

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 19 January 2016

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

Decision (including any steps ordered)

1. The complainant requested two reports relating to an investigation into Kincora Boys' Home. The Police Service of Northern Ireland (PSNI) refused the request under sections 30(1)(a)(i), 38(1)(a) and (b), 40(2)(a) and (b) by virtue of 40(3)(a)(i), and 41(1)(a) and (b). The Commissioner's decision is that PSNI was entitled to refuse the request under section 30(1)(a)(i). Therefore no steps are required.

Request and response

2. On 6 August 2014, the complainant requested the following information from PSNI:

"Please provide copies of the Harrison and Flenley reports carried out by the then RUC into Kincora Boys' Home.

I am willing to accept redactions to prevent victims or their immediate family being identified."
3. PSNI wrote to the complainant on 3 September 2014 to advise that it required additional time in order to consider the public interest in respect of the exemptions at section 30 and section 38 of the FOIA. PSNI said that it aimed to provide a response by 22 September 2014.
4. PSNI wrote to the complainant again on 22 September 2014 to advise that it required additional time, and that it hoped to respond by 30 September 2014.
5. PSNI issued a refusal notice on 8 October 2014. This cited the exemptions at sections 30(1)(a), 38(1)(a) and (b), 40(2)(a) and (b) by

virtue of 40(3)(a)(i), and 41(1)(a) and (b). PSNI also said that it could not confirm or deny whether it held any other information relevant to the request under sections 23(5) and 24(2) of the FOIA.

6. Following an internal review PSNI wrote to the complainant on 29 October 2014. The internal review upheld the original decision to refuse the request.

Scope of the case

7. The complainant contacted the Commissioner on 7 November 2014 to complain about the way his request for information had been handled. The complainant was of the view that PSNI ought to have provided him with the requested information.
8. During the course of the Commissioner's investigation PSNI withdrew reliance on sections 23(5) and 24(2) in respect of the duty to confirm or deny that information was held.

Reasons for decision

Section 30(1)(a)(i): investigations

9. Section 30(1)(a)(i) provides an exemption for 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. The PSNI clearly has a duty to carry out investigations which fall under the exemption at section 30(1)(a)(i).
10. In order for the exemption at section 30(1)(a)(i) to be engaged, the information in question must have been held for the purposes of an investigation. The Commissioner considers that "for the purposes of an investigation" may be interpreted broadly in terms of the information itself, although it must be held for the purposes of a particular investigation, rather than investigations in general. The phrase 'at any time' means the investigation the information relates to can be ongoing, closed or abandoned, it does not need to be live.
11. Section 30(1)(a)(i) is a class-based exemption. This means that it is not necessary to identify some prejudice that may arise as a result of disclosure in order to engage the exemption. All that is required is for the information to fall under the class in question, ie the requested information must be held for the purposes of a particular investigation.

12. The requested information in this case comprises two reports that were produced in connection with an investigation into allegations of child sexual abuse at Kincora Boys' Hostel. The investigation itself was undertaken by the Royal Ulster Constabulary (RUC), which became the PSNI in 2001. The reports were written by Detective Superintendent Gordon Harrison and Superintendent Richard Flenley, who assisted Sir George Terry in his review of the original RUC investigation into Kincora and other homes. PSNI has confirmed that D/Superintendent Harrison and Superintendent Flenley re-examined previous investigations which the RUC had carried out and the investigative tactics, techniques, methodology and conclusions were critiqued.
13. In light of the above the Commissioner is satisfied that the requested information in this case is held for the purposes of an investigation that the PSNI (and before it the RUC) had a duty to conduct. Accordingly the exemption at section 30(1)(a)(i) of the FOIA is engaged. As the exemption is qualified the Commissioner has gone on to consider the public interest.

Public interest arguments in favour of disclosing the requested information

14. The PSNI recognised that there is a legitimate public interest in assuring the public that police did carry out investigations appropriately and thoroughly into the allegations of sexual abuse at Kincora and other homes. Disclosure of the requested information would help inform the public as to how the investigations were conducted. Disclosure would therefore support the general principles of transparency and accountability.

Public interest arguments in favour of maintaining the exemption

15. The PSNI provided the Commissioner with a number of detailed arguments in favour of maintaining the exemption. The Commissioner must be cautious as to the level of detail he can include in this decision notice in order to avoid the possibility of disclosing exempt information.
16. PSNI argued that disclosure of the requested information would prejudice the work of the Historical Institutional Abuse Inquiry.¹ The Inquiry was established in 2012 to examine if there were systemic failings by institutions or the state in their duties towards those children in their care between the years of 1922-1995. Kincora Boys' Home is

¹ <http://www.hiainquiry.org/>

one of the institutions under examination by the Inquiry, which is expected to publish its findings in 2017. PSNI has confirmed that it has provided relevant police material to the Inquiry.

