

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 May 2019

Public Authority: Police Service of Northern Ireland

Address: foi@psni.pnn.police.uk

Decision (including any steps ordered)

1. The complainant has requested information from the PSNI in relation to two specific reports known as 'The Morton Reports.' The PSNI has stated that it does not hold one of those reports, and that the exemption as set out in section 23(1) of the FOIA is engaged in relation to the other report.
2. The Commissioner's decision is that the PSNI has correctly applied section 23(1) to the information it holds which falls within the scope of the complainant's request. Therefore the Commissioner requires no steps to be taken.

Request and response

3. The complainant on 24 May 2017 made the following request for information to the PSNI:-

"I am requesting copies of two reports compiled by John Percival Morton CMG OBE, also known as Jack Morton, hereafter MORTON.

In 1973, MORTON produced a report, referred to as the 'Morton Report', which contained advice on the relationship between the RUC and the Army.

In 1979, MORTON visited Sri Lanka and produced a report, referred to as the 'Morton Report', which contained advice on the reorganisation of Sri Lanka's security apparatus. Please provide a copy of both reports."

4. The PSNI provided a response to the complainant on 8 August 2017, stating that it was refusing to disclose the requested information, citing section 23(1) of the FOIA as a basis for non-disclosure.
5. The complainant, not being satisfied with the PSNI's response, requested an internal review on 9 August 2017. The PSNI provided a response to that request on 18 September 2017. It stated that it did not hold the 1979 Morton Report and apologised for not articulating this in its response to the complainant of 8 August 2017. It maintained its position in relation to the 1973 Morton Report.

Scope of the case

6. The complainant contacted the Commissioner on 9 October 2017 to complain about the way his request for information had been handled.
7. The Commissioner has carefully considered the PSNI's application of section 23(1) to refuse the request.

Reasons for decision

Section 23(1) – information supplied by or relating to bodies dealing with security matters

8. The PSNI refused to disclose the information falling within the scope of the complainant's request on the basis of section 23(1) of FOIA. This states 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).'

The bodies listed at subsection (3) are as follows:-

- (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,
 - (l) the Service Authority for the National Criminal Intelligence Service.
 - (m) the Serious Organised Crime Agency.
 - (n) the National Crime Agency.
 - (o) the Intelligence and Security Committee of Parliament.
9. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3). It is an absolute exemption and therefore it is not subject to the public interest test section set out at section 2 of the FOIA.
10. The Commissioner is aware that the information held by the PSNI which falls within the scope of the complainant's request consists of a report which is over 45 years old. In responding to the Commissioner's request for submissions, the PSNI has verified the provenance of this report with the Security Service. The Security Service confirmed that the report was directly supplied to the then Royal Ulster Constabulary (RUC) now known as the PSNI, by MI5.
11. The PSNI has informed the Commissioner that, in June 1973, an RUC Chief Constable accepted an offer from the then Director General of the Security Service for a senior MI5 officer to conduct a review of and report on the RUC Special Branch organisation and its functions. Jack Morton, a serving MI5 officer, carried out this work on the instruction of the Director General of the Security Service.

12. The Commissioner, having asked the PSNI whether the information was supplied directly or indirectly to it by one of the security bodies listed in section 23(3) of the FOIA, was informed that the information was supplied directly to the PSNI, then the RUC, by MI5, which falls within section 23(3)(a) of the FOIA.
13. The Commissioner's guidance on the use of the section 23 exemption provides that, when investigating complaints about the application of section 23(1), the Commissioner will need to be satisfied that the information was in fact supplied by a security body or relates to such a body, if she is to find in favour of the public authority. In certain circumstances the Commissioner is prepared to accept a written assurance from the public authority that this is the case. This only applies where it initially appears plausible that the information would engage the exemption. The written assurance acts as confirmation that this is the case. The assurance must be provided by someone who because of their seniority and responsibilities has regular access to information relating to the security bodies and who understands the relationship between the public authority and those bodies. Furthermore, they must also have seen the disputed information.
14. The Commissioner, in the particular circumstances of this case, considers that it initially appeared entirely plausible that the information falling within the scope of the complainant's request would engage the exemption at section 23(1) of the FOIA. As the Commissioner has also received written and verbal assurances from senior officials within the PSNI, who have viewed the information and who have regular access to information relating to the security bodies and understand the relationship between the PSNI and those bodies, she is satisfied, in this instance, by that assurance that the information was supplied directly to the PSNI by MI5.
15. As the PSNI has confirmed that the requested information was supplied to it directly by MI5, the Commissioner is satisfied that the exemption at section 23(1), by virtue of section 23(3) of the FOIA, is engaged in this case.

16. The Commissioner would highlight that the circumstances of this case are very different from those in *Corderoy and Ahmed v (1) ICO (2) A-G (3) CO [2017] UKUT 495 (AAC)*. In that Upper Tribunal judgment the issue of disaggregation was considered by the Tribunal, however, the information in question was claimed to be exempt on the basis that it was information relating to a section 23 body. The particular circumstances in this case concern information which was directly supplied by a section 23 body, ie MI5, and therefore disaggregation on the Corderoy principle is neither relevant nor appropriate.

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

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