

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 31 March 2011**

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

### Summary

---

The complainant requested copies of reports relating to the Stevens Enquiries (Stevens II and Stevens III). The PSNI informed the complainant that it did not hold Stevens II as such a report did not exist, but did hold a copy of Stevens III. The PSNI refused to disclose Stevens III citing sections: 23 (information supplied by or relating to security bodies), 24 (national security), 30 (investigations and proceedings conducted by public authorities), 31 (law enforcement), 38 (health and safety) and section 40 (personal information). The Commissioner finds that the PSNI does not hold Stevens II and that section 23(1) was engaged in respect of Stevens III. The Commissioner requires no further steps to be taken.

### The Commissioner's Role

---

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act). This Notice sets out his decision.

### Background

---

2. The Stevens Enquiries were carried out by Sir John Stevens (now Lord Stevens), former Commissioner of the Metropolitan Police Service. In 1999 Lord Stevens was asked by the Royal Ulster Constabulary (the RUC) to re-investigate the murder of Patrick Finucane (a prominent solicitor, murdered in 1989) and allegations of collusion between the security forces and loyalist paramilitaries in Northern Ireland. Lord

Stevens carried out three Enquiries: Stevens I, II and III. These Enquiries also covered the re-investigation of the murder of Brian Adam Lambert (a student, murdered in 1987) and examinations of certain issues surrounding the handling of agents. The three Enquiries were described by Lord Stevens as the largest investigation undertaken in the United Kingdom.

3. As part of the Enquiry Lord Stevens' team examined how the RUC investigated the two murders, which involved consideration of the role of Special Branch. Special Branch was the unit of the RUC responsible for national security matters in Northern Ireland until 2007, when it became the responsibility of MI5 in line with the rest of the UK. The Stevens Enquiry team also investigated issues arising from the work of the Force Research Unit (FRU). This was a military unit operating in Northern Ireland, which handled agents and counter terrorist matters. FRU is now known as the Joint Services Group (JSG).
4. The RUC became the Police Service of Northern Ireland (the PSNI) in 2001. In 2003 Lord Stevens published a report comprising an overview and recommendations resulting from Stevens III<sup>1</sup>. This report covered the collection and use of intelligence, the use of agents, standards of investigation and the prevention of collusion. The Stevens Enquiries were considered highly sensitive because they resulted in findings that collusion had occurred, and that the two murders could have been prevented. Lord Stevens also expressed the view that he had been obstructed, and that "This obstruction was cultural in its nature and widespread within parts of the Army and the RUC".
5. The Cory Inquiry Report into collusion and the deaths of Patrick Finucane and others, published on 1 April 2004 stated: "At the time of the Finucane murder, the Security Service discharged a number of important functions within the Northern Ireland intelligence network. It provided overall direction for and coordinated intelligence initiatives carried out by other agencies, such as FRU and RUC SB (Special Branch). The Security Service did not play an active role in the day-to-day operations of these agencies, though it did act in a supervisory capacity. In any event it is clear that it was aware of all FRU activities and had access to all FRU documentation."

---

1

[http://news.bbc.co.uk/1/shared/spl/hi/northern\\_ireland/03/stephens\\_inquiry/pdf/stephens\\_inquiry.pdf](http://news.bbc.co.uk/1/shared/spl/hi/northern_ireland/03/stephens_inquiry/pdf/stephens_inquiry.pdf)

## The Request

---

6. On 14 November 2008 the complainant requested the following information from the PSNI:

*"Under the Freedom of Information Act I would like to request a copy of the Stevens II and Stevens III reports".*

7. On 8 January 2009 the PSNI informed the complainant that it held the information but was refusing to disclose it citing sections 23, 24, 30, 31 and 38 of the Act. The PSNI advised that some information was in the public domain, and available via a number of websites. The PSNI cited section 21<sup>2</sup> in respect of this information, although it did not specify what this information was.
8. On 23 January 2009 the complainant requested an internal review of the decision. The complainant provided detailed arguments as to why he considered the information should be disclosed.
9. On 1 April 2009 the PSNI informed the complainant that it had completed its internal review. At this stage the PSNI clarified to the complainant that there was in fact no Stevens II report as this was a continuation of Stevens I. The PSNI explained to the complainant that the Stevens Enquiries had a *"core theme running through all"* and could be *"treated as one entity"*. In respect of the request for a copy of Stevens III the PSNI confirmed that this information was held but that it was exempt under sections 23(3), 24, 30(1) and (2) and 38. The PSNI advised that it was no longer seeking to rely on section 31, but did now consider some information exempt under section 40(2).
10. The PSNI also advised the complainant that some information was in the public domain, and provided links to a number of websites, including media, academic institutions and interest groups.

