

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 April 2025

Public Authority: Police Service of Northern Ireland
Address: PSNI Headquarters
65 Knock Road
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific murder case. The Police Service of Northern Ireland (PSNI) provided some of the information but withheld the remaining information citing sections 30(1)(a) (investigations and proceedings), 40(2) (personal information) 31(1)(c) (law enforcement) and 12(2) (cost of compliance) of FOIA.
2. The Commissioner's decision is that PSNI was entitled to rely on section 12(2) of FOIA to refuse the request. He does not require PSNI to take any further steps.

Request and response

3. On 10 July 2024, the complainant wrote to PSNI and requested information in the following terms:

"Under Freedom of Information legislation in terms of the original investigation into the death of [name redacted] (9 August 2020) please provide:

 - The date the death was deemed not suspicious
 - The date the case was referred back to uniform officers by CID (Criminal Investigation Team) / MIT (Murder Investigation Team) following the request for their input

- The rank(s) of detective(s) who made this decision and on what basis
 - The date the case was reviewed
 - The rank(s) of officer(s) who ordered the review and on what basis
4. PSNI responded on 28 August 2024 and provided responses to the complainant's request at parts one and two. However, PSNI withheld information relating to parts three, four and five of the request.
 5. The complainant requested an internal review on 28 August 2024. Following an internal review PSNI wrote to the complainant on 17 September 2024 and upheld its original decision.

Scope of the case

6. The complainant contacted the Commissioner on 4 October 2024 to complain about the way their request for information had been handled.
7. On 31 January 2025, the Commissioner wrote to the complainant and PSNI. He advised the complainant of the scope of his investigation and requested submissions from PSNI in support of the exemptions it was applying.
8. PSNI provided its first submissions on 21 February 2025. It decided that sections 30(1)(a) and 40(2) of FOIA were still applicable to the withheld information, but considered that responding to part five of the request would require a manual review of all the investigative material on its database. It stated that it had identified 117 documents and concluded that to manually review the documents in order to try and locate the requested information would exceed the appropriate limit. In addition to the above, PSNI informed the Commissioner that it was also relying on section 31(1)(c) of FOIA to withhold the information due to a Coroner's inquest that is yet to be undertaken.
9. On 3 March 2025, the Commissioner wrote to the PSNI again requesting further information about its intention to rely on section 12 to withhold information at part five of the complainant's request, as well as further details about the withheld information. The Commissioner also reminded PSNI of its responsibility to inform the complainant of any new exemptions it was relying on.
10. On 14 March 2025, PSNI responded and confirmed that it was relying on sections 30(1)(a), 40(2) and 31(1)(c) to withhold information relating to part three only and relied on sections 30 (1)(a) and 31(1)(c) to withhold

part four of the request. It also relied on section 12(2) of FOIA to withhold information relating to part five of the complainant's request and provided submissions in support of its reliance on section 12(2). PSNI issued a revised refusal notice, updating its position to the complainant on the same day.

11. In light of PSNI's updated position, the Commissioner advised the complainant on 24 March 2025 of the scope of his investigations and invited them to provide any further arguments they considered relevant to the case.
12. The complainant informed the Commissioner that they disagree with PSNI's revised response entirely. They have stated:

"Firstly, cost is being used yet again to hide information through a PSNI self-implemented Catch 22 as they refuse to accept excess payment despite having no policy to do so.

In this regard PSNI are acting under a self-regulated exclusion system to their advantage and contrary to FOI legislation.

Furthermore, I reject cost is the reason in this matter as the information is readily available on file and can be accessed on the system at any time without difficulty.

In terms of Strands 4 and 5, I wholly reject the responses.

In breaking down the PSNI rationale I do not accept personal information is a factor as neither names nor identities have been sought, rather I have requested the rank(s) of officers which has been provided in other FOIs connected to this matter and other unrelated enquiries in the past. Why one FOI and not another? That's blatant disparity.

In terms of criminal investigations and proceedings, I reject this as the case in question has fully concluded having ended in June 2024.

I also reject the administration of justice rationale for the same reason. The case is closed.

There is no further investigation and there could never be as the individual at the centre of this case is deceased having taken his own life one day after going on trial.

The co-accused were latterly sentenced in June 2024 and that brought all matters to a conclusion.

The PSNI have confirmed the case is closed and no other persons are being sought in relation to any aspect. There can be nothing further against the co-accused as that would be double jeopardy.

Therefore, the rationale proffered throughout is without merit and I believe demonstrates a further attempt to prevent the release of information of critical public interest.

PSNI is being deliberately evasive in an attempt to cover up matters which may be professionally embarrassing. This is deliberate blocking of information by a public-authority, contrary to the requirements of openness, transparency, and accountability.”

13. The Commissioner considers that the scope of his investigation is to determine whether the exemptions cited are appropriate.

Reasons for decision

Aggregation of requests

14. Multiple questions within a single item of correspondence are considered to be separate requests for the purpose of section 12. In the present case, this means that there are three remaining requests to be considered. However, where requests relate to the same overarching theme, a public authority may aggregate two or more separate requests in accordance with the conditions laid out in the Fees Regulations. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.
15. In the Commissioner’s guidance¹ on exceeding the cost limits, he explains that:

“When you are estimating whether you are likely to exceed the appropriate limit, you can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations are satisfied. Those conditions require the requests to:

- be made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

- relate, to any extent, to the same or similar information; and
 - be received by the public authority within any period of 60 consecutive working days”.
16. The Fees Regulations wording of “relate, to any extent, to the same or similar information” makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
17. Although PSNI did not address this point, having reviewed the wording of the complainant’s request, the Commissioner is satisfied that there is an overarching theme. This is because the individual parts of the request all refer to information about the same investigation. Therefore, PSNI was entitled to aggregate the costs of dealing with each question.

