



FREEDOM OF INFORMATION REQUEST

FOI Reference number: 57/2013

Date: 21 January 2014

Request: "I refer to the minutes of the Policing Board's Human Rights and Professional Standards Committee's meeting on 10 January 2013.

In item 5.1, mention is made of the 'Independent Panel's Interim Report'.

This refers to the Operation Stafford Independent Review Panel.

Could I have a copy of that interim report?"

Answer: On 18 December 2013 in our initial response to you, the Board advised that the exemptions at section 31 (1) (a), (b), & (c) Law Enforcement, section 24 (1) Safeguarding National Security and section 38 (1) (a) & (b) Health and Safety of the Freedom of Information Act applied to the requested information.

Sections 31, 24 and 38 are all qualified exemptions and, as such, are subject to a Public Interest Test. The Board therefore had to consider public interest arguments to determine if the public interest in maintaining the exemptions outweighed the public interest in disclosure.

I can confirm that the Board has now completed its deliberations. The Board has decided that in the circumstances of this request the public interest in maintaining these exemptions outweighs the public interest in disclosure and, therefore, the requested information should not be released at this time.

A copy of our public interest test document is enclosed 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

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: - 02890 269 380
Email: - 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.

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

FOI 57/2013 – Public Interest Test considerations

Information requested

“I refer to the minutes of the Policing Board's Human Rights and Professional Standards Committee's meeting on 10 January 2013.

In item 5.1, mention is made of the 'Independent Panel's Interim Report'.

This refers to the Operation Stafford Independent Review Panel.

Could I have a copy of that interim report?”

Section 31 “Law enforcement”

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.

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.
2. Disclosure would also be within the overall spirit of Freedom of Information legislation in asking public bodies to be open and transparent.
3. Disclosure could help to assure the public that police investigations are conducted in an appropriate manner.

Arguments in favour of withholding the requested information

1. Guidance produced by the Information Commissioner's Office states that the interest in principal in protecting information acquired during police investigations should be recognised when considering the public interest test under s30 (1). This also applies when information normally held by the police is held by another authority, as in this case, and the s31 exemption is being considered.
2. This principal is further borne out in the cases of **Toms v The Information Commissioner, Guardian v The Information Commissioner and Avon and Somerset Police**, and particularly in the case of **DTI v the ICO** which highlighted that *“the Act has recognised that there is a public interest in recognising the importance of the proper conduct of investigative processes and procedures carried out by public authorities, particularly those which*

might lead to criminal proceedings, and moreover that in relation to such procedures and possible proceedings, the maintaining of confidential sources must be respected”.

3. The case of **Hargrave v the information Commissioner and the National Archives** demonstrates that similar principals may apply when a public authority is considering the public interest balance under s31 (since only an investigating authority such as the police can engage the s30 exemption). In that case the Tribunal were very clear that the information acquired in the investigation should remain protected, and the Tribunal thought “...it very likely that disclosure of this information would prejudice the investigation...”
4. In this instance, the information requested relates to a live investigation of serious criminal activity. Release of the requested information at this time into the public domain could severely undermine the investigative process.
5. The information was provided to the Policing Board in confidence as part of its statutory police oversight role, with the expectation that confidentiality would be maintained whilst current investigations continue. Release of the requested information at this point in time could undermine the work of the Review Panel and the PSNI.
6. There is a strong public interest in encouraging the general public to engage with this investigation and disclosure of information relating to the investigation could result in individuals being less willing to co-operate, which in turn could hamper the investigatory process.
7. The operation of the panel is inextricably linked to the overall investigation and disclosure of the requested information could reveal the PSNI’s investigative approach to a continuing police operation, including the way in which information is provided to the panel.

As a result of all of the above, it is felt that release of the requested information at this point in time is not in the public interest and as a consequence the requested information should not be released.

Section 24 “Safeguarding National Security”

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.

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.
2. Disclosure would also be within the overall spirit of Freedom of Information legislation in asking public bodies to be open and transparent.
3. Disclosure could help to assure the public that police investigations are conducted in an appropriate manner.

Arguments in favour of withholding the requested information

1. The requested information contains material concerning the gathering of intelligence by the police. If this information was put into the public domain it would undermine activity in this very important area of counter terrorism and has the real potential to adversely impact upon national security.
2. Operation Stafford relates to the investigation of the activities of loyalist paramilitaries. Disclosure could jeopardise national security as terrorists would be able to identify whether or not their activities had been detected.
3. PSNI had responsibility for National Security in Northern Ireland until MI5 took over this area in 2007. The requested information also contains material concerning the nature of the work of a particular area within PSNI, including its working relationship with other security bodies. If this information was put into the public domain it would undermine work in this very important area of counter terrorism and has the real potential to adversely impact upon national security.
4. The requested information contains material concerning the sharing of information and intelligence between a particular area within PSNI and other security bodies. If this information was put into the public domain it would undermine work in this very important area of counter terrorism and has the real potential to adversely impact upon national security.
5. Work in the field from which the requested information is derived is still active and remains on-going. Consequently, release of the requested information at this time is seen as untimely and premature. If this information was put into the public domain it would undermine this very important function, could undermine the whole process, and as a result has the real potential to adversely impact upon national security.

6. The security assessment for terrorism in Northern Ireland at this time is rated as “**severe**” (i.e. a terrorist attack is considered highly likely). This being the case, it is felt that it would not be in the public interest to release information which could hamper the PSNI’s duties concerning national security.

The Board is of the opinion that there is a strong public interest in maintaining national security. As a result, it is felt that at this time the requested information should not be released.

Section 38 “Health and Safety”

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.

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.
2. Disclosure would also be within the overall spirit of Freedom of Information legislation in asking public bodies to be open and transparent.
3. Disclosure could help to assure the public that police investigations are conducted in an appropriate manner.

Arguments in favour of withholding the requested information

1. The information requested relates to a live investigation into serious criminal activity, which includes material procured as a result of intelligence gathering by security agencies. If the requested information was put into the public domain at this point in time, then individuals identified within the material could have their and their families’ safety put at risk.
2. Information contained within the material requested refers to certain named individuals who are now deceased. Release of the requested information at this point in time could provide additional distress and anxiety to their surviving family members.
3. The security assessment for terrorism in Northern Ireland at this time is rated as “**severe**” (i.e. a terrorist attack is considered highly likely). As such, it is felt

that it would not be in the public interest to release information into the public domain which could undermine an ongoing investigation and might put individual's safety at risk.

As a result of all of the above, it is felt that release of the requested information at this point in time is not in the public interest and as a consequence the requested information should not be released.

Taking into account all of the arguments and counter-arguments above, it is felt that the public interest in releasing the information does not outweigh the public interest in withholding the information.

As a result, the requested information should not be released at this point in time.