



FREEDOM OF INFORMATION REQUEST

FOI Reference number: FOI 12/2019

Date: 18 July 2019

Request:

Could you provide me with the following information please?

- 1. On what date was the NI Policing Board first made aware of cost implications, regarding "Holiday Pay" grievances by PSNI staff? A full copy of that briefing?**
- 2. On the first date with regards to the above what was the estimated original cost to the PSNI to settle the case or if they lost it in court?**
- 3. What was or is the NI Policing Board legal advice regarding the above case?**

Answer:

- 1. The Policing Board's Finance Branch was first made aware of cost implications regarding "Holiday Pay" at a meeting involving Officials from the PSNI and Department of Justice on 21 September 2016.**
- 2. The information you requested in relation to the estimated original cost to the PSNI to settle the case or if they lost it in court is exempt from release under Section 42(1) (Legal Professional Privilege - Litigation Privilege) of the Freedom of Information Act.**

Section 42 of the Act is a qualified exemption and as such has been subject to a 'Public Interest Test'; a copy of which I have attached. In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- 3. The information you requested in relation to the Policing Board's legal advice is exempt from release under Section 42(2) (Legal Professional Privilege - Advice Privilege) of the Freedom of Information Act.**

Section 42 of the Act is a qualified exemption and as such has been subject to a 'Public Interest Test'; as referenced above. In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

If you have queries about this request or the decisions 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:

387912

Northern Ireland Policing Board
Waterside Tower
31 Clarendon Road
Clarendon Dock
Belfast BT1 3BG

E-mail: foi@nipolicingboard.org.uk

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.

FOI 12/2019 – Section 42 Exemption “Litigation & Advice Privilege”

Public Interest Test

The above exemption is a qualified exemption, and a Public Interest Test must be carried out to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Information under consideration for release

- A copy of counsels’ confidential preliminary advice following the judgement of the Industrial Tribunal (Agnew and others V PSNI and NIPB Working Time Directive / Holiday Pay Claims) handed down on 2 November 2018.
- The Policing Board’s legal advice regarding the Agnew and others V PSNI and NIPB Working Time Directive / Holiday Pay Claims.

Arguments in favour of disclosure of the requested information

1. Disclosure of the requested information would be in line with a public authority being open and transparent in how it transacts its business, and would help in promoting accountability.
2. Disclosure would also be within the overall spirit of the Freedom of Information legislation in asking public bodies to be open and transparent.

Arguments in favour of engaging the exemption and withholding the requested information

1. The case is subject to ongoing legal proceedings. The Chief Constable has taken the decision to appeal the ruling by the Court of Appeal to uphold the 2018 Tribunal finding to the Supreme Court.
2. This litigation – subject to the decision of the Supreme Court, may enter a remedies phase, which is likely to involve hearings to the Tribunal to determine quantum in individual cases and release of this information may prejudice the PSNI and NIPB position.

3. The release of this information is of interest to claimants. However this is not the same as being of interest to the public at large which is what releasing this information under the FOIA is intended to be.
4. Maintaining legal privilege safeguards openness in all communications between the Board and its legal advisors to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice.

Result

Taking into account all of the deliberations above, it is felt that the public interest in engaging the exemption to withhold the information outweighs the arguments towards disclosure.

As a result the information should not be provided.