



## FREEDOM OF INFORMATION REQUEST

**FOI Reference number:** FOI 21/2014

**Date:** 31 July 2014

**Request:** Northern Ireland Policing Board HET working group:

1. Minutes from the 19 occasions this group has meet since the publication of the HMIC report on 4<sup>th</sup> July 2013
2. Minutes from the 7 meetings the group has held with the Chief constable
3. Minutes from the monthly meetings with David Ford, Minister for Justice since the 16<sup>th</sup> October 2013
4. Minutes of the 3 meetings held with Steve Otter, HMIC
5. Minutes of the meetings with Professor Lundy (unknown number)
6. Minutes of the meetings with Baroness O'Loan & Richard Harvey specifically in relation to the HET & HMIC
7. Minutes of meetings with Paul Leighton & Phil Scraton specifically in relation the HET & HMIC
8. Meetings with NGO's and Legal Representatives conducted by the group
9. Meeting with the Director of Public Prosecutions conducted by the group
10. Copies of the 2 progress reports from the PSNI to the working group on the 12<sup>th</sup> December 2013 and the 27<sup>th</sup> March 2014.
11. Copy of the report submitted by the Board to HMI Steve Otter re the HET Performance Committee meeting

### Northern Ireland Policing Board

12. Correspondence referred to by the Chairperson in the minutes of the 5<sup>th</sup> September 2013 under item 3.1.2, between the Board and Chief Constable
13. Correspondence referred to in the minutes of the 5<sup>th</sup> September 2013 under item 18 as 'A letter from the Chief Constable to the Board dated the 9<sup>th</sup> August 2013'
14. Minutes from the additional meeting of the Policing Board held on Thursday 27<sup>th</sup> March 2014
15. Minutes from the Policing Board Meeting held on 3<sup>rd</sup> April 2014
16. Minutes from the Policing Board Meeting held on the 14<sup>th</sup> April 2014, including correspondence and progress reports referred to on the agenda under items 3 & 4

**Answer:** In our previous letter of 18 June 2014 the Board advised you that it considered the exemptions at Section 36 (*prejudice to the effective conduct of public affairs*) and Section 22 of the FOIA (*Information intended for future publication*) may apply in relation to some of the information that you requested. You were also advised that

as these are qualified exemptions the Board required some additional time to consider public interest tests in relation to the application of these exemptions.

I can advise that the Board has now concluded its deliberations in relation to the Section 36 and Section 22 exemptions, and has decided that at this point in time the factors in favour of engaging the exemptions outweigh the factors in favour of release of the information. As a consequence, the Board will not be providing you with the remainder of the information you have requested.

A copy of the Section 36 and Section 22 public interest tests have been included with this response for your 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](mailto: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:-

The Information Commissioner's Office – Northern Ireland  
3rd Floor  
12 Cromac Place  
Gasworks  
Ormeau Road  
Belfast  
BT7 2JB.

Telephone: - 0303 1231114

Email: - [ni@ico.org.uk](mailto:ni@ico.org.uk)

Please be advised that all Policing Board replies under Freedom of Information will be released into the public domain via our website @ [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk).

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

**FOI 21/2014 – Section 36 (2) (c) exemption “Prejudice to the Effective Conduct of Public Affairs”**

**Public Interest Test**

The above exemption is a qualified exemption, and a Public Interest Test must be carried out to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

**Information requested by the applicant**

**Northern Ireland Policing Board HET working group:**

Minutes from the 19 occasions this group has meet since the publication of the HMIC report on 4<sup>th</sup> July 2013

Minutes from the 7 meetings the group has held with the Chief constable

Minutes from the monthly meetings with David Ford, Minister for Justice since the 16<sup>th</sup> October 2013

Minutes of the 3 meetings held with Steve Otter, HMIC

Minutes of the meetings with Professor Lundy (unknown number)

Minutes of the meetings with Baroness O’Loan & Richard Harvey specifically in relation to the HET & HMIC

Minutes of meetings with Paul Leighton & Phil Scraton specifically in relation the HET & HMIC

*Meetings with NGO’s and Legal Representatives conducted by the group*

Meeting with the Director of Public Prosecutions conducted by the group

Copies of the 2 progress reports from the PSNI to the working group on the 12<sup>th</sup> December 2013 and the 27<sup>th</sup> March 2014.

