



FREEDOM OF INFORMATION REQUEST

FOI Reference number: 09/2021

Date: 4 June 2021

Request:

The September 2019 Policing Board meeting minutes state that the Chief Constable agreed to provide more information to the board about the background to Operation Tabist.

Did the PSNI provide any more information to the Policing Board regarding this? Is yes, please provide me with all the background information that was provided.

Answer:

I can confirm that the Northern Ireland Policing Board holds information which falls within the scope of your request. This information has been released to you subject to a number of redactions. Where redactions have been made we have identified the exemption(s) engaged.

A number of redactions have been made to protect the personal data of third parties. This personal information is exempt from disclosure to you under section 40(2) by virtue of section 40(3)(a)(i) of the FOIA.

Section 40(2) allows a public authority to withhold information from a response to a request for information under the FOIA when the information requested is personal information relating to someone other than the requester and its disclosure would contravene one of the data protection principles.

The first data protection principle requires personal data to be processed fairly and lawfully. This personal data is exempt from disclosure under section 40(2) of the FOIA as, in our view, it would be unfair to provide it to you, and therefore disclosure would be in contravention of the first principle of the UK General Data Protection Regulation. This is an absolute exemption and there is no requirement to conduct a public interest test.

Information has been withheld as we consider that the law enforcement exemptions at section 31 (1) (a) (The prevention or detection of crime) and (c) (The administration of justice) is firmly engaged in regard to that information.

Section 31 is a qualified and prejudice based exemption. This means that in order to engage the exemption there must be a risk of harm or prejudice to one of the law enforcement interests protected by Section 31 by a disclosure.

The withheld information consists of confidential information that has been disclosed to the Police Service of Northern Ireland (PSNI) for investigation purposes and other information that is capable of identifying PSNI methodologies which could be of assistance to those seeking to engage in criminal activity. There would be a prejudice to the PSNI's law enforcement capability if confidential information held for investigation purposes is made publicly available and could

undermine future trust in those who report matters to the police believing their information will be held confidentially. Release of information that is capable of identifying PSNI investigative methodologies would prejudice the PSNI's current and future law enforcement capability.

As Section 31 is a qualified exemption the Board must conduct a Public Interest Test. A copy of this test is attached at Appendix A. In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

If you have queries about this request or the decision please contact the Board quoting the reference number above. If you are unhappy with the service you have received and wish to make a complaint or request a review you should write to the Board's Chief Executive at the following address:

Northern Ireland Policing Board
Waterside Tower
31 Clarendon Road
Clarendon Dock
Belfast BT1 3BG

Email: foi@nipolicingboard.org.uk

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner. Generally, the Information Commissioner's Office cannot investigate or make a decision on a case unless you have exhausted the complaints procedure provided by the Board. The Information Commissioner can be contacted at:-

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

Telephone: - 0303 1231114
Email: - ni@ico.org.uk

Please be advised that Policing Board replies under Freedom of Information may be released into the public domain via our website @ www.nipolicingboard.org.uk.

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.

FOI 09/2021 Internal review

PUBLIC INTEREST TEST CONSIDERATIONS

Outline of information under consideration –

The September 2019 Policing Board meeting minutes state that the Chief Constable agreed to provide more information to the board about the background to Operation Tabist.

Did the PSNI provide any more information to the Policing Board regarding this? Is yes, please provide me with all the background information that was provided.

Exemptions at Section 31 (1) (a) (The prevention or detection of crime) and (c) (The administration of justice) of the FOIA – Law Enforcement

Arguments that weigh in favour of disclosure

Providing the requested information is in line with the spirit of openness and transparency enshrined within FOI legislation.

There is a general public interest in disclosing information that promotes accountability and transparency in order to maintain public confidence in the PSNI, who are responsible for enforcing the law.

Arguments that weigh in favour of maintenance of the exemption

The information under consideration was requested by the Board as part of its statutory oversight role of the PSNI. There was no expectation that this information would be released into the public domain.

To release confidential information could lead those providing the information to believe that it would be disclosed to the world at large identifying those who provide it. There is a potential harm to the flow of information to the PSNI and this would be likely to hamper their law enforcement capabilities.

PSNI have a duty to deliver effective law enforcement, ensuring the prevention and detection of crime is carried out appropriately. To release information that is capable of identifying PSNI methodologies would undermine the law enforcement capability of the PSNI.

Decision

In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.



Please provide details regarding Operation Tabist – when was the Board informed about Operation Tabist and how were we informed

(follow up from previous meeting)

Response :

On 4 April 2017 the Crown Solicitors Officer informed the Police Service of Northern Ireland (PSNI) that documents marked [REDACTED]

Sect 31(1)

It was assessed that the documents had in all likelihood emanated from the Office of the Police Ombudsman Northern Ireland (OPONI).

