



FREEDOM OF INFORMATION REQUEST



Request Number: FOI-2019-03127

Keyword: Crime

Subject: Information on the disappearance of Lisa Dorrian

Request and Answer:

Your request for information has now been considered. In respect of Section 1(1)(a) of the Act I can confirm that the Police Service of Northern Ireland does hold information to which your request relates. The decision has been taken not to supply the information you have requested and the reasons for this are set out in more detail below. We have also provided you with links to guidance issued by the Information Commissioner's Office which we have followed in responding to your request.

Request

The disappearance of Lisa Dorrian on 28th February 2005.

Information I am seeking is as follows:

Missing person report
Incident reports
Supplemental reports
Daily Activity Logs
Witness or Victim Statements
Property and Evidence Sheets
Interview recordings
Photos that were taken in relation to the case
File notes

Answer

Section 17(1) of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which:

- (a) states that fact,
- (b) specifies the exemption in question and
- (c) states (if not otherwise apparent) why the exemption applies.

The exemptions, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

Section 30(1) Investigations and Proceedings Conducted by Public Authorities - Information held by

a public authority is exempt information if it has been held at any time by the authority for the purposes of:

(a) Any investigation which the public authority has a duty to conduct with a view to it being ascertained (i) whether a person should be charged with an offence.

Section 40(2)(a)(b) by virtue of 40(3)(A)(a) Personal Information – Information constitutes personal data and disclosure would contravene any of the Data Protection principles.

The full text of exemptions can be found at www.legislation.gov.uk and further guidance on how they operate can be located on the Information Commissioners Office website www.ico.org.uk.

Section 40 (2) of the FOIA is an absolute exemption which means there is no requirement on the PSNI to consider whether there is a public interest in disclosure. It is an interface exemption and we must consider whether release of the information would breach the General Data Protection Regulations ('GDPR') or the Data Protection Act 2018 ('DPA'). Third party personal information is contained within records relating to this incident and would constitute 'personal data' under the GDPR (Article 4) and DPA (Part 1 s.3).

Under the Freedom of Information Act, PSNI must consider if information can be released into the public domain. I have therefore considered whether the disclosure of this personal data is subject to the exemption at Section 40(2) of the Freedom of Information Act 2000 by virtue of s40 (3)(A)(a). As this information is 'personal data', PSNI considered whether disclosure would contravene any of the six data protection principles contained within the GDPR or DPA.

The six data protection principles are good information handling standards which PSNI must comply with in relation to how it handles personal information, including deciding whether to disclose it or not. In particular, the first principle requires personal data to be processed 'lawful and fair'. In considering whether it is 'fair' to any individual to release information about them, PSNI considered the likely expectations of those individuals and the nature of the information involved. Individuals must have confidence that their information is treated sensitively and appropriately by PSNI. We consider those individuals would not have any reasonable expectation PSNI would disclose such information about them. We consider it would be extremely unfair to those individuals and therefore a breach of the first principle of data protection legislation. This information is therefore exempt under section 40 (2) of the FOIA as it contravenes data protection legislation to release it and the PSNI has made the decision to withhold that information.

Section 30 is a class based and qualified exemption which means that there is no requirement to evidence the Harm in release but that it is necessary to conduct a Public Interest Test.

Please see the public interest considerations for Section 30.

Public Interest Test

Factors Favouring Release – Section 30

Disclosure would assist in demonstrating that PSNI are conducting thorough investigations. There is much public interest in ensuring that this and any other investigation is undertaken professionally and rigorously and release of the requested information could promote public trust in providing transparency, openness and accountability into how investigations take place.

Releasing the information may better inform the public and encourage others to come forward to report criminal offences if they know a proper investigation will be undertaken. All police investigations will involve the use of public funds and where this is the case there is always a public interest in ensuring that those funds are not used unnecessarily or unwisely.

Factors Favouring Retention – Section 30

Information requested relates to an investigation and while there is likely information already in the public domain, a release of specific information by PSNI could compromise any future investigative opportunities.

If details of the incident were to be released at this time, any future review could be hampered and undermined if new witnesses or new information were identified. Confidence in the Police by the families of those involved could also be severely damaged if our abilities to interview witnesses were to be reduced. Disclosure may affect current or future evidence and negatively impact any potential prosecution, hindering the administration of justice.

It is the NPCC's (National Police Chiefs' Council) approach that information relating to an investigation will rarely be disclosed under the provisions of the Freedom of Information Act. Whilst information may be released if it provides a tangible community benefit, for example to prevent or detect crime or to protect life or property, it is hard to see how the information here will do so.

Decision

Although there is a public interest in the transparency of investigations, the police service has a greater duty of care to all individuals involved in any investigation. On balance the requirement to withhold information relating to any investigations and in conjunction with personal information must take precedence over the important issues of public accountability and transparency as by releasing the information which may affect the outcome of any court proceedings must take precedence.

The release of information under FOI is a release into the public domain and not just to the individual requesting the information. Once information is disclosed by FOI, there is no control or limits as to how the information is shared with other individuals therefore a disclosure under FOI is considered a release to the world in general.

The requested information is held as part of a police investigation and such a file would contain personal information of individuals involved in the police investigation. PSNI must ensure that investigations or future evidence opportunities are not adversely affected by the release of information. Therefore if PSNI were to release the information in question it would lead to a perception that statements given to the police could or would be released to the public at some future date. This perception must inhibit or dissuade some witnesses from giving statements or assistance to the police in future investigations.

As the release of this information which would contravene one of the Data Protection principles, as the lives of individuals are of paramount importance and the PSNI will not divulge any information which could put any individual at risk. Any diminution of public assistance would hamper these investigations and detection of crimes and, in time, lead to a reduction in the public's confidence in the criminal process.

Therefore PSNI are satisfied that in this case the public interest factors favouring retention outweigh those favouring release as the interests in accountability can rarely defeat the interests in a fair investigation and trial.

If you have any queries regarding your request or the decision please do not hesitate to contact me on 028 9070 0164. When contacting the Freedom of Information Team, please quote the reference number listed at the beginning of this letter.

If you are dissatisfied in any way with the handling of your request, you have the right to request a review. You should do this as soon as possible or in any case within two months of the date of issue of this letter. In the event that you require a review to be undertaken, you can do so by writing to the Head of Freedom of Information, PSNI Headquarters, 65 Knock Road, Belfast, BT5 6LE or by

emailing foi@psni.pnn.police.uk.

If following an internal review, carried out by an independent decision maker, you were to remain dissatisfied in any way with the handling of the request you may make a complaint, under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office and ask that they investigate whether the PSNI has complied with the terms of the Freedom of Information Act. You can write to the Information Commissioner at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out, however the Commissioner has the option to investigate the matter at his discretion.

Please be advised that PSNI replies under Freedom of Information may be released into the public domain via our website @ www.psnipolice.uk

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