose the requested information on the basis of the exemptions contained in sections 40(2), 30(1)(a)–(c) and 38(1)(a) and (b) of the Act.
6. The complainant requested an internal review of the public authority's decision on 8 January 2011. On 27 January 2011, the public authority informed the complainant that its review had upheld the original decision.
7. The complainant then wrote to the public authority on 2 February 2011 and laid out in detail why he thought the public authority's decision was wrong. By way of précis the complainant said as follows:
 - Criminal investigations are conducted by serving police officers – HET staff are retired police officers
 - A review is entirely different to a criminal investigation
 - There is no real threat to witness given the elapsing of three decades since the deaths
 - Information could be redacted to ensure safety of witnesses
 - Releasing the information would not endanger the relatives of those killed
 - That he was already in the possession of some of the withheld information.

The Commissioner's investigation

Scope of the case

8. On 8 February 2011, the complainant contacted the Commissioner to complain about the way his request for information had been handled.

Chronology

9. As part of the Commissioner's investigation a representative of his office, on 10 May 2011, viewed the withheld information. It can be described as follows –
 - a. Investigation reports from 1975
 - b. Forensic information and analysis
 - c. Map of the crime scene
 - d. Photographs of the crime scene
 - e. Post-mortem reports
 - f. Information provided at the inquest, including witness depositions
 - g. A large number of witness statements, including friends and family, members of the public, and individuals acting in an official capacity (police and medical staff)
 - h. Background information obtained, including correspondence between family members of the deceased.
10. The Commissioner, in a letter dated 21 July 2011, asked the complainant about his assertion to the public authority (in his letter to it dated 2 February 2011) that he possessed some of the withheld information. Under cover of a letter dated 16 August 2011 the complainant provided a copy of the information he already had in his possession which he had apparently obtained via a request for information made under the Act to the Public Record Office of Northern Ireland. The information consisted of autopsy records and associated witnesses statements concerned with the identification of the two deceased. Certain names had been redacted from the information.

Analysis

Exemptions

11. In the first instance the Commissioner needs to determine whether the requested file was a "historical record" for the purposes of the Act. If the information is in a historical record then it cannot be exempt under

section 30(1) (by virtue of section 63 of the Act¹). Section 62 of the Act states that:

".....a record becomes a "historical record" at the end of the period of thirty years beginning with the year following that in which it was created. Where records created at different dates are for administrative purposes kept together in one file or other assembly, all the records in that file or other assembly are to be treated the for the purposes of this Part as having been created when the latest of those records was created....."

12. The Commissioner notes that at the time the information request was made to the public authority the last record that was added to the file it held was dated 18 October 2010. This was a forensic report regarding exhibits from the original investigation. Accordingly, the Commissioner's decision is that the requested information is not a historical record for the purposes of the Act and therefore it could be exempt information by virtue of section 30(1).
13. Section 30 is a class-based exemption. Therefore in order for it to be engaged there is no need for a public authority to demonstrate any prejudice should the requested information be disclosed. It must simply show that the information is held for the purposes specified in the relevant part of the exemption that has been cited.
14. The public authority relied upon section 30(1)(a)(i) which states that:
 - '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'
15. Having viewed the withheld information, the Commissioner accepts the assertion of the public authority that the information was generated by the public authority's investigation (primarily whilst it was known as the Royal Ulster Constabulary) of the deaths of the two individuals and held for the purposes outlined above.
16. Contrary to the complainant's stated view, the Commissioner believes that it is irrelevant that the public authority is using retired officers to help it with the task of reviewing unsolved murders. HET's website

¹ <http://www.legislation.gov.uk/ukpga/2000/36/section/63>

describes its work as being undertaken “with a view to bringing forward any new or remaining evidential opportunities”.

17. The Commissioner is therefore satisfied that the requested information falls within the description set out in section 30(1)(a)(i) above. However, section 30(1)(a)(i) is a qualified exemption and is therefore subject to a public interest test. The public interest arguments that have been identified by the parties and/or the Commissioner are laid out below.

18. **Public interest arguments in favour of disclosing the requested information**

- Facilitating the public’s ability to evaluate the effectiveness of the public authority’s investigation.
- Releasing the information may better inform the public and encourage others to come forward to report criminal offences if they know a proper investigation will be done.
- All police investigations are publically funded and disclosing the information will aid the public’s evaluation as to whether it has been well spent.
- Releasing the information would improve the public’s knowledge and understanding of the investigatory process.

19. **Public interest arguments in favour of maintaining the exemption**

- Releasing the information would inhibit the co-operation of witnesses to all crimes.
- Releasing the information could jeopardise the physical and mental well being of witnesses in relation to this case.
- Releasing the information could assist the perpetrators of the crime by releasing information pertinent to the investigation.
- Releasing the information would reduce and hamper the police’s ability to investigate crime due to the nature of the information and the fact that this case remains unsolved.

Balance of the public interest arguments

20. The Commissioner acknowledges the validity of some of the public interest arguments in favour of releasing the exempt information. In particular releasing the information would add to or reinforce the public’s knowledge of how the police investigate matters. Similarly the

public would get a clearer understanding of why evidential difficulties sometimes mean charges are not brought against the perpetrators of serious crimes. Balanced against these factors for release are those factors that favour maintaining the exemption and which the Commissioner considers are more compelling.

21. The proper detection and investigation of crimes are cornerstones of a modern democratic society. The Commissioner considers that releasing the information would lead to a perception that statements given to the police by witnesses could or would be released to the public at some future date. This perception must inhibit or dissuade some witnesses from giving statements or assistance to the police in future investigations. This diminution of public assistance would hamper the investigation and detection of crimes and, in time, lead to a reduction in the public's confidence in the criminal process.
22. The Commissioner does accept that statements / evidence may well become public at some stage where this is relied upon in future criminal proceedings. However, he does not consider this to be of relevance in the circumstances of this case. Furthermore, witnesses in the appropriate circumstances can have their anonymity protected both in and out of court.
23. The complainant, in correspondence dated 2 February 2011 to the public authority took issue with some of the factors it had cited for maintaining the exemption. The complainant in essence is saying that after 35 years there was no realistic threat to witnesses or the likelihood of criminal charges being brought.
24. There may be some validity in the complainant's contention that releasing the information may not have such dire consequences for the witnesses. However, the Commissioner is not as certain as the complainant is on this issue. A high degree of certainty is required before the Commissioner would order the release of information if its release could bring about harm to others.
25. The Commissioner is similarly not prepared to be as certain as the complainant that there is no real prospect of a person or persons being charged in connection with the double murder. The Commissioner considers this to be a powerful factor favouring the maintenance of the exemption in relation to all the information requested. Future advances, for example, in forensic techniques may secure evidence that enables charges to be brought.
26. The information that the complainant has obtained from another public authority - that is also information held by the Police Service of Northern Ireland - is reasonably accessible to the complainant and as

such would have been exempt from disclosure in this case by virtue of section 21 of the Act (information accessible to applicant by other means). In any event, disclosure by another public authority does not add weight to the arguments for disclosure in this case.

27. The exemption afforded by section 30(1)(a) is not an absolute one and there will be occasions when information exempted by section 30(1)(a) is nonetheless released because of the public interest test. However this is not such an occasion.
28. The Commissioner, for the reasons given above, is of the view that those public interest factors in favour of maintenance, by quite a margin, outweigh those factors for the public dissemination of the information.

The Decision

29. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Right of Appeal

30. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk.

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.
32. 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

Alexander Ganotis
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