

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 31 July 2012

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

Decision (including any steps ordered)

1. The complainant requested policies regarding recording, retention and detention of forensic exhibits. The Police Service of Northern Ireland (the PSNI) advised that it did not hold the requested information.
2. The Commissioner's decision is that the PSNI handled the request in accordance with the FOIA. The Commissioner is satisfied that, on the balance of probabilities, the PSNI does not hold the requested information.
3. The Commissioner does not require any steps to be taken by the public authority.

Request and response

4. On 14 September 2011 the complainant requested the following information from the PSNI:
 1. *PSNI's policy regarding forensic exhibits retention*
 2. *PSNI's policy regarding the destruction of forensic exhibits*
 3. *PSNI's policy regarding destruction of forensic exhibits, including full details of authorisation that is required at different and or all levels to destroy such forensic exhibits*
 4. *PSNI's policy regarding the recording of destruction of forensic exhibits, records.*
5. The PSNI responded on 12 October 2011 advising that it did not hold the requested information. The PSNI referred the complainant to the

Police and Criminal Evidence (Northern Ireland) Order 1989¹ for further information in relation to forensic exhibits.

6. The complainant requested an internal review on 12 October 2011. Following the internal review the PSNI responded to the complainant on 17 December 2011. As a result of the internal review the PSNI referred the complainant to the Criminal Procedures and Investigations Act 1996². The PSNI explained that it used this legislation in the governance of the handling of forensic exhibits. However the PSNI maintained its position that it did not hold any policies as described in the request.

Scope of the case

7. The complainant told the Commissioner that he did not accept the PSNI's explanation that it did not hold the requested information. The complainant was also dissatisfied with the time taken to conduct an internal review.
8. The Commissioner's investigation in this case focused on whether or not the PSNI held the requested information. The Commissioner also considered the time taken to complete the internal review, and this is dealt with at Other Matters below. It does not form part of this Decision Notice because it is not a requirement of the FOIA.

Reasons for decision

9. Section 1 of the Freedom of Information Act provides that 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.
10. Cases where it is disputed whether the public authority actually holds the requested information can be difficult to investigate, as it can be impossible to prove that information is not held. The First-tier Tribunal (Information Rights) has confirmed that the Commissioner should focus on the authority's search for the requested information, so that it can be

¹ <http://www.legislation.gov.uk/nisi/1989/1341/contents>

² <http://www.legislation.gov.uk/ukpga/1996/25/contents>

established how the authority reached the conclusion that it does not hold the information. If the authority's explanation is reasonable then it is likely that the Commissioner will find that, on the balance of probabilities, the information is not held.

11. In this case the PSNI explained to the Commissioner that it had checked the PSNI computer systems and the records management department to ascertain whether relevant information was held. The PSNI further clarified that it had re-checked these at internal review stage and had considered whether there were any other departments or individuals who might be aware of relevant information, but had concluded that this was not the case. The PSNI referred the complainant to the legislation as referenced above, as this, rather than policies, informed its handling of forensic exhibits.
12. The complainant advised the Commissioner of his view that the PSNI should have policies and procedures in place to ensure that forensic exhibits are recorded, retained and destroyed in accordance with legislation. The Commissioner put this to the PSNI, and was advised that staff consult the relevant legislation directly regarding any queries they may have. The PSNI confirmed to the Commissioner that it did not hold any individual policies or procedures, or any kind of procedural manual in this regard.
13. In light of the above the Commissioner is satisfied that the PSNI has conducted an adequate search for the requested information, and has provided a reasonable explanation as to why it does not hold the requested information. The Commissioner has also considered whether, if he were to uphold the complaint, he could specify any steps that the PSNI could be required to take. However the Commissioner is of the view that there is nothing more he can oblige the PSNI to do in relation to the complainant's request.
14. The Commissioner appreciates the complainant's frustration at not receiving the information he requested. However, the Commissioner has stressed to the complainant that the FOIA does not require that information be held or generated. The FOIA only provides for access to recorded information held by a public authority at the time of the request. If the requested information is not held, the only requirement under the FOIA is that the public authority informs the complainant of this.
15. In conclusion, although the Commissioner acknowledges the complainant's view, he finds, on the balance of probabilities, that the PSNI does not hold the requested information in this case. Therefore the Commissioner finds that the PSNI complied with section 1(1)(a) of the FOIA.

