



FREEDOM OF INFORMATION REQUEST

Please note the text of this request has been reproduced exactly as received.

FOI Reference number: FOI 05/2023

Date: 3 July 2023

Request:

Can I request the following under Fol?

A copy of the PSNI's 'lessons learned' report provided to the Policing Board following Operation Yurta into the arrest of two journalists over the Loughinisland massacre. The report is mentioned in the Board's annual human rights report, published today, January 18.

Answer:

The Policing Board (the Board) can confirm that it holds information falling within the description specified in your request. However it is being withheld as the exemption at Section 41 (Information provided in confidence) of the Freedom of Information Act (FOIA) is engaged.

Section 41 sets out an exemption from the right to know where the information was provided to the public authority in confidence.

Specifically, Section 41(1) states:

(1) Information is exempt information if —

(a) it was obtained by the public authority from any other person (including another public authority), and,

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

Section 41 (1) (a) is engaged as the information sought was provided to the Board in confidence by the Police Service of Northern Ireland (PSNI). This is acknowledged in the Board's Human Rights Annual Report 2021/ 22 –

'The Human Rights Advisor has been given a copy, in confidence, of the report ...'.

Section 41 (1) (b) is engaged as disclosure of the information would constitute an actionable breach of confidence and the providers (PSNI) have the necessary legal standing to take an action.

The report was commissioned by PSNI from Senior Counsel to which they maintain the exemption at Section 42(1) Legal Professional Privilege of the FOIA. The Board is satisfied that this exemption is engaged. As the information is not common knowledge, is not in the public domain and is, therefore inaccessible, the information has, in the opinion of the Board, the necessary quality of confidence about it.

The Board is satisfied that when providing this information, the PSNI did so on the understanding that it would not be disclosed. This view is supported by the fact, as referenced above, that a copy was given to the Human Rights Advisor in confidence.

The Board has gone on to consider if there is an overriding public interest in disclosing the information.

There has been public and media commentary on Operation Yurta and provision of this information could assist the general public interest in ensuring that such activities by the PSNI remain transparent, accountable and open to scrutiny.

In considering the public interest in favour of maintaining the confidence, the Board has paid particular regard to the wider public interest in preserving the principle of confidentiality, and the Board's statutory duty to monitor the performance of PSNI compliance with the Human Rights Act 1998 as per the (Police (Northern Ireland) Act, s.3(3) (b)(ii)). As such the Board's Human Rights Annual Report 2021/22 has provided commentary and recommendations in relation to this subject matter.

Any disclosure of confidential information will to some degree, undermine the principle of confidentiality and the relationship of trust between the PSNI and the Board. PSNI may be discouraged from confiding in the Board if they do not have a degree of certainty that this trust will be respected. If the Board was to breach this trust then the flow of information could diminish, making it more difficult for Board, and its Human Rights Advisor, to carry out its functions effectively.

Having considered these competing public interest factors the Board considers that there is no overriding public interest in disclosing the information.

If you have queries about this request or the decision please contact the Board quoting the reference number above. If you are unhappy with the service you have received and wish to make a complaint or request a review you should write to the Board's Chief Executive at the following address:

Northern Ireland Policing Board
James House
Block D
2 – 4 Cromac Avenue
The Gasworks
Belfast
BT7 2JA

Email: foi@nipolicingboard.org.uk

You should contact the Board within 40 working days of this response.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner. Generally, the Information Commissioner's Office cannot investigate or make a decision on a case unless you have exhausted the complaints procedure provided by the Board. The Information Commissioner can be contacted at: -

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Telephone: - 0303 1231114
Email: - ni@ico.org.uk

Please be advised that Policing Board replies under Freedom of Information may be released into the public domain via our website @ www.nipolicingboard.org.uk.

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