

Freedom of Information Act 2000 (FOIA)

Decision notice

Date:

Public Authority: Police Service of Northern Ireland

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

Decision (including any steps ordered)

1. The complainant requested information from the Police Service of Northern Ireland ("PSNI") in relation to disciplinary proceedings against a police officer. The PSNI refused to disclose the requested information, citing the exemptions at sections 31 and 40(2) as a basis for non-disclosure.
2. The Commissioner's decision is that the PSNI has correctly applied section 31 of the FOIA to the requested information. The Commissioner did not go on to consider the PSNI's application of section 40(2) as she considered that section 31 applied to the entirety of the requested information. Therefore the Commissioner requires no steps to be taken.

Request and response

3. The complainant originally wrote to the PSNI on 9 October 2017 and requested information in the following terms:-
 - (i) copies of the decisions of all of the disciplinary tribunals
 - (ii) All papers generated during the disciplinary process of each individual officer
 - (iii) Referral document from the Chief Constable to the Ombudsman's office

- (iv) All papers generated during the Police Ombudsman's investigation
 - (v) The detailed report to the Police Ombudsman (to which reference is made in the letter dated 4th February 2016 from the Police Ombudsman's office to our client).
 - (vi) Details of any documents that are considered necessary and relevant (see No.7 above).
 - (vii) Address for reply and service of Court documents. See No.5 above.
 - (viii) Proposed reply date –within 14 days of receipt of this correspondence as per the protocol.
4. The PSNI responded to the complainant on 9 October 2017, stating that it had taken legal advice and that the information sought was not to be disclosed unless the complainant obtained a court order. The PSNI subsequently wrote to the complainant on 23 October 2017, stating that the information requested was 'replete with personal data' and as such could not be released, citing section 40(2) of the FOIA as a basis for non-disclosure, but providing no further details of this.
5. On 4 October 2018, the complainant submitted a request under the FOIA to the PSNI for the following information:-
- (1) The Investigating Officer's report (required by Regulation 10 of the Royal Ulster Constabulary (Conduct) Regulations 2000.
 - (2) The written notice of the investigation provided to the member concerned (see Regulation 9 of the 2000 Regulations).
 - (3) The written notice of the decision to refer the case to a hearing specifying the conduct of the member concerned which it is alleged failed to meet the appropriate standard and the paragraph of the Code of Ethics 2008 in respect of which the appropriate standard is alleged not to have been met (see Regulation 13 of the 2000 Regulations).
 - (4) The statements, documents or other material obtained by the Investigating Officer (see Regulation 13 of the 2000 Regulations).
 - (5) A verbatim record of the proceedings at the hearing (see Regulation 30 of the 2000 Regulations)
 - (6) Written notification of the findings and summary of the reasons (see Regulation 33 of the 2000 Regulations).

6. The PSNI treated this latter request as a request for an internal review of its handling of the original request and wrote to the complainant on 30 November 2018 stating that it was carrying out an internal review of the PSNI's processing of the complainant's request. The result of that internal review was provided to the complainant on 28 January 2019. The reviewer upheld the original decision to apply section 40(2) to the requested information and also applied another exemption under the FOIA (section 31(1)(g) by virtue of section 31(2)(b)).
7. The Commissioner wrote to the PSNI on 19 June 2019 stating that, in her view, the request of 4 October 2018 should have been treated as a new request under the FOIA and requesting the PSNI to reconsider this. Following the Commissioner's correspondence, the PSNI decided to treat its response to the complainant of 30 November 2018 as an initial response to the request of 4 October 2018, and subsequently carried out an internal review of its handling of that request, the result of which was provided to the complainant on 11 July 2019. The reviewer upheld the decision to apply sections 31(1)(g) (by virtue of section 31(2)(b)) and 40(2) to the requested information.

Scope of the case

8. The complainant contacted the Commissioner on 4 March 2019 to complain about the way their request for information had been handled.
9. The Commissioner wrote to the PSNI and the PSNI responded as outlined in paragraph 7 above. The PSNI carried out a fresh internal review and copied in the Commissioner to its response to the complainant. As the internal review response provides sufficient detail in relation to the PSNI's application of the exemptions, the Commissioner did not seek further submissions from the PSNI.

Reasons for decision

Section 31 – law enforcement

10. Section 31 provides a prejudice-based exemption which protects a variety of law enforcement interests. Consideration of this exemption is a two-stage process. Firstly, in order for the exemption to be engaged it must be at least likely that disclosure would prejudice one of the law enforcement interests protected by section 31 of FOIA. Secondly, the exemption is subject to a public interest balancing test. The effect of

this is that the information should be disclosed if the public interest favours this, even though the exemption is engaged.

11. The PSNI has applied section 31(1)(g) together with section 31(2)(b) to withhold the requested information.

12. The relevant parts of section 31 of the FOIA provide that:
“(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—

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

(2) The purposes referred to in subsection (1)(g) to (i) are –

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper

13. The Commissioner will therefore consider whether the PSNI exercises a relevant function for the purposes specified in this subsection, the nature and likelihood of prejudice to any of the functions if the requested information were to be disclosed and whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The PSNI’s functions for the purposes of Section 31(2)(b)

14. For the exemption to be engaged, the Commissioner requires the function identified by the public authority in relation to section 31(1)(g) to be a function which is specifically entrusted to that public authority to fulfil.

