

## Freedom of Information Act 2000 (FOIA)

### Decision Notice

**Date:** 15 December 2014

**Public Authority:** Police Service of Northern Ireland

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

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the PSNI's investigation (or otherwise) of incidents he reported. The PSNI refused to confirm or deny that it held the requested information in reliance on sections 40(5) and 30(3) of the FOIA. The Commissioner's decision is that the PSNI was entitled to refuse the request, and he does not require any steps to be taken.

#### Request and response

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2. The complainant in this case has reported a number of incidents to the PSNI since 2004. The complainant is not satisfied that the PSNI has properly investigated these incidents.
3. On 14 April 2014 the complainant made an information request to the PSNI. The Commissioner has extracted the relevant parts of the letter and numbered them for reference:

*"1. The results/outcome from the following incidents that CSI took/removed from incidents at my farm premises/property etc on the following dates:*

*24/05/2004  
30/06/2004  
22/05/2008  
04/07/2008  
25/03/2009*

*2. I also request copies of the CCTV footage in relation to the following*

*incidents:*

*19/03/2006  
16/04/2006  
18/04/2006  
23/04/2006*

*3. I request a copy from the police issue camcorder to an incident which occurred on 24/04/2004...*

*4. I also request [in respect of a meeting on 10/06/2009]*

- a) What was the name of the police officer that attended that meeting?*
- b) Was it the police officer in attendance that was the 1<sup>st</sup> person to state that the USPCA were in a position to withdraw from the situation?*
- c) What action/steps did that police officer take regarding the animal cruelty prosecution? What was the outcome of this?*
- d) What did this police officer do/carry out regarding the 'wrap up' meeting which was stated 'is necessary'?*
- e) What was agreed to as to cause the 'wrap up' meeting that 'is necessary'?*
- f) What role did this police officer play in this 'wrap up' meeting?*
- g) What is the name of the person that said a 'wrap up' meeting was needed and 'is necessary'?*
- h) Did this police officer give clearance to the USPCA to take this animal cruelty case to the USA?*
- i) Who at that meeting was to 'seek' the clearance for the USPCA suggestion?*
- j) What was the outcome of this?*
- k) What are the names of the 'two American animal welfare experts'?*
- l) What organization(s) do these two American animal welfare experts represent?*

*5. Following that meeting of 10/06/2009 I request:*

*Why has this police officer not apprehended the perpetrator/s that continue to brutalise and commit these criminal acts of animal cruelty to my live sheep?*

*6. [In respect of a meeting on 12/12/12]*

- a) I request the names of 'all' the attendees at that meeting.*
- b) Provide me with the crime ref. number of the incidents they discussed.*
- c) The 'Crown Solicitor's Office' denies that there is a police*

*'policy' in place and said there never has been a 'policy' in action – explain why the police in 'G' district contradict this?"*

4. The PSNI wrote to the complainant on 16 April 2014 to suggest that the request was unlikely to be successful under the FOIA and that it may be more appropriately dealt with as "normal course of business". However the complainant confirmed that he wished to pursue the request under the FOIA. On 23 April 2014 the complainant advised the PSNI that he was content for the names of police officers to be redacted if necessary.
5. The PSNI issued a refusal notice to the complainant on 29 May 2014. This stated that the PSNI was refusing to confirm or deny that it held the requested information in reliance on the exemption at section 40(5) of the FOIA. The PSNI also advised the complainant of how he could apply for his personal data under the Data Protection Act 1998 (the DPA).
6. The complainant requested an internal review on 3 June 2014 and the PSNI advised him of the outcome on 27 June 2014. The PSNI upheld its refusal on the basis of section 40(5) and reiterated its advice that the complainant may wish to submit a subject access request.

### **Scope of the case**

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7. On 28 July 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant argued that the PSNI ought to have provided him with the information he requested.
8. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. In considering such matters, the Commissioner is mindful that whilst an individual may be aware that information does or does not exist because of their involvement in events, it does not follow that the general public is also aware of the existence of that information. Disclosure under the FOIA is a disclosure to the world at large.
9. The Commissioner noted that the PSNI had sought to rely on section 40(5), which would only apply to information that, to the extent that it was held, would be the complainant's personal data. The Commissioner therefore asked the PSNI to consider its position in respect of any relevant information that, if held, would not comprise the complainant's personal data.

10. In response to the Commissioner's enquiries the PSNI advised that it sought to rely on section 30(3) in order to neither confirm nor deny that it held relevant information that would not, if held, comprise the complainant's personal data.
11. The Commissioner may consider a public authority's late reliance on exemptions or exclusions at any stage of his investigation. This does not mean that the Commissioner automatically decided that the PSNI was entitled to claim reliance on section 30(3); rather, the Commissioner agreed to consider the PSNI's arguments in respect of this provision.
12. In light of the above the decision for the Commissioner in this case is whether the PSNI is required to confirm or deny, to the public at large, that it holds the requested information. The Commissioner recognises that the complainant has personal reasons for making the request in this case. However, neither the identity of the applicant nor any purely personal reasons for wanting the requested information are relevant to the consideration of a request made under the FOIA. This is because the FOIA concerns disclosure to the public, and public interests, rather than a specified individual's private interests.

## **Reasons for decision**

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### **Section 1(1)(a): Duty to confirm or deny that information is held**

13. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise the applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny in reliance on certain exemptions under the FOIA.

### **Section 40(5): personal information**

14. The PSNI cited section 40(5) of the FOIA to refuse to confirm or deny whether it held information relevant to the complainant's request which would, if held, constitute the complainant's personal data. Section 40(5)(a) provides that the duty to confirm or deny does not arise in relation to information that falls, or would fall if it were held, within the scope of section 40(1) of the FOIA. Section 40(1) provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This is because individuals may request their personal data under a separate legislative access regime, namely the right of subject access under section 7 of the DPA.
15. The Commissioner accepts that information held by the PSNI in respect of any investigation into the incidents reported by the complainant

would be likely to include some information which would be the personal data of the complainant. This would clearly fall under section 40(1) of the FOIA. Therefore the Commissioner is satisfied that the PSNI is not required to confirm or deny under the FOIA whether it holds information which, if held, would be the personal data of the complainant, by virtue of section 40(5)(a).

### **Section 30(3): investigations and proceedings**

16. The PSNI relied on section 30(3) in respect of the requested information that, if it were held, it would not be the personal data of the complainant. Section 30(3) provides an exemption from the duty to confirm or deny in relation to any information which is (or if it were held would be) exempt information by virtue of sections 30(1) or 30(2).
17. The PSNI has confirmed to the Commissioner that the requested information, if held, would fall within section 30(1)(a)(i) of the FOIA. Section 30(1)(a)(i) applies to information that has at any time been held by the public authority for the purposes of an investigation that the public authority has a duty to carry out with a view to it being ascertained whether a person should be charged with an offence. In addition the information in question must relate to a specific investigation; not to investigations in general.
18. The public authority in this case is a police force and the Commissioner is satisfied that the PSNI has the power to carry out investigations of the kind described in sections 30(1)(a)(i) to establish whether an offence has occurred. The Commissioner is satisfied that any information falling within the scope of the request that may be held by the PSNI would have been held for the purposes of a specific investigation, which it has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence. Therefore the Commissioner is satisfied that the exemption is engaged.

### **The public interest test**

19. As section 30 is a qualified exemption the Commissioner has gone on to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion from the duty to confirm or deny outweighs the public interest in disclosing whether the PSNI holds the requested information.

### Public interest arguments in favour of confirming or denying that information is held

20. The PSNI accepted that confirming or denying that the requested information is held would provide transparency and reassure the public that the PSNI was exercising its functions properly.