Copy of the report submitted by the Board to HMI Steve Otter re the HET Performance Committee meeting

**Northern Ireland Policing Board**

Correspondence referred to by the Chairperson in the minutes of the 5<sup>th</sup> September 2013 under item 3.1.2, between the Board and Chief Constable

Correspondence referred to in the minutes of the 5<sup>th</sup> September 2013 under item 18 as ‘A letter from the Chief Constable to the Board dated the 9<sup>th</sup> August 2013’

...Policing Board Meeting held on the 14<sup>th</sup> April 2014, including correspondence and progress reports referred to on the agenda under items 3 & 4

### **Arguments in favour of disclosure of the requested information**

1. Disclosure of the requested information would be in line with a public authority being open and transparent in how it transacts its business, and would help in promoting accountability.
2. Disclosure would also be within the overall spirit of the Freedom of Information legislation in asking public bodies to be open and transparent.
3. The HET has featured prominently in the media with many news articles covered. As such, it could be argued that the work undertaken by the Board's HET Working Group would be of interest to not only third sector organisations such as the one which has made this request, but also to the media and members of the general public. It could therefore be argued that there is a real and genuine public interest in releasing the requested information.

### **Arguments in favour of engaging the exemption and withholding the requested information**

1. The role of the Historical Enquiries Team (HET) is very much a live and current issue for the Northern Ireland Policing Board (the Board). Release of the requested information at this point in time is therefore judged to be premature and ill-timed.
2. The Board has an important role to fulfil in overseeing the PSNI implementation of recommendations arising from the HMIC review into the operation of the Historical Enquiries Team, and has not yet finalised its work to assess progress made by the PSNI. If the information requested were released and placed into the public domain at this point in time, it is felt that the Board's ability to deliver on its oversight role regarding the operation of the HET would be adversely affected. This is because it is felt that the release could lead to further requests for information relating to the HET from interested parties, both locally, nationally and perhaps internationally, and there would highly likely also be a significant increase in media interest both locally and nationally (and perhaps also internationally). This could also lead to an increase in contact between Board Officials and Board Members concerning the HET with members of the press and the general public. As the Board is a comparatively small NDPB with a staffing level of less than 70 people, it is highly likely that additional resources would need to be diverted away from other work areas in order to deal with the expected effects of disclosure of the requested information. This would clearly ultimately *adversely impact upon the Board's ability to fulfil not only its important role regarding oversight of the PSNI implementation of the HMIC HET recommendations but also upon other Board business areas.*
3. The issues surrounding the operation of the HET are still being discussed and this is very much a live issue for the Board. Release of the requested information into the public domain at this point in time could adversely impact upon this very important piece of work, which is not in the interests of

stakeholders or victims' families, or in the wider public interest in what is an extremely sensitive area of work.

4. If the requested information was released at this point in time, the Board could find itself having to defend its position both in public and to the media in relation to any decisions already taken by the Working Group. Whilst it is only right that those in public positions should be able to be challenged concerning their actions, activities and decisions, to do so whilst an issue is still not finalised and under active discussion and consideration would almost inevitably lead to those same decision-makers feeling unduly pressurised by the force of public or media opinion, which could lead to corporate instability and less than satisfactory outcomes. This is clearly not in the public interest.
5. Release of the requested information at this point in time could also hamper and restrict the ability of Board Members to have the necessary 'free thinking space' which is required to fully consider the many complex and extremely sensitive issues surrounding the work and operation of the HET. This area of work is of significant political interest given ongoing discussions on legacy matters.
6. Disclosure of internal discussions between members of the HET Working Group at this point in time could have the effect of inhibiting Members' and stakeholders' free and frank discussion on a range of HET related issues. This in turn could lead to Members and stakeholders being more circumspect and guarded in the expression of their views and opinions and could ultimately adversely affect any future decisions taken by the Board regarding the work of the HET.
7. As HET is a sensitive and complex area of work, Board Members require a 'safe space' to develop ideas, debate the live issues, and to reach decisions away from any possible external interference, diversion or distraction. Disclosure of the information requested at this point in time could undermine and prejudice the entire decision making process of the Board in relation to the work of the HET, which would very likely lead to dissatisfaction amongst stakeholders and victims' families – which clearly cannot be said to be in the wider public interest.

## **Result**

Taking into account all of the deliberations above, it is felt that the public interest in engaging the exemption to withhold the information at this point in time outweighs the arguments towards disclosure.

As a result, the requested information should not be provided.

## **FOI 21/2014 – Section 22 “information intended for future publication” Public Interest Test**

The above exemption is a qualified exemption, and a Public Interest Test must be carried out to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **Information requested by the applicant**

Minutes from the additional meeting of the Policing Board held on Thursday 27<sup>th</sup> March 2014

Minutes from the Policing Board Meeting held on 3<sup>rd</sup> April 2014

Minutes from the Policing Board Meeting held on the 14<sup>th</sup> April 2014, including correspondence and progress reports referred to on the agenda under items 3 & 4

### **Arguments in favour of disclosure of the requested information**

1. Disclosure of the requested information would be in line with a public authority being open and transparent in how it transacts its business, and would help in promoting accountability.
2. Disclosure would also be within the overall spirit of the Freedom of Information legislation in asking public bodies to be open and transparent.

### **Arguments in favour of engaging the exemption and withholding the requested information**

1. Draft minutes have been prepared by Board officials but these may be incomplete as they have not yet been shared with any 3<sup>rd</sup> party who attended the meeting for comment on their input provided at the meeting. A 3<sup>rd</sup> party may recommend that certain information contained in draft minutes be amended.
2. It is the intention of the Board to publish the minutes requested. The Board should not place information in the public domain that may be inaccurate and subject to future amendment.

### **Result**

Taking into account the contentions above, it is felt that the public interest in engaging the exemption to withhold the information at this point in time outweighs the arguments towards disclosure.

As a result, the requested information should not be provided.



## FREEDOM OF INFORMATION REQUEST

**FOI Reference number:** FOI 21/2014

**Date:** 18 June 2014

**Request:** Northern Ireland Policing Board HET working group:

1. Minutes from the 19 occasions this group has meet since the publication of the HMIC report on 4<sup>th</sup> July 2013
2. Minutes from the 7 meetings the group has held with the Chief constable
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### **Northern Ireland Policing Board**

12. Correspondence referred to by the Chairperson in the minutes of the 5<sup>th</sup> September 2013 under item 3.1.2, between the Board and Chief Constable
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15. Minutes from the Policing Board Meeting held on 3<sup>rd</sup> April 2014
16. Minutes from the Policing Board Meeting held on the 14<sup>th</sup> April 2014, including correspondence and progress reports referred to on the agenda under items 3 & 4

**Answer:** The Board considers that the exemption at Section 36 of the Freedom of Information Act (prejudice to the effective conduct of public affairs) applies in relation to some of the information that you have requested.

I must advise that Section 36 is a qualified exemption rather than an absolute exemption and, as such, a Public Interest Test must also be considered before the Section 36 exemption can be engaged.

There is provision within the Freedom of Information Act at Section 10 (3) which allows the 20 working day time limit for a response to be extended where a public authority is considering a Public Interest Test for a qualified exemption.

In this case I must advise that the Board may require an additional twenty working days to fully consider a Public Interest Test in relation to the information you have requested. As such, your request is now due for answer by 18 July 2014, although if it is possible to provide an answer in advance of this date we will of course do so.

Turning to the remaining information requested and not being considered in line with the provisions of the section 36 exemption, I can advise as follows;

**Question 14.** In accordance with the exemption at section 22 of the FOIA (Information intended for future publication), a public authority can decide not to release information requested if it is intended for future publication.

The section 22 exemption is a qualified exemption and is therefore subject to consideration of a public interest test. This means that a public authority must determine whether, on balance, it considers it to be in the wider public interest to maintain the exemption, or to release the requested information.

There is provision within the Freedom of Information Act at Section 10 (3) which allows the 20 working day time limit for a response to be extended where a public authority is considering a Public Interest Test for a qualified exemption.

I must advise you that the Board may require an additional twenty working days to fully consider a Public Interest Test in relation to the information you have requested. As such, your request is now due for answer by 18 July 2014, although if it is possible to provide an answer in advance of this date we will of course do so.

**Question 15.** Minutes of meetings of the Policing Board are published on the Board's website. In accordance with the provisions of Section 21 of the Freedom of Information Act (FOIA) 2000, if the requested information is held by the public authority and is reasonably accessible to the applicant by other means, then there is no right to access to that information via the FOIA. The Section 21 exemption is an absolute exemption, which means that it is not subject to a public interest test prior to being engaged.

The Board considers that this information is exempt under Section 21 of the FOIA.

To assist you minutes of meetings of the Policing Board may be accessed using the following internet link;

<http://www.nipolicingboard.org.uk/index/meetings/northern-ireland-policing-board.htm>

**Question 16.** In relation to minutes of the Policing Board, I would refer you to the answer given at 14 above.

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](mailto: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:-

The Information Commissioner's Office – Northern Ireland  
3rd Floor  
12 Cromac Place  
Gasworks  
Ormeau Road  
Belfast  
BT7 2JB.

Telephone: - 0303 1231114  
Email: - [ni@ico.org.uk](mailto:ni@ico.org.uk)

Please be advised that all Policing Board replies under Freedom of Information will be released into the public domain via our website @ [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk).

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