Other matters

16. Although it does not form part of this Decision Notice the Commissioner has considered the time taken to conduct the internal review.

The internal review

17. The complainant requested an internal review on 12 October 2011, and the PSNI communicated the outcome of the review to him on 17 December 2011. The complainant argued to the Commissioner that this breached the FOIA.
18. The FOIA does not provide a statutory timescale in relation to internal reviews, but the Code of Practice issued under section 45 of the FOIA provides guidance on this issue. Paragraph 42 of the Code states that:
- "42. Authorities should set their own target times for dealing with complaints; these should be reasonable, and subject to regular review."*
19. The Commissioner has also produced guidance³ setting out his view that internal reviews should take no longer than 20 working days, or in exceptional circumstances, 40 working days.
20. In this case the PSNI took 48 working days to complete the internal review. The PSNI provided the Commissioner with details of the steps taken to conduct the internal review, and pointed out that the reviewer decided to provide additional information to the complainant. This information comprised links to legislation (set out at paragraph 6 above) and was arguably not within the scope of the request, but the reviewer felt it might assist the complainant's understanding. The PSNI also advised the Commissioner that between September and December 2011 it received five requests for internal reviews in relation to other requests made by the complainant.
21. The Commissioner has seen no evidence to suggest that the PSNI deliberately delayed completing the internal review. In addition the Commissioner notes that the PSNI went beyond the scope of the request in an effort to assist the complainant. Rather, it appears from the information provided by the PSNI that the problem may be insufficient resources allocated to internal reviews.

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/internal%20reviewsv1.pdf

22. Nevertheless the Commissioner is of the opinion that timely internal reviews are important to demonstrate a public authority's commitment to customer service. Delays in concluding an authority's internal complaints procedure can affect the relevance of information released as a result. It also increases the total time taken from the original request being refused, to the start of the Commissioner's investigation of a complaint.
23. Therefore although the Commissioner can not find that the PSNI breached any provision of the FOIA in the time taken to complete the internal review he does consider that 48 working days is unreasonable, and would expect the PSNI to take steps to prevent this level of delay in future cases.

Right of appeal

24. 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 1234 504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

25. 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.
26. 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
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

Full text of request made on 19 December 2010

"1. Please confirm if there has been any ballistic link between my attempted murder and that of [named individuals].

2. The reports refer to 'home-made' bullets being used in murders of above named and also in my attempted murder in June 1999. Did RUC and/or PSNI ever establish any kind of link between both cases, whether it be ballistic, weapons used or from ammunition used, forensically linked to either attack, if so, please supply full details.

3. Have the RUC and/or PSNI established that the terrorist outlawed group, the IRA, was behind the Fegan, Downey murders and/or involved in the attack, if so, please supply full details.

4. Have the RUC and/or PSNI established that the terrorist outlawed group, the IRA, was behind my attempted murder in June 1999 and/or involved in the attack, if so, please supply full details.

5. Have the RUC and/or PSNI at any time relayed or passed information to Northumbria Police, which identified the terrorist outlawed group, the IRA, as having been involved in my June 1999 attempted murder, if so, please supply full details.

6. Have the RUC and/or PSNI at any time relayed or passed information to Northern Ireland Office, British Government or any other third parties, including Ministers, which identified the terrorist outlawed group, the IRA, as having been involved in my June 1999 attempted murder, if so, please supply full details.

Please note for the avoidance of doubt, that I would be interested in any information which is held by PSNI, (RUC before them), regarding my 1999 attempted murder case, this request. Please deal with this request under all laws of rights of access to information, including FOIA, DPA and other associated laws."