PSNI confirmed that the intelligence included in the documents had been passed by them to OPONI in response to requests and within an agreed protocol.

PSNI raised the matter with OPONI and expressed concerns regarding their storage of the intelligence that had been shared with them. On 6 April 2017 the then Assistant Chief Constable Crime Operations issued a moratorium on sharing of historical intelligence with OPONI. It was removed on 18 July 2017 once sufficient assurances regarding the security of documents were provided.

PSNI launched an investigation referred to as Operation Tabist. To ensure independence of the investigation, the Chief Constable sought assistance from the National Police Chief's Council (NPCC) Crime lead. Subsequently, terms of reference were agreed with the Chief Constable of Durham Constabulary who led the investigation.

At present the Operation TABIST investigation is with PPS awaiting a decision.



At the time of this enquiry the Policing Board was not formally constituted, however PSNI have a brief note of a meeting from 2 May 2017 with the Chair, Vice Chair and Chief Executive. At this meeting the then Chief Constable and Deputy Chief Constable provided an update on the investigation and advised that due to its nature, the investigation would require to be conducted by another police service.

On 4 October 2017 OPONI requested a meeting with PSNI to discuss the release of 'No Stone Unturned' film which identified documents and issues which may expose intelligence related matters.

PSNI launched a second investigation referred to as Operation Yurta. Durham Constabulary were asked to extend the remit of their investigation to include Operation Yurta. The existing terms of reference for Op Tabist were extended to include the second investigation. These were supplied in the report submitted to the Policing Board for their September meeting.

Keeping People Safe



JOHN McCAUGHAN
HEAD OF COMMAND SECRETARIAT

Our Ref: Com Sec 17/6621

30th August 2019

Dear Amanda,

OPERATION YURTA

Thank you for your letters of 20 June and 1 August 2019 respectively.

Please find attached a report which addresses all of the questions asked therein. This report has been approved by the Chief Constable and I would ask that you share it with Board members.

Yours sincerely,

JOHN McCAUGHAN
Superintendent
for Chief Constable

Amanda Stewart
Chief Executive
Northern Ireland Policing Board
Waterside Tower
31 Clarendon Road
BELFAST
BT1 3BG

Northern Ireland

CrimeStoppers.

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Please note: You can now email your letters and queries directly to Command Secretariat:
Email: comsec1@psni.pnn.police.uk

Private Office, PSNI Headquarters, 65 Knock Road, Belfast, Northern Ireland BT5 6LE
Telephone: 028 90 700005

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REPORT TO NORTHERN IRELAND POLICING BOARD – OPERATION YURTA

Purpose

This report is submitted to the Northern Ireland Policing Board in response to letters received on 20 June 2019 and 1 August 2019 respectively. Each letter contained a number of questions and I will address each in turn.

Response to Letter Dated 20 June 2019

1. The process for the initiation and progression of this investigation

Sect 40(2)

6/4/2017 – Meeting between Trevor Bimey, [REDACTED] ACC Crime Operations (S Martin) and the PSNI Legal Advisor to discuss the forthcoming documentary 'No Stone Unturned' that named suspects in the Loughinisland Massacre which took place on 18 June 1994. ACC Crime Operations concluded that no Article 2 issues were engaged at that particular time.

4/10/2017 – Meeting with two senior Police Ombudsman Northern Ireland (PONI) staff, ACC Crime Operations (S Martin), other senior police officers and the PSNI Legal Advisor to discuss documents which appeared within the 'No Stone Unturned' documentary that had aired at the New York Film Festival on 30 September 2017.

On viewing the documentary PONI reported that the film contained screen shots of sensitive information which they believed came from a four page Executive Summary Report originating from their office and, potentially, another sensitive PONI document, 55 pages in length. PONI could not account for how the film makers came to possess this information.

Due to the fact that Durham Constabulary was already investigating a case of unauthorised disclosure of documents from the PONI's office (Operation Tabist) ACC Crime Operations concluded that the Terms of Reference should be extended to include the incident described above. The then Chief Constable, Sir George

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REPORT TO NORTHERN IRELAND POLICING BOARD – OPERATION YURTA

Hamilton, agreed and asked then Chief Constable Mike Barton to include these issues within his ongoing operation.

The two points added to the existing Terms of Reference were:-

- i. To investigate the circumstances within which a PONI Executive Summary, a full summary or other documentation relating to the Loughinisland PONI enquiry, are possibly within the possession of any media production outlet.
- ii. To ascertain if there is any connection between the leaking of this document and CJNI report previously leaked and subsequently investigated by the Metropolitan Police London.

