

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 30 August 2017

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

Decision (including any steps ordered)

1. The complainant requested a report produced for the then Royal Ulster Constabulary (the RUC) in 1980. The Police Service of Northern Ireland (PSNI) confirmed that it held the requested information but stated that it was exempt from disclosure on the basis of section 23(1) of the FOIA. The Commissioner's decision is that PSNI was entitled to rely on section 23(1) to refuse the request. The Commissioner also finds that PSNI failed to comply with the statutory time for compliance under section 10(1) and section 17(1). The Commissioner does not require PSNI to take any steps as a result of this decision.p

Request and response

2. On 18 January 2016 the complainant requested the following information from PSNI:

"1. A copy of the contents page, or similar document, of the Walker Report;

A copy of the Walker Report, redacting any personal information of individuals in accordance with the framework in the Data Protection or Freedom of Information Acts."
3. PSNI responded to the complainant on 2 March 2016. It cited the exemption at section 23(1) of the FOIA as its refusal to disclose the requested information.
4. The complainant requested an internal review on 3 March 2016, and PSNI issued the outcome of that review on 10 May 2016. Following the internal review PSNI upheld its decision to refuse the request.

Scope of the case

5. The complainant contacted the Commissioner on 4 August 2016 to complain about the way the request for information had been handled. The complainant asked the Commissioner to consider whether or not PSNI was entitled to refuse the request on the basis of the exemption at section 23(1) of the FOIA.

Reasons for decision

Section 23(1): information provided by or relating to security bodies

6. Section 23(1) provides that:

“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”

7. In order to rely on the exemption, a public authority must be able to demonstrate that the relevant information was directly or indirectly supplied by, or relates to, any of the bodies listed at section 23(3) of the FOIA. This subsection lists bodies dealing with security matters, such as the Security Service, the Secret Intelligence Service and Government Communications Headquarters.
8. The exemption at section 23(1) is class-based, which means that the public authority is only required to demonstrate that the information falls within the scope of the exemption. There is no need for the public authority to consider the consequences of disclosure. The exemption is also absolute, which means that there is no need to consider the public interest.
9. In its internal review response dated 10 May 2016, PSNI explained to the complainant that the requested information, ie the report, contained information relating to Special Branch. Special Branch is not one of the bodies listed in section 23(3), but the Commissioner has in previous cases accepted that the exemption provided by section 23 will be engaged in respect of information relating to Special Branch activities.
10. The Commissioner adopts the approach taken by the First-Tier Tribunal (Information Rights), which has considered the application of section 23

in relation to a number of cases involving the Metropolitan Police.¹ In one case the Tribunal approved a consent order to dispose of the appeal on the basis of the following argument:

"... special branches work closely with security bodies and routinely share information with them such that, on the balance of probabilities, any information relating to the work of Special Branch would relate to, or have been supplied by, a section 23(3) body."

11. Consequently the Commissioner has accepted that information relating to Special Branch is likely to relate to a section 23(3) body, even if it was not directly or indirectly supplied by such a body. In one decision notice involving PSNI the Commissioner expressed the opinion that

*"The Commissioner is of the view that there will be very few instances where information relating to Special Branch does not relate to a section 23(3) body, even if it was not directly or indirectly supplied by them, as the nature of the work of this type of police unit involves very close working with security bodies and regular sharing of information and intelligence."*²

12. The complainant has argued that in the decision notice cited above the Commissioner took too broad an interpretation of "relates to" with regard to Special Branch. The complainant expressed the view that:

"The fact that MI5 assumed the functions previously exercised by RUC Special Branch cannot elevate this organisation to the status of a security 23(3) security body."

The Commissioner respectfully disagrees. The decision notice in question was appealed to the Information Tribunal, who upheld the Commissioner's decision and found that information relating to Special Branch would be caught by the exemption at section 23(1).

13. The Commissioner has inspected the requested information in this case. She is unable to describe the information in detail since to do so would defeat the purpose of the exemption at section 23(1). However the Commissioner can state that she is satisfied that the information does in fact relate to the work of RUC Special Branch. Consequently the

¹ Appeal nos EA/2010/0008; EA/2010/0117

² For example decision notice FS50265155, issued on 31 March 2011

Commissioner accepts that the information falls within the scope of the exemption at section 23(1) and PSNI was entitled to refuse the request on that basis.

Procedural matters

Section 1: general right of access

Section 10(1): time for compliance

Section 17: refusal notice

14. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
15. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request. Section 17(1) states that if a public authority wishes to refuse any part of a request it must issue a refusal notice within the 20 working day time for compliance.
16. In this case the request was submitted on 18 January 2016. PSNI issued its response, confirming that the information was held but refusing to disclose the information on 2 March 2016, 32 working days after the request was received. The Commissioner therefore finds that PSNI failed to comply with section 10(1) in respect of section 1(1)(a), and section 17(1) of the FOIA.

Right of appeal

17. 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

18. 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.
19. 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

Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF