

## **Freedom of Information Act 2000 (FOIA) Decision notice**

**Date:** 27 June 2023

**Public Authority:** Public Prosecution Service (Northern Ireland)  
**Address:** 93 Chichester Street  
Belfast  
BT1 3JR

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the Prosecutorial file for R v Christie and Others (1994).
2. The Commissioner's decision is that Public Prosecution Service (Northern Ireland) (PPS) is entitled to rely on section 31(1) to withhold the requested information.
3. The Commissioner does not require PPS to take any steps as a result of this decision notice.

### **Request and response**

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4. On 4 July 2022, the complainant wrote to PPS and requested information in the following terms:

"Could you inform me as to whether the PPS hold a copy of the prosecutorial file for R v Christie and Others (1994). If this is the case, could you please communicate that information to me by no later than the twentieth working day following the date of receipt of the present request."

5. PPS responded on 8 July 2022 and confirmed the information was held, but did not provide it. The complainant made the following request the same day.

"I request that I am provided with a copy of this information, in

accordance with the rights to access to information under the terms of the Freedom of Information Act (2000).”

6. PPS responded on 23 September 2022 and refused to provide the requested information, citing sections 31(1)(b) and (c), and 40(2). Newspaper articles regarding the case were provided in the response.
7. Following an internal review PPS maintained its position.

## **Background**

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8. The file requested relates to proceedings against police officers for the offence of perverting the course of justice. The alleged offences in this case are associated with, and arise from, investigations into a separate criminal matter involving the offence of murder in 1983. This occurred during the time known as ‘the troubles’ or ‘Northern Ireland Conflict’.
9. The PPS also holds a case file relating to the murder itself. Therefore, material held relating to these files are interlinked and the prosecuting directing officer had requested that the files were kept together as associated files. Both cases have been the subject of further proceedings in the intervening years.

## **The Public Prosecution Service**

10. The Public Prosecution Service is the principal prosecuting authority in Northern Ireland, with responsibility for taking prosecutorial decisions based on the evidential and public interest test. Processing of personal data is consistent with the statutory purpose of the PPS as set out in sections 29-39 of the Justice (Northern Ireland) Act 2002 (JNIA). Section 31 JNIA sets out the Director’s responsibility for conducting prosecutions.
11. This processing is for ‘law enforcement’ purposes consistent with Part 3 of the Data Protection Act 2018 (DPA).
12. A significant volume of the material held in prosecution files relates to evidential material that has been provided following investigation by police. As the police both created and provided the information, it is considered that they understand the content and sensitivity. PPS therefore consulted with the Police Service of Northern Ireland (PSNI) in this instance as any disclosure is likely to affect their interests and it was necessary to obtain their views when considering the prejudice and public interest tests. PSNI have advised that, in their view, withholding this material would prevent any prejudice to future litigation, investigations and/or proceedings.

13. The information that is subject of the request relates to a file held regarding an investigation, prosecution and subsequent criminal proceedings. The file contains the following categories of information:
  - Case details
  - Interviews
  - Suspect statements and interviews
  - Witness statements
  - Internal PPS papers
  - Opinions and Directions from Counsel
  - Correspondence between the former Office of the Director of Public Prosecutions -now PPS and Royal Ulster Constabulary now PSNI
  - Crown Court and Appeal papers
  - List of exhibits
  - Depositions and Direction of Proofs
14. Having considered the contents of the file, the PPS determined that the entirety of the file should be withheld under FOIA as this is not a release of information solely to the requester but is placing this information into the public domain and the world at large.
15. Information held relating to newspaper articles regarding the case were provided in the original response.

### **Scope of the case**

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16. The following analysis sets out whether PPS was entitled to refuse to disclose the requested information.

## **Reasons for decision**

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### **Section 31 – law enforcement**

17. Section 31(1)(b) and (c) of FOIA provide an exemption where disclosure of the relevant information would, or would be likely to, prejudice -
  - (b) the apprehension or prosecution of offenders,
  - (c) administration of justice.
18. For this exemption to be engaged, disclosure must be at least likely to prejudice the administration of justice. The exemption is qualified by the public interest which means that, if the public interest in maintaining the exemption does not outweigh the public interest in disclosure, the information must be disclosed.
19. The exemption applies where disclosure “would or would be likely” to cause prejudice. The approach of the Commissioner is that he will accept that prejudice would occur where that outcome is more probable than not.
20. In respect of section 31, PPS advised that disclosure of the information could prejudice the ability of both the PSNI and PPS to effectively discharge their functions in respect of the administration of justice and would be likely to prejudice any future legal proceedings.
21. Having seen the withheld information the Commissioner accepts the actual harm which the PPS alleges would be likely to occur if the withheld information was disclosed and that it relates to the applicable interests identified. He also accepts that there is a causal relationship between disclosure and the prejudice the exemption protects and that it is real and of substance. The Commissioner is satisfied that the exemption is engaged at the lower level of prejudice.

### **Complainant’s position**

22. In correspondence to the Commissioner, the complainant argued that exemptions were not applied as redactions to the file showing the extent of the file as would usually be the practice, but the file was not released in any part. They asserted that this approach was neither reasonable nor proportionate to the stated exemptions. In withholding the contents of the file, PPS appeared to have argued that under Section 31(1)(b), to release any element of the file contents could prejudice the ability of the PPS(NI) to effectively discharge its decision-making process in future cases, and that it would hamper investigations and prosecutions in other cases.

23. Likewise, under Section 31(1)(c) it suggested that there would be a similar prejudice to their ability to discharge their responsibilities in respect of the administration of justice. Given that this was a high-profile case receiving media attention at the time, and which led to acquittal of all charged, it is hard to see on this basis how information from any historic file could be released in principle.
24. While it is inherent to the request that there is a private interest on behalf of the complainant for disclosure there is also a clear public interest both in the principle and specific nature of the case to which the request refers that favours disclosure.
25. Firstly, there is an established wider public interest in the recovery of information relating to the 'Troubles' in Northern Ireland. This is reflected in the statutory priority of information recovery within the wider area of dealing with the past and Troubles legacy. It can be seen in the efforts made towards information retrieval, namely, the now defunct Historical Enquiries Team (HET), the once proposed Stormont House Agreement with the Independent Commission for Information Retrieval (ICIR), and the Northern Ireland (Legacy and Reconciliation) Bill with its Independent Commission for Reconciliation and Information Recovery (ICRIR) currently passing through parliament.
26. These former and proposed bodies demonstrate the existence of a public interest in this area in favour of the principle of disclosure. The complainant believes that this public interest is particularly exercised in a case such as that of the complainant and the wider UDR4<sup>1</sup> miscarriage of justice case, where the narrative of events concerning the actions of the police are still disputed and may not been considered adequately in Court.

### **Public interest test**

27. The Commissioner must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at section 31 of FOIA outweighs the public interest in disclosing the information requested.

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<sup>1</sup> The UDR Four were four members of the 2nd Battalion, Ulster Defence Regiment who were convicted of the murder of Adrian Carroll in 1983. Adrian Carroll was the brother of the Sinn Féin councillor Tommy Carroll. Three of the Ulster Defence Regiment soldiers were acquitted on appeal in 1992.

### **Public interest factors favouring disclosure**

28. PPS acknowledge that disclosing the requested information may serve to increase the accountability and transparency of the PPS in relation to the performance of its statutory functions in respect of prosecutorial advice.
29. To release this information could promote public trust in providing transparency and demonstrating openness and accountability in the methodology which is used in the apprehension or prosecution of offenders.
30. To publish the information requested may further the interests of justice as it would improve the public's knowledge and understanding of the criminal justice process, thereby encouraging the participation of members of the public in that process.

### **Public interest in favour of maintaining the exemption**

31. To publish the information may inhibit the future effectiveness of police investigations/prosecutions as it would involve the disclosure of information supplied by members of the public and police in confidence and in the expectation that it would only be used for the purposes of a criminal investigation.
32. To publish this information could prejudice the ability of both the PSNI and PPS to effectively discharge their function in respect of the administration of justice and would be likely to prejudice the outcome of any potential future legal proceedings in other cases.

### **The Commissioner's decision**

33. The Commissioner is satisfied that section 31 is engaged. With regard to the public interest test, the Commissioner accepts PPS's argument that disclosure of the information may prejudice any future actions of its own as well as potential future investigations by PSNI that may not yet be obvious.
34. The Commissioner acknowledges the reason for the request is a genuine attempt to discover information relating to a miscarriage of justice. He further acknowledges that a number of bodies, past and present have been involved in retrieving this type of information to aid the reconciliation process. However, these bodies would not necessarily make public disclosures of such information during any reviews carried out. Disclosure under FOIA is a disclosure into the public domain, not just to the requester.
35. Although the complainant has commented that there was no attempt to disclose any information in a redacted form, it should be noted that,

where redaction renders information meaningless there is no benefit in its disclosure.

36. That being the case it is clearly not in the public interest for PPS to potentially prejudice future cases, or compromise investigations that may be undertaken by PSNI.
37. Therefore the balance of the public interest lies in maintaining the exemption.

## Right of appeal

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38. 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 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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 .....**

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**