2. The scope and Terms of Reference for the investigation

This information can be found within the Terms of Reference at Appendix A.

3. Day to day operating and reporting arrangements with Durham Constabulary including the responsibilities of respective officers for its conduct and governance

This information can be found within the Terms of Reference at Appendix A.

4. Responsibility for the direction of PSNI officers

This information can be found within the Terms of Reference at Appendix A.

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REPORT TO NORTHERN IRELAND POLICING BOARD – OPERATION YURTA

- 5. The process for obtaining the warrant and the grounds for application considering comments by the Lord Chief Justice that it was 'inappropriate'**

This answer is based upon an input from former Chief Constable, Mike Barton.

The investigation team decided to apply for the warrants in order to facilitate an effective criminal investigation. They did not consider, on the basis of legal advice, that a Production Order would be an effective means to ensure the retrieval of all material within the scope of the investigation.

The investigation team received very detailed and voluminous legal advice before making the warrant application. The warrant applications were made to a County Court Judge who, after considering the details of the application, granted them. This was done in good faith and on the basis of detailed legal advice.

It is matter of record that the County Court Judge's decision was overturned on appeal to the Lord Chief Justice. The Durham investigation team and I fully respect that decision.

- 6. The cost of the investigation and numbers of officers**

Taking into account those costs formally billed to us by Durham Constabulary to date, and the finalised costs of PSNI personnel involved in assisting the investigation, the current costing up to 30 June 2019 is £247,874.42.

This is expected to rise once we receive further billing from Durham Constabulary in early September.

Up to the end of June, I am advised that three members of Durham Constabulary staff worked three days per week on the operation.

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REPORT TO NORTHERN IRELAND POLICING BOARD – OPERATION YURTA

Two PSNI officers within Crime Operations Department provided assistance one day per week.

On the day of the searches of the homes of Mr Birney and Mr McCaffrey and associated business premises, up to 50 PSNI officers were involved across the search activity, including search trained Tactical Support Group officers, with some additional support from Crime Operations colleagues. They all operated under the command and leadership of the Senior Investigating Officer from Durham Constabulary.

In the week immediately following the searches of the homes of Mr Birney and Mr McCaffrey, four PSNI officers assisted in the examination of exhibits, but the PSNI commitment returned back to the usual level after that.

7. The future operating and accountability arrangements for the investigation given the retirement of Chief Constable Barton and reports to the Board

Upon retirement, Mr Barton was contracted by the former PSNI Chief Constable as the independent Gold Commander for the investigation. The Terms of Reference at Appendix A remain extant.

The responsibilities and services will include:-

- Strategic command and leadership
- Provision of appropriate reports and briefings to the Chief Constable and/or other key stakeholders as required by the Chief Constable
- Development and maintenance of effective strategic partnerships
- Resource management
- Strategic management of information and intelligence
- Maintenance and enhancement of public confidence in policing

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REPORT TO NORTHERN IRELAND POLICING BOARD – OPERATION YURTA

- Liaison with Durham Constabulary to ensure the effectiveness and efficient supply of support services
- The delivery of a publicly available report, at the conclusion of any criminal justice process, setting out his findings

Mr Barton will remain accountable to the Chief Constable of PSNI and the Northern Ireland Policing Board and will be required, upon request, to report to either or both about the conduct of the investigation.

- 8. The likely timescale for the completion of the investigation and receipt of the report referred to by Mr Barton.**

The report referred to by Mr Barton should be delivered to the Chief Constable and Northern Ireland Policing Board by 31 December 2019.

- 9. It would be helpful to understand why the starting point for this investigation focused on the recipients of the material rather than its source.**

The starting point for this investigation was the source of the leaked information, not the recipients. Investigators had actively been following many lines of enquiry with PONI since April 2017 given that the original Terms of Reference focussed on a previous leak of confidential information from that office. These enquiries included extensive interviews with principle PONI employees.

- 10. Confirmation of when NIPB was informed of the commencement of the investigation.**

I regret that I am unable to confirm when this occurred.

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REPORT TO NORTHERN IRELAND POLICING BOARD – OPERATION YURTA

11. Oversight and Governance arrangements for investigations currently being progressed by other policing services on behalf of the PSNI

The engagement of police officers from other UK services is done so under the auspices of Section 98 of the Police Act 1996.

The Policing Board has been provided with copies of the Term of Reference for other externally led investigations, namely Operations Kenova, Klina, Mizzenmast and Turma.