17. PSNI also provided arguments in respect of the specific content of the two reports. From an investigative perspective, D/Superintendent Harrison and Superintendent Flenley re-examined previous investigations which the RUC had carried out and the investigative tactics, techniques, methodology and conclusions were critiqued. PSNI argued that disclosure of this information would reveal details of police investigative techniques, which could assist offenders in attempting to evade detection and prosecution.
18. However, the complainant maintained that a redacted version of the report could be disclosed without causing any prejudice. The complainant advised the Commissioner that he believed the reports might be critical of the RUC, and that PSNI was therefore unwilling to disclose them. The Commissioner must avoid disclosing any of the content of the requested information, but he can say that he has found no evidence to suggest that PSNI is refusing to disclose information in order to protect its predecessor body.
19. PSNI also stated that both reports contain sensitive personal data including information relating to victims and witnesses. Although the complainant suggested that any information identifying individuals could be removed, PSNI was concerned that disclosure of redacted information would still cause substantial distress to individuals. PSNI pointed out that some individuals have come forward publicly, but many have not chosen to do so, and may not have told their families about their experiences, or indeed the fact that they may have provided information to PSNI about them.
20. Similarly PSNI argued that there was a strong public interest in encouraging the public to engage with the Inquiry, and that disclosure of relevant information may result in individuals being less willing to co-operate. The PSNI considered that there was a more compelling public interest in encouraging, rather than discouraging, public engagement and confidence in the Inquiry's work.
21. The complainant did not accept PSNI's concerns about identification of individuals or causing unnecessary anxiety to people who gave confidential information. The complainant pointed out that he had accepted that personal details and identities would and should be withheld. Therefore, in the complainant's opinion, the PSNI statement that many victims "are only willing to assist police with any investigation if their identity is kept confidential" was not relevant. The complainant also pointed out that details of many of the allegations relating to

Kincora Boys Home had already been the subject of intense and extensive media reporting.

22. The Commissioner acknowledges that the complainant was willing to accept a redacted version of the requested information in order to avoid identifying individuals. PSNI considered whether redaction, as suggested by the complainant, was possible and ultimately concluded that it was not. Having inspected the requested information the Commissioner accepts PSNI's position.

Balance of the public interest arguments

23. The Commissioner recognises that the public has a legitimate interest in finding out about how the police investigated allegations of child sexual abuse. There is a public interest in disclosure, given the seriousness of the allegations involved and the continuing speculation and concern about what took place. However the Commissioner must distinguish between what interests the public and what is objectively in the best interests of the public.
24. The Commissioner has consistently found that there will be a strong and significant public interest in protecting police investigations. The Commissioner extends this to include the public interest in protecting the ability of the Inquiry to fulfil its important work. In the Commissioner's opinion the public interest would not be served by disclosure of information that would make it more difficult for the Inquiry to command the public confidence it needs to carry out its work effectively.
25. The Commissioner notes the arguments made by the complainant with regard to the possible content of the reports, and PSNI's reasons for not wishing to disclose them into the public domain. The complainant has also suggested that the Inquiry may not have access to, or report on, the requested information. Therefore the complainant does not accept the matter will be dealt with satisfactorily by the Inquiry.
26. The Commissioner respectfully disagrees with the complainant. Having inspected the requested information the Commissioner is satisfied that its disclosure would harm the work of the Inquiry. Although the Commissioner acknowledges the importance of the public being properly informed about important issues of the day, he does not accept that there was an overriding public interest in disclosure of the requested information at this time (ie the time of the request). The Commissioner understands that the Inquiry will publish its findings in due course, and the Commissioner is of the view that this will include disclosure of relevant information sufficient to meet the legitimate public interest in understanding what happened.

27. For the reasons set out above the Commissioner considers that the public interest in maintaining the exemption at section 30(1)(a)(i) outweighs the public interest in disclosing the requested information. Since the Commissioner is satisfied that all the requested information has been properly withheld under section 30(1)(a)(i) he is not required to make a decision in respect of the other exemptions cited by PSNI.

Procedural requirements

Section 17: refusal notice

28. Section 17(1) of the FOIA states that:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

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

29. Section 17(2) of the FOIA allows a public authority to extend the time limit where it is still considering the public interest. However, public authorities are still obliged to issue a refusal notice within 20 working days explaining why any exemptions cited are actually engaged.
30. In this case the request was made on 6 August 2014. PSNI's correspondence of 3 September 2014 cited the exemptions at sections 30 and 38 of the FOIA. However PSNI did not explain why either exemption applied. PSNI's further correspondence of 8 October 2014 clarified PSNI's reliance on sections 30(1)(a) and 38(1)(a)(b), as well as citing additional exemptions.
31. The Commissioner finds that the PSNI failed to comply with section 17(1)(a) of the FOIA in that its refusal notice did not cite exemptions later relied on, and section 17(1)(c) in that it did not explain why the exemptions cited were engaged. However, the Commissioner notes that these breaches were rectified by PSNI's correspondence of 8 October 2014, and he would expect PSNI to maintain this improvement in future refusal notices.

Right of appeal

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 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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 Information 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

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