Section 12- Cost of compliance

18. The following analysis covers whether complying with the remaining three parts of the request would exceed the appropriate limit.
19. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
20. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for PSNI is £450.
21. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours work for PSNI.
22. Where a public authority is relying on section 12(1) to refuse a request it must still confirm whether or not it holds the information. However, a public authority may rely on section 12(2) if the cost of determining whether the information is held would, on its own, exceed the appropriate limit.
23. If section 12(2) applies, the public authority does not need to confirm or deny that it holds the information.
24. A public authority does not have to make a precise calculation of the cost of establishing whether information is held; instead, only an estimate is required. The Commissioner considers that any estimate must be sensible, realistic, and supported by cogent evidence. The task

for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of determining what, if any, information is held.

25. Section 12 of FOIA is an absolute exemption and not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
26. Where a public authority claims that section 12(2) of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it may, if possible, be dealt with under the appropriate limit, in line with section 16 of FOIA.

PSNI's position

27. As is the practice in a case in which the public authority has cited the cost limit under section 12(2) of FOIA, the Commissioner asked PSNI to provide a detailed estimate of the time and cost of determining whether the requested information was held.
28. PSNI explained that although the information relating to the Police investigation is held electronically, it is not in a format that can be automatically extracted and therefore requires manual review.
29. As the information is not retrievable via automated means, PSNI says it relies on keyword search in an attempt to locate and retrieve overarching documents which would need to be reviewed to understand if they contain information falling within the scope of the request.
30. PSNI confirmed that the relevant Business Area undertook a sampling exercise using the keyword 'review' based on the question at point five of the complainant's request. PSNI explained that using this keyword would provide the greatest opportunity to locate the information falling within the scope of the request.
31. PSNI stated that the search returned a total of 117 documents within which it randomly selected five documents in an attempt to locate and determine if the information is held and also to estimate the time required to review all the results. The five documents varied in size and contained a total of 129 pages. PSNI estimates that at an average reading speed of 1.7 minutes for each page, it will take 3.65 hours to read those five documents.
32. PSNI argued that for the remaining 115 documents, if the average pages of the five documents sampled is calculated, it estimates that this would be the equivalent of 25.8 pages per document. Therefore, it estimates that it will take a total of 87.71 hours to read the entire 117 documents.

33. PSNI have argued that the estimates it has provided do not consider information relating to the investigation that is held on its 'NICHE' and 'Holmes' databases or information held on its Occurrence Entry Logs. It also argued that there may be information held outside its systems, for example in Police issue notebooks. Although entries in the notebooks are manually recorded and in date order, PSNI says they are not indexed and hence it would require a manual review of each notebook.
34. It further explained that when searching through unstructured data, keyword searches are not reliable methods because, PSNI cannot automatically determine the context of the term found in the search result and hence a manual review is almost always required to determine if the results meet the criteria of the FOI request.
35. It added that the scope within which it can do a keyword search is a limited one. As the data is unstructured it cannot rely on having the data entered in a way as to identify those records that are relevant to the scope of the request. The searches are impacted by abbreviations or spelling mistakes and these affect the reliability of the keyword searches.
36. During the Commissioner's investigation he requested further information about the structure of PSNI's databases to provide more understanding of the complexities associated with locating and retrieving information related to the investigation. In particular, the Commissioner wanted to know if other keywords would have yielded a narrower search result.
37. On 25 March 2025, PSNI provided a detailed outline of how information is recorded and stored, giving a clearer picture of why the information is unstructured, making it challenging to locate or retrieve information. It explained that documents can be reviewed in response to specific actions or documents, keyword searches or if they fall within a specific index.
38. PSNI also advised of other searches it conducted on its policy files using the keyword 'order' and or 'review.' It explained the various outcomes and the reasons why some of the results did not feature information falling in the scope of the complainant's request or why the results (based on the keyword searched), would still require a manual review of each document to determine if it falls within the scope of the complainant's request, due to the unstructured manner in which information is stored.

The Commissioner's view

39. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation.

The question for the Commissioner here is whether the cost estimate by PSNI was realistic.

40. The Commissioner has considered arguments presented by the complainant and PSNI. He is satisfied that PSNI has demonstrated reasonably how confirming or denying whether it holds the information requested at part five of the request would exceed the 18 hours threshold.
41. The Commissioner is therefore satisfied that PSNI was entitled to rely on section 12(2) of FOIA to refuse to comply with the remainder of the complainant's request.
42. As it is the Commissioner's decision that locating and retrieving information related to point five of the complainant's request would exceed the appropriate cost limit, he has not found it necessary to go on to consider the application of sections 30(1)(a), 31(1)(c) and 40(2) of FOIA to the remaining parts of the request.

Section 16 Advice and assistance

43. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.
44. Section 16(1) of FOIA provides that a public authority should give reasonable advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice² in providing advice and assistance, it will have complied with section 16(1). The FOIA code of practice states that, where public authorities have relied on section 12 to refuse a request, they should:

“provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the cost limit.”
45. PSNI stated that it was unable to offer refinement to the request as, even if the complainant were to remove part five of the request, it believes that the complainant's request at parts three and four attract other exemptions.

² <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

46. The Commissioner understands that this advice provided by PSNI may not be helpful to the complainant to locate information that satisfies their interest. However, the Commissioner accepts that due to the format in which the information is stored, it is difficult for PSNI to advise how to refine the request. As such the Commissioner is satisfied that there was no breach of section 16(1) of FOIA.

Right of appeal

47. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.
49. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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