I recognise that the contracting of non-warranted police officers presents an added level of complexity. In such circumstances, any person leading an investigation not engaged via Section 98 of the Police Act is not accountable to the Police Ombudsman. In such circumstances, the person is made contractually accountable to the Chief Constable and the Northern Ireland Policing Board and will be required, upon request, to report to either or both about the conduct of the investigation. They are expected to behave in line with the ethical and professional standards of the PSNI. A failure to do so could lead to the removal of a contract.

At my direction, future arrangements will also include documented evidence about the experience and relevant accreditation of senior personnel to give added assurance.

Response to Letter Dated 1 August 2019

12. Storage, retention and disposal of property by PSNI

This matter is currently the subject of ongoing legal proceedings and I am somewhat limited in what I can report at this stage. The issue arose as part of the proceedings that the Board was briefed on in June 2019, but I recognise that the nuances of this particular issue may not have been covered in that meeting.

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REPORT TO NORTHERN IRELAND POLICING BOARD – OPERATION YURTA

The property seized from Mr Birney and Mr McCaffrey was returned to them immediately after the Lord Chief Justice's direction. Further to that, further assurances were sought from the PSNI that all back-up traces on our computer information systems relating to these seizures would be permanently deleted. The PSNI does not believe that it is realistic, practicable, proportionate or a necessary legal requirement to provide the assurance in the wide terms sought by the Applicants. The PSNI has suggested alternative assurances. This is a matter that remains the subject of the current legal deliberations before the High Court.

13. Professional and ethical standards of officers acting on behalf of PSNI in the Durham investigation

The actions of the Senior Investigating Officer (SIO) were raised in the Board meeting with Chief Constable Barton and Chief Constable Hamilton on 6 June 2019. Then Chief Constable Barton answered a question concerning the allegation that the SIO had spoken to a local Labour MP. He advised Board members that he had given the SIO advice in order to reflect upon the appropriateness of such an action and to learn and reflect.

Upon appointment, I engaged in further dialogue with Mr Barton about the progress of the investigation and the issues arising from the Board meeting in June 2019.

I can advise the Board that a new SIO has now been appointed by Mr Barton. The officer is an accredited SIO from South Yorkshire Police.

14. Re-building relationships with the NUJ

The rebuilding of the professional relationship with the NUJ is important to me and I would be happy to work with the Board in doing so. I intend to explore how best to do that with my Director of Corporate Communications once this enquiry has concluded and reported.

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PSNI and Durham Constabulary

OP TABIST

Investigative and Threat Management.

Terms of Reference (ToR)

Sect 31(1)

Background

[REDACTED]

[REDACTED]

[REDACTED]

Both the criminal investigation and threat management review were managed under Gold commander, ACC Martin.

These matters now form the basis of Op Tabist, and fall within the following Terms of Reference.

Legislative basis

The functions of the Police Service are set out in Section 32 of the Police (Northern Ireland) Act 2000, which states:

- (1) It shall be the general duty of police officers -
 - (a) to protect life and property;

(b) to preserve order;

(c) to prevent the commission of offences; and

(d) where an offence has been committed, to take measures to bring the offender to justice.

(2) Police officers shall, so far as practicable, carry out their functions in co-operation with, and with the aim of securing the support of, the local community.

This Investigation will comply with the requirements of the European Convention on Human Rights, as incorporated into domestic law by the Human Rights Act 1998.

Externally-led Investigation

The Chief Constable of the Police Service of Northern Ireland (PSNI) has asked for the assistance of Durham Constabulary Chief Constable Michael Barton, to lead an external investigation team to carry out a full investigation in response to the PONI complaint of theft of sensitive and secret documents.

Chief Constable Barton will lead the investigation and appoint a Senior Investigating Officer and the investigation team. Chief Constable Barton will have the full delegated authority of the Chief Constable of the Police Service of Northern Ireland to direct the investigation. PSNI officers will, if requested, carry out executive and investigative action as directed by the Senior Investigating Officer, and report directly to him/her.

The investigation team will carry out their investigation by virtue of Section 98(1) of the Police Act 1996 and thus, will have all the necessary powers and privileges of police officers of the PSNI. The team will be based in Durham; however will carry out enquiries in Northern Ireland as necessary.

The investigation team will hold the appropriate level of vetting as assessed by the SIO and in consultation with PSNI.

Mechanisms will be put in place to report any allegations of criminal or misconduct offences by the police officers or police staff within the Operation Tabist investigation team, to the relevant investigative body.

Investigative Remit

The Investigative remit will be to establish:

Whether there is evidence of criminal offences having been committed by any persons in respect the theft of secret and sensitive documents from the office of PONI.