---

<sup>2</sup> The PSNI provided the website [www.madden-finucane.com/patfinucane/archive/pat\\_finucane/2003-04-17\\_stevens\\_report.pdf](http://www.madden-finucane.com/patfinucane/archive/pat_finucane/2003-04-17_stevens_report.pdf). The information contained here was the overview and recommendations report published by the Stevens Enquiry.

## The Investigation

---

### Scope of the case

11. On 17 August 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant provided the Commissioner with a detailed submission as to why he felt the public interest favoured disclosure of the requested information. The complainant drew the Commissioner's attention to Lord Stevens' conclusions relating to collusion, including his view that he had been obstructed in his investigation. The complainant also advised that he was content to exclude any personal information whose disclosure could put any individual at risk.
12. Unfortunately, owing to the high volume of complaints received the Commissioner was unable to commence his investigation until July 2010. On 14 July 2010 the complainant informed the Commissioner that he now wished to narrow the scope of his complaint as he believed that the request to cover all the information gathered by the Stevens team would be impractical. The complainant advised that he only wished the Commissioner to consider the following information:

*"..... copies of the full and final reports (or as near as is practical full and final reports) of the Stevens II and III inquiries".*

### Chronology

13. Between July and November 2010 the Commissioner and the PSNI corresponded on a number of occasions in relation to this complaint. The PSNI provided the Commissioner with information regarding its handling of the case, and the application of the exemptions cited.
14. The Commissioner met with the PSNI during the course of his investigation and in the course of those discussions he received sufficient explanations and assurances to satisfy him that there was no Stevens II report.

### Analysis

---

#### Substantive procedural matters

##### Section 1

15. As stated in the chronology the Commissioner is satisfied that there is no Stevens II report. During his meeting with the PSNI explanations were provided setting out why no Stevens II report existed or indeed

ever had existed. The Commissioner tested these explanations thoroughly and was satisfied with the reasoning and the assurances provided.

## Exemptions

### **Section 23 – Information supplied by or relating to bodies dealing with security matters**

16. The Commissioner notes that the PSNI did confirm that it held information relevant to the request, but advised that it was all exempt from disclosure under section 23(1) of the Act. Therefore the Commissioner has considered this exemption first. If the Commissioner finds that section 23 does not apply to any aspect or element, he will go on to consider the additional exemptions claimed.
17. Under section 23(1), information held by a public authority is exempt from disclosure if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3). The full text of section 23 is set out in the legal annex at the end of this Notice. The exemption is class-based, which means that there is no requirement to consider the effect of disclosure. It is also an absolute exemption, which means that the public authority is not required to consider the public interest test.
18. In considering the application of this exemption, the Commissioner has examined whether the requested information could be considered as having been supplied by, or relating to a security body listed in section 23(3). This subsection lists bodies dealing with security matters, such as, the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.
19. The Commissioner has received detailed submissions from the PSNI on this issue, but is mindful that he must ensure that his Decision Notice does not itself disclose exempt information. As a consequence, it is not possible for the Commissioner to reproduce or summarise the arguments put forward by the PSNI.
20. The Commissioner is of the view that “relates to” can be interpreted broadly, and will not be limited in scope to information “about” a security body. The Commissioner is mindful of the PSNI’s view that the Stevens Enquiries had a “core theme”, and that they could be “treated as one entity”. Without going into detail about the evidence provided by the PSNI, the Commissioner can say that he is satisfied that the withheld information can be described as broadly relating to RUC Special Branch.

21. In considering whether the exemption provided by section 23 applies to information relating to Special Branch activities, the Commissioner is assisted by other cases dealt with by the First-Tier Tribunal (Information Rights). The Tribunal has considered this issue in relation to a number of cases involving the Metropolitan Police<sup>3</sup>. The evidence presented in these cases, some of which was given in closed session (with press, public and non-security cleared personnel excluded) has been taken into account by the Commissioner.
22. The Commissioner is of the view that there will be very few instances where information relating to Special Branch does not also 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.
23. In assessing the PSNI's application of 23(1) the Commissioner is also assisted by the Tribunal's comments in *The Commissioner of Police of the Metropolis v Information Commissioner*<sup>4</sup>. The argument was advanced that it was highly likely that any information held by that public authority that fell within the scope of the request would have been supplied to it by a section 23(3) body. In that case a counterargument was made that only certainty as to the source of the information would be sufficient but the Tribunal rejected this argument:

*"[The evidence provided] clearly establishes the **probability** that the requested information, if held, came through a section 23 body."* (paragraph 20)
24. The Commissioner accepts the Tribunal's view that the balance of probabilities is the correct test to apply in such cases. Essentially the evidence must suggest to a sufficient degree of likelihood (rather than certainty) that any information held that falls within the scope of the request would relate to, or have been supplied by, a body specified in section 23(3).
25. Again the Commissioner is mindful that he can not go into detail, but is satisfied that the PSNI has provided sufficient information in order for him to make an informed decision. In this case, the Commissioner is satisfied that section 23(3) has been correctly applied by the PSNI. Section 2(3) provides that section 23 confers absolute exemption, so no public interest test applies.

---

<sup>3</sup> Appeal nos EA/2010/0008; ES/2010/0117

<sup>4</sup> Appeal no EA/2010/0008

## **Other exemptions claimed**

26. As the Commissioner has found that section 23(3) is engaged, it is not necessary to go on to consider the other exemptions claimed.

## **Procedural Requirements**

### **Section 10 - time for compliance**

27. As PSNI didn't confirm that the information was held within 20 working days it breached section 10(1) of the Act.

### **Section 17 – refusal notice**

28. Where a public authority refuses a request for information it is required under section 17 of the Act to provide the applicant with a 'refusal notice' within the time for complying with section 1(1), which is 20 working days.
29. The request in this case was made on 14 November 2008. The PSNI responded on 8 January 2009, more than 40 days after the request was received. The Commissioner finds that the PSNI breached section 17(1) of the Act in failing to issue a refusal notice within the statutory time limit.

## **The Decision**

---

30. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The public authority was correct to refuse the request in reliance on the exemption at section 23(1) of the Act.

31. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act:

- The public authority breached section 17(1) of the Act in failing to provide a refusal notice within the statutory time limit.
- The public authority breached section 10(1) of the Act for failing to confirm that the information was held within 20 working days.

## **Steps Required**

---

32. The Commissioner requires no steps to be taken.

## Right of Appeal

---

33. 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  
Arnhem House  
31, Waterloo Way  
LEICESTER  
LE1 8DJ

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 31<sup>st</sup> day of March 2011**

**Signed .....**

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



## Legal Annex

---

### General Right of Access

#### **Section 1(1) provides that -**

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

### Time for Compliance

#### **Section 10(1) provides that –**

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

### Refusal of Request

#### **Section 17(1) provides 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."

## **Section 23 - Information supplied by, or relating to, bodies dealing with security matters**

### **Section 23 provides that –**

(1) 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).

(2) A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.

(3) The bodies referred to in subsections (1) and (2) are-

(a) the Security Service,

(b) the Secret Intelligence Service,

(c) the Government Communications Headquarters,

(d) the special forces,

(e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,

(f) the Tribunal established under section 7 of the Interception of Communications Act 1985,

(g) the Tribunal established under section 5 of the Security Service Act 1989,

(h) the Tribunal established under section 9 of the Intelligence Services Act 1994,

(i) the Security Vetting Appeals Panel,

(j) the Security Commission,

(k) the National Criminal Intelligence Service, and

(l) the Service Authority for the National Criminal Intelligence Service."