21. The Commissioner notes that the complainant's request related to the PSNI's investigation of incidents reported by the complainant himself. The complainant has advised the Commissioner that he has spoken with PSNI officers in relation to the case but is not satisfied with what he perceives as a lack of progress. Therefore the complainant argues that the PSNI ought to disclose information relating to the investigation, so that the public can be informed as to its effectiveness.

Public interest arguments in favour of maintaining the refusal to confirm or deny whether information is held

22. The PSNI argued that confirming or denying that the requested information was held would inform the public – and alert any perpetrator(s) – as to the nature of any investigation and lines of enquiry.
23. The PSNI argued that there was a strong public interest in protecting its ability to conduct (or to decide not to conduct) investigations effectively. Confirming or denying that information was held would impede any such investigation, which would not be in the public interest. This is particularly relevant given that the complainant's request comprised several detailed questions about the PSNI's investigation of the incidents he had reported.
24. The PSNI also referred to a number of the Commissioner's decisions<sup>1</sup> which had found that the public authority was entitled to rely on section 30(3) as a basis for refusing to confirm or deny that it held information relating to particular investigations.

Balance of the public interest

25. The Commissioner recognises that the complainant has personal reasons for making the request, as he alleges that he has been the victim of crime and is dissatisfied with the police investigation. However, the Commissioner has stressed to the complainant that the FOIA is motive-blind. This means that the Commissioner can only decide whether confirmation or denial that information is held should be put into the public domain. The Commissioner understands the complainant's position but must stress that the FOIA only allows for information to be disclosed into the public domain. The Commissioner can make no comment on the incidents as reported by the complainant as this is a matter for the PSNI.

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<sup>1</sup> Decision notices FS50478108 and FS50456429.

26. The Commissioner understands that, as the person reporting an incident, the complainant will have received information from the PSNI outside the remit of the FOIA. This should not be interpreted as confirming that the requested information is held in this case, but rather acknowledging the channels of communication that exist for individuals to be updated as to how the PSNI handles their cases.
27. The Commissioner is also mindful that the Police Ombudsman for Northern Ireland has responsibility for dealing with complaints about the PSNI. The complainant may therefore choose to contact the Ombudsman if he wishes to complain about the way the PSNI has dealt with his allegations. The Commissioner is of the view that this addresses the legitimate public interest in accountability, as the Ombudsman may receive information that it would not be appropriate to put into the public domain.
28. As the PSNI has pointed out, the Commissioner has considered many cases where police forces have been asked for information relating to investigations. The Commissioner acknowledges that the exclusion from the duty to confirm or deny is qualified, therefore Parliament was of the view that there may be cases where the public interest is sufficiently strong to overturn the application of section 30(3). In this case the Commissioner is unable to identify an overriding public interest in requiring the PSNI to confirm or deny that it holds information when to do so would have a detrimental effect on the PSNI's ability to conduct investigations. In particular the Commissioner notes in this case that the complainant's request comprised several detailed questions about the PSNI's investigation of incidents he had reported. The Commissioner does not consider it to be in the public interest to require the PSNI to take any action that could compromise an investigation.
29. The Commissioner finds that the arguments in favour of maintaining the refusal outweigh the arguments in favour of confirming or denying that information is held. Therefore the Commissioner finds that the PSNI was entitled to rely on the refusal to confirm or deny provided by section 30(3) of the FOIA.

## **Procedural requirements**

### **Section 17: refusal notice**

30. Section 17(1) of the FOIA states that if a public authority wishes to rely on any exemption it must issue a refusal notice. The refusal notice must state which exemption applies, and why, and contain details of the public interest test in relation to qualified exemptions.

31. In this case the refusal notice issued by the PSNI cited section 40(5) only. During the course of the Commissioner's investigation the PSNI also sought to rely on section 30(3). As this was not cited in the refusal notice, the Commissioner finds that the refusal notice did not meet the requirements of section 17(1)(a) of the FOIA.



## Right of appeal

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32. 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 123 4504  
Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
34. 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 .....**

**Alexander Ganotis**  
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