If the Op Tabist investigation team identifies matters which indicate the existence of criminal offences, they will oversee and direct on relevant investigative steps including interviews and/or searches. Upon completion of the investigation, any potential suspects will be formally and expeditiously referred to the ACC for PSNI Crime Operations who will facilitate the onward transmission to the Public Prosecution Service managing any potential jurisdictional matters which may arise from the use of an external investigation team.

Any matters falling outside these parameters will be brought to the attention of the ACC for Crime Operations of the PSNI by Chief Constable Barton for consideration. The PSNI ACC for Crime Operations will, if necessary, consult with the Director of Public Prosecutions (PPS) or the Police Ombudsman as to the appropriate basis on which to address these additional matters.

ect 40(2)

[REDACTED] has been appointed as the PSNI Single Point of Contact (SPOC) for the Op Tabist investigation team, and will provide all assistance as necessary to ensure that Chief Constable Barton receives the logistical and organisational support necessary to discharge his responsibilities.

Threats to life management remit.

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Durham Constabulary have requested that PSNI retain ownership of the threat management process in respect of Op Tabist, under a GOLD, SILVER and BRONZE command structure. The PSNI ACC for Crime Operations will perform the role of GOLD commander, [REDACTED] will perform the role of SILVER commander and [REDACTED] will perform the role of BRONZE commander. PSNI retention of the threat to life management is necessary in order to ensure any threats identified, including those that may reach the real and immediate Article 2 ECHR threshold, are expeditiously and effectively managed. The SIO and the PSNI Silver Commander will remain in weekly contact, or more frequently as required.

The above structures have been agreed by Chief Constable Barton and ACC for Crime Operations of the PSNI. Option six of the Durham Op DELCON Command structure options paper refers.

Legal Advice

Any legal advice required by the investigation team will be commissioned independently by the Op Tabist investigation team under the direction of Chief Constable Barton. PSNI may also provide legal advice as requested.

Role of the PSNI

The PSNI ACC for Crime Operations will be regularly updated as to the progress of the investigation but will not seek to direct or control, or in any way interfere with the investigation.

The PSNI remain accountable to the Northern Ireland Policing Board for the conduct of Op Tabist. If required, Chief Constable Barton and/or the SIO will accompany senior members of the PSNI to brief the Northern Ireland Policing Board.

Chief Constable Barton will be responsible for the delivery of any reports to the PSNI ACC for Crime Operations. These can include a file with prosecutorial recommendations for the consideration of the Director of the PPS.

The PSNI will provide access to all information requested by the Op Tabist investigation team.

The PSNI will be responsible for financial support to all elements of the investigation. The PSNI ACC for Crime Operations reserves the right to keep all costs under review and to agree reasonable financial parameters for the discharge of the investigation.

The Police Service of Northern Ireland Business Services will agree a Memorandum of Understanding with Durham Constabulary setting out the payment and monitoring of all invoices and any other logistical requirements.

These Terms of Reference will be subject to review as required by the PSNI ACC for Crime Operations and Chief Constable Barton. [REDACTED]

Sect 31 (1)

Op Yurta - Additional Terms of Reference.

On 4 October 2017 PONI further contacted the PSNI and requested a meeting in relation to a film titled "No Stone Unturned" which refers to the murders of 6 persons in Loughinisland, a small Northern Ireland village, in 1994. This film was first aired at a New York Film Festival on Saturday 30 September 2017 and is produced by Fine Points Film Ltd in association with Jigsaw Productions.

PONI have been provided with a copy of the film and on viewing it have identified that within it there are screen shots of sensitive documentation that only they believe refers to a 4 page Executive Summary Report, which originated from their office. PONI have not said how they believe the Executive Summary came to be in the possession of the filmmakers, and stated they are not certain that this was a result of it being given to them directly by a member of PONI staff.

These screen shots identify suspects and persons of interest highlighted in the PONI investigation, which commenced as a result of complaints by family members of the deceased.

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PSNI therefore request that Durham Constabulary add the below two points to their current terms of reference in addition to the above, which remains extant.


1. To investigate the circumstances within which a PONI Executive Summary, a full summary or other documentation relating to the Loughinisland PONI enquiry, are possibly within the possession of any media production outlet.
2. To ascertain if there is any connection between the leaking of this document and a CJNI report previously leaked and subsequently investigated by the Metropolitan Police London

Signed:

**Chief Constable Mike Barton
Durham Constabulary**

Date:

Signed:



**Chief Constable George Hamilton
Police Service of Northern Ireland**

Date: 27/12/17