15. The PSNI has stated that it has the power to conduct disciplinary proceedings under the PSNI (Conduct) Regulations 2000. The Commissioner is satisfied that this is a relevant function which falls under sections 31(1)(g) and 31(2)(b) of the FOIA and is one which is specifically entrusted to the PSNI to fulfil.

Nature and likelihood of prejudice

16. The Commissioner has considered whether the PSNI has demonstrated a causal link between disclosure of the requested information and the prejudice that section 31(1)(g) is designed to protect against. In the Commissioner's view, disclosure must at least be capable of harming the function in some way, i.e. having a damaging or detrimental effect on it.
17. The PSNI states that regulation 26 of the PSNI (Conduct) Regulations 2000 provide for disciplinary proceedings to be conducted 'in private' subject to regulation 25 which provides for a limited number of specified persons to be able to be present. The legislation provides very clearly that these are not proceedings which are to be held in public. Disclosure of the requested information into the public domain could prejudice the PSNI's ability to comply with the regulations in holding the proceedings, which would prejudice the PSNI's ability to carry out its functions for the purposes set out in section 31(2)(b) of the FOIA.
18. The PSNI further states that disclosure of the requested information could also reveal detailed information on the investigation undertaken by the PSNI's Discipline Branch, which would include details of methodologies employed. The PSNI has informed the Commissioner that revealing the methodology of the Discipline Branch to the public would impact upon future investigations and may assist officers in circumventing internal disciplinary procedures, which would also cause prejudice to the PSNI's functions for the purposes set out in section 31(2)(b).
19. The PSNI also states that disclosure of the requested information would undermine the confidence of officers in co-operating with the Discipline Branch which would negatively impact upon the Branch's ability to investigate disciplinary matters, which would again cause prejudice to the PSNI's ability to carry out its functions for the purposes set out in section 31(2)(b).
20. In relation to the likely prejudice caused, the PSNI has variously used the terms 'could' and 'would'. In the absence of clarification as to the threshold of prejudice applied, the Commissioner has taken as read that the lower threshold of 'would be likely to' prejudice applies in this case.

Is the exemption engaged?

21. The Commissioner is satisfied that the potential prejudice the PSNI has stated would occur if the requested information were to be disclosed is

real, actual and of substance, and that there is a causal link between disclosure of the requested information and the prejudice against which the exemption is designed to protect.

22. The Commissioner is satisfied that it is plausible that disclosure of the requested information would be likely to cause prejudice to the PSNI's ability to carry out its functions under section 31(1)(g) for the purposes as set out in section 31(2)(b) of the FOIA for the reasons outlined above. Therefore the Commissioner is satisfied that the exemption is engaged in relation to the requested information.

Public interest test

23. Section 31 is a qualified exemption. The Commissioner must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemptions at sections 31(1)(a), and (b) of FOIA outweighs the public interest in disclosing the information.

Public interest factors in favour of disclosure

24. The PSNI accepts that there is a public interest in public authorities being as open and transparent as possible with regard to their decision-making processes. Disclosure of the requested information in this case would demonstrate to the public how robustly the PSNI investigates its own officers to ensure that they have complied with ethical standards and the Conduct Regulations.

Public interest factors in favour of maintaining the exemption

25. The PSNI states that the requested information was gathered and retained as part of the investigation by the Discipline Branch into a police officer in order to ascertain whether that officer had failed to comply with the law or had committed any dishonest, unethical or unprofessional behaviour. There is a strong public interest in not undermining those discipline processes or revealing methodology which could affect future discipline and conduct investigations.

Balance of public interest factors

26. The Commissioner acknowledges the public interest arguments in favour of openness and transparency from public authorities, and accords these significant weight.

27. The Commissioner also acknowledges the importance of the PSNI being able to carry out disciplinary proceedings, as per its functions under legislation, in private without those proceedings later being subject to public scrutiny and potentially thereby affecting the robustness of future such proceedings.
28. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to the PSNI's ability to ascertain whether any person is responsible for any conduct which is improper.
29. Having considered the requested information and balanced the public interest factors, the Commissioner acknowledges that, although obtaining the requested information would be of great interest to the complainant, this is not the same as being in the public interest. In the Commissioner's view, the prejudice which would result from such disclosure to the PSNI's ability to carry out a statutory function would not be in the public interest and this would outweigh the public interest in public authorities being open and transparent regarding their decision-making processes. The Commissioner also notes that there should be an alternative route open to the complainant by which to view the requested information, i.e. the discovery route as the complainant appears to be engaged in legal proceedings against the PSNI.
30. The Commissioner therefore concludes that, in all of the circumstances of this case, the public interest in maintaining the exemption at sections 31(1)(g) and 31(2)(b) of the FOIA outweighs the public interest in disclosing the requested information.
31. Therefore the Commissioner considers that the exemption at section 31(1)(g) with section 31(2)(d) is engaged in relation to the withheld information. As section 31 is a qualified exemption, the next step is for the Commissioner to consider whether in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.
32. As the Commissioner considers that the above exemption is engaged in relation to the entirety of the requested information, she has not gone on to consider the PSNI's application of section 40(2).

Right of appeal

33. 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

34. 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.

35. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF