

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 May 2023

Public Authority: Chief Constable of the Police Service of Northern Ireland (PSNI)

Address: 65 Knock Road
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The Commissioner's decision is that the Police Service of Northern Ireland (PSNI) is entitled to refuse the request under sections 24(1) (National Security) and 30(1) and (2) (Investigations and Proceedings) of FOIA. However, the PSNI breached section 10 of FOIA as it failed to provide its respond within 20 working days of receipt. No steps are required as a result of this decision.

Request and response

2. On 19 November 2022, the complainant wrote to the PSNI and requested information in the following terms:

"In May 1984, the Chief Constable of the RUC commissioned an enquiry.

After consulting HM Chief Inspector of Constabulary, he appointed John Stalker, Deputy Chief Constable of Greater Manchester to lead a team of detectives to carry it out.

Mr Stalker submitted an interim report to Sir John Hermon on 18 September 1985. Sir John in turn submitted it to the Director of Public Prosecutions for Northern Ireland on 13 February 1986.

The report in has never been published.

This is a request for information under FOIA 2000.

Please provide:

1. A full unredacted copy of the report submitted by John Stalker to Sir John Herman on 18 September 1985
2. A full unredacted copy of the report submitted by Sir John to the DPP of Northern Ireland on 13 February 1986."
3. The PSNI responded on 13 January 2023. It cited sections 24(1), 30(1) and (2), 38(1) and 40(2) of FOIA to withhold the requested information.
4. Following an internal review on 1 February 2023, the PSNI upheld its initial position and apologised for the delay in its original response. The Information Commissioner has considered representations he received from both the complainant and the PSNI; he has also received some further representations which the PSNI provided including background for context.

Reasons for decision

Section 24 – National security

5. In broad terms, section 24(1) allows a public authority not to disclose information if it considers that the release of the information would make the United Kingdom or its citizens vulnerable to a national security threat. This has been cited for some of the withheld information.
6. The term "national security" is not specifically defined by UK or European law. However, in *Norman Baker v the Information Commissioner and the Cabinet Office* ([EA/2006/0045](#) 4 April 2007) the Information Tribunal was guided by a House of Lords case (*Secretary of State for the Home Department v Rehman* [2001] UKHL 47), concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as:
 - "national security" means the security of the United Kingdom and its people;
 - The interests of national security are not limited to actions by the individual which are targeted at the UK, its system of government or its people;

- The protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
 - Action against a foreign state may be capable indirectly of affecting the security of the UK; and
 - Reciprocal cooperation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security."
7. The exemption provided by section 24 applies in circumstances where withholding the requested information is "required for the purpose of safeguarding national security". The Commissioner interprets "required" as meaning "reasonably necessary."
 8. It is not necessary to show that disclosing the withheld information would lead to a direct threat to the United Kingdom.
 9. The PSNI explained to the Commissioner that:

"In this case, the information includes details from RUC Special Branch files and details of those original RUC investigation files into the deaths reviewed as a part of the inquiry.

Such information by its nature-involved close working with other bodies and regular sharing of information and intelligence. At present, the current threat to Northern Ireland from Northern Ireland-related terrorism is assessed by the Security Services as **SEVERE**. This means an attack is highly likely.

PSNI considers it clearly reasonable to conclude that given the nature of the requested information releasing it into the public domain would undermine national security and could be of use to terrorists. We concluded the weight of the public interest test therefore strongly favoured upholding the exemption."
 10. Based on the arguments presented by the PSNI, the Commissioner is satisfied that the report falls within the remit of national security and that, on that basis, it is reasonably necessary to protect the details within the report. He therefore finds that the exemption is properly engaged.

Public interest test

11. Section 24 is subject to the public interest test, as set out in section 2 of FOIA.
12. When submitting their complaint to the Commissioner, the complainant stated:

“the public interest test has not been applied properly and the public interest balance weighs in clear favour of disclosure. The public interest in disclosure is especially weighty in the current context of UK government plans to shut down access to justice for families of murder victims in the period of the conflict despite condemnation of international bodies and human rights groups. There is a wider overwhelming public interest in the public knowing the findings of the report in light of current events.”
13. The PSNI argued that: “There is a public interest in consideration of the release of their information in order to increase transparency and add to the public debate generated by the work of John Stalker and his report.” However, “It would not be in the public interest to release information which could undermine the national security of the UK and could benefit those involved in criminal activity or a threat to national security. The disclosure of this report which contains sensitive information could hinder the ability of law enforcement and other agencies to safeguard national security....PSNI considers the balance of the public interest test favours safeguarding national security and upholding the application of this exemption.”
14. The Commissioner recognises that section 24 is not an absolute exemption and therefore there may be circumstances where the public interest favours the disclosure of information which engages this exemption. However, in the Commissioner’s opinion, and taking into account both the complainant’s and PSNI’s arguments, the public interest in disclosing the withheld information is outweighed by that in maintaining the exemption in this case. The Commissioner agrees with the PSNI that it would be firmly against the public interest to reveal information contained within the report at this time.
15. The Commissioner’s decision is therefore that the PSNI was entitled to rely on section 24(1) of FOIA to withhold the requested information in this case.

Section 30 - Investigations and proceedings conducted by public authorities.

16. The following analysis explains why the Commissioner has decided that the PSNI were entitled to rely upon section 30 of FOIA for withholding information within the scope of the complainant's request.
17. Section 30(1) provides 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 any investigation which the public authority has a duty to conduct, with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it.
18. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1) and (2) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.
19. Consideration of section 30(1) and (2) of FOIA is a two-stage process. Firstly, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test.

Is the exemption engaged?

20. The first step is to address whether the requested information falls within the class specified in section 30(1) and (2) of FOIA.
21. Given the nature of the information requested, the Commissioner is satisfied that if information falling within the scope of the complainant's request were held, it could fall within the scope of the exemptions in sections 30(1) and (2) FOIA.
22. Sections 30(1) and (2) of FOIA relates to the investigation of crimes rather than actions taken with the intention of deterring or preventing crime. There is a difference between information being held as part of a specific investigation, which would be likely to fall within the scope of section 30, and a PSNI operation to deter criminal activity, which would not.
23. The request clearly relates to a specific criminal investigation and the Commissioner is therefore satisfied that the exemptions are engaged.

The public interest test

24. The complainant has argued that:

- There is a public interest in the PSNI being transparent about its decision making and in its spending of public money.
 - There is a public interest in the PSNI being open to scrutiny about its activities.
 - A disclosure of the requested information would lead to a better-informed general public. It would promote public trust in the PSNI and provide greater transparency in its activities, demonstrating openness and accountability. This would enhance public confidence in the PSNI service.
25. The public interest in the exemption being maintained can be summarised as follows:
- The disclosure of the information held would potentially undermine any investigation.
 - There is a strong public interest in allowing the PSNI to carry out investigations without these being undermined by any ongoing operational information being disclosed.
 - The disclosure of any relevant information may allow individuals or groups to avoid discovery.
 - The disclosure of information in relation to a request could enable individuals to identify if specific people or groups have, or have not, been the subject of a PSNI operation. This could harm any current or future investigation or the subject(s) of it.

The Commissioner's view

26. The Commissioner has considered the arguments submitted by both the complainant and the PSNI. He is satisfied that the balance of the public interest in maintaining the exemption outweighs that of the disclosure of information under FOIA in this case.
27. The Commissioner's decision is that the PSNI was therefore entitled to rely upon Sections 30(1) and (2) of FOIA in this case.
28. However, as the Commissioner has upheld the exemptions at sections 24(1) and 30(1) and (2) which cover all the withheld information, he has not gone on to consider the exemptions at sections 38(1) and 40(2) in this decision notice.

Right of appeal

29. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Joanna Marshall
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