

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 March 2024

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested a copy of a weapon's destruction order from the Police Service of Northern Ireland ("PSNI"). PSNI refused to disclose the requested document, citing section 30(1) (Investigations and proceedings) of FOIA.
2. The Commissioner's decision is that section 30(1) is properly engaged and that the public interest favours maintaining the exemption. The Commissioner does not require further steps.

#### **Request and response**

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3. On 7 February 2023, the complainant wrote to PSNI and requested the following information:  

"Under the Freedom of Information Act 2000...I would ask if you hold a copy of the destruction order issued by the RUC on [date redacted], for a 9mm short 'Savage' semi-automatic pistol. This weapon was used in the murder of [name redacted], the father of [name redacted], on [date redacted]. If this is the case, could you please communicate a copy of this information to me by no later than the twentieth working day following the date of receipt of the present request".

4. PSNI would initially neither confirm nor deny holding the destruction order and a complaint was made to the Commissioner. This complaint resulted in a Decision Notice, IC-238248-L6Z2<sup>1</sup>, which required PSNI to confirm or deny holding the information and to either disclose it, if held, or issue a valid refusal notice.
5. On 18 September 2023, in compliance with that Decision Notice, PSNI responded. It confirmed holding the destruction order but refused to disclose it, citing section 30(1)(a)(i) of FOIA.
6. The complainant requested an internal review on 20 September 2023.
7. PSNI provided an internal review on 28 September 2023, in which it maintained its position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 10 October 2023 to complain about the way his request for information had been handled. He disagreed with the citing of the exemption.
9. The Commissioner will consider the application of section 30(1)(a)(i) to the request below. He has viewed the withheld information.
10. 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 FOIA. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

### **Reasons for decision**

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#### **Section 30 – Investigations and proceedings**

11. Section 30(1)(a)(i) of FOIA states:
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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4026257/ic-238248-l6z2.pdf>

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of –

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –

(i) whether a person should be charged with an offence".

12. The phrase "at any time" means that information can be exempt under section 30(1)(a)(i) of FOIA if it relates to a specific, ongoing, closed or abandoned investigation. It is not necessary for the investigation to lead to someone being charged with, or being convicted of, an offence.
13. The exemption is a class-based exemption, which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. Information must simply have been held for a specific or particular investigation.
14. The withheld information in this case comprises a standard form, which is an "Order for disposal of firearms / ammunition".
15. The complainant has argued that the exemption is not engaged. He said:
  - Force Order 178/73 (a PSNI document which had previously been disclosed to him) stated that a disposal order will be issued "when firearms, etc, are no longer required for court or other purposes". He was therefore of the opinion that: "it seems somewhat contradictory to suggest that the section 30(1)(a) exemption applies in that the document is being held or has been held for the purpose of investigation, when the disposal order is by definition a document authorising the destruction of material once held for the purpose of investigation and is no longer required. The document did not itself contribute in any way to the investigation".
  - In its refusal notice, PSNI had stated that release of the destruction order would "potentially prejudice / hamper and could adversely affect any future evidence gathering opportunities" but it was not clear how this effect would result from its release.
  - The murder took place in 1981 and the original investigation was completed soon after that, with two convictions in 1985. He therefore considered that it was no longer being actively investigated.
  - Information about the investigation was, to a considerably greater degree than is usual for murder cases, already in the public domain by way of a book and TV programme.

- The information is not 'sensitive', as it is not evidence from the murder investigation, but rather a document authorising the disposal of evidence from the investigation.
  - An arrest in 1985 took place in the same week that the destruction order was issued; he believed that this raised grave suspicions about the conduct of the police investigation.
16. As a police force, PSNI has a duty to investigate whether a criminal offence has been committed by virtue of its core function of law enforcement. The Commissioner is satisfied that it has the duty to conduct investigations of the type described in section 30(1)(a)(i) of FOIA. The information that PSNI holds which falls in scope of this request is in its possession by virtue of that core policing duty.
17. PSNI said to the complainant: "Whilst the PSNI recognise time has passed in relation to the incident to which your request relates, the prospect of a future investigation or pursuing evidential opportunity is not extinct and to release the information at this time into the public domain via the FOIA 2000 could compromise and undermine any future review or investigation into their death".
18. PSNI confirmed to the Commissioner that: "The disposal order contains details relating to the investigation of this murder". It also provided a further confidential submission to the Commissioner, which he is unable to reproduce here.
19. Having considered both positions, the Commissioner is satisfied that the exemption provided by section 30(1)(a)(i) of FOIA is engaged as the requested document relates to a specific criminal investigation.

### **The public interest test**

20. Section 30 is a qualified exemption and is subject to the public interest test at section 2 of FOIA. The Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

21. In accordance with his guidance<sup>2</sup>, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
22. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the disclosure of the requested information could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively, and in turn, increase the risk of harm to members of the public from offenders.

### **Public interest arguments in favour of disclosure**

23. The complaint's views are listed above.

24. PSNI has argued:

“There is a strong public interest in ensuring that this and any other investigation is or has been undertaken professionally and rigorously by police. Disclosure of the requested information could promote public trust in providing transparency and demonstrating openness and accountability into how investigations take place. Releasing the information may better inform the public and encourage others to come forward with evidence that could assist in the detection and apprehension of an offender/s if they know a proper investigation will be undertaken. All police investigations involve the use of public funds and this information could allow the public to make informed decisions about police procedures and the money spent in this business area”.

25. The Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance, and this may involve examining actions and decisions which have been taken in relation to particular cases.

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

## **Public interest arguments in favour of maintaining the exemption**

26. PSNI has argued:

“Information gathered as part of the investigation should be protected should any further evidence come to light. Release of this requested information could prejudice any future investigation thus hindering the course of justice. There are examples in recent times of historical investigations being re-opened when police receive new leads/evidence. Any investigations may be prejudiced by premature release of information resulting in loss of evidence or alerting a suspect, therefore there is a strong public interest in protecting the ability of PSNI to carry out investigations including those legacy cases without fear of premature disclosure of information. Whilst there may be some information already in the public domain the PSNI would not wish to provide any further detail, as they have a duty to protect the integrity of investigative information.

It would therefore not be in the public interest to release information which would in turn impact on police resources and lead to more crime being committed, placing individuals at risk and an investigation or the outcome of subsequent proceedings could be compromised”.

### **Public interest balancing test**

27. When balancing the opposing public interests in a case, the Commissioner will decide whether it serves the public interest better to disclose the requested information, or to withhold it because of the interests served by the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.
28. The Commissioner acknowledges the complainant’s personal interest in disclosure of the information requested. However, it is important to understand that disclosure under FOIA is to the world at large, and not just a private communication between the public authority and the applicant. Therefore, whilst the Commissioner understands the complainant has personal reasons for wanting the withheld information, he must primarily consider wider public interest issues.
29. The Commissioner notes that the complainant also believes that there may be something within the withheld document which could demonstrate that there was something ‘suspicious’ regarding the weapon’s destruction; having viewed the document the Commissioner can see nothing to support this view.

30. The Commissioner accepts that there is a presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest.
31. As well as this general public interest in transparency, the Commissioner acknowledges the public interest in accountability in law enforcement. He recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. FOIA is a means of helping to meet that public interest, as confidence will be increased by allowing scrutiny of how they discharge their duties.
32. However, the Commissioner considers that disclosure of the withheld information in this case would add little which would inform the public on the processes for the destruction of weapons in the 1980s or provide clarity about the weapon's destruction in the particular circumstances of this police investigation.
33. In this case, the Commissioner has placed considerable weight on the confidential submission which PSNI provided to him; unfortunately he is unable to share this submission here as it would undermine reliance on the exemption being cited.
34. Taking the above into account, and having been presented with no persuasive countervailing public interest arguments in support of disclosing the information, the Commissioner is satisfied in this case that the public interest clearly favours maintaining the exemption. It follows that PSNI was entitled to apply section 30(1)(a)(i) to refuse to disclose the requested information.

## **Right of appeal**

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35. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**