

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 April 2023

Public Authority: Police Service of Northern Ireland

Address: Police Headquarters
65 Knock Rd
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant submitted a request to the Police Service of Northern Ireland (PSNI) seeking a copy of the "Morton Report". PSNI refused to provide the information on the basis of section 23(1) (security bodies) of FOIA. The Commissioner is satisfied that withheld information is exempt from disclosure on the basis of section 23(1) of FOIA.
2. The Commissioner does not require PSNI to take any steps.

Request and response

3. On 28 January 2022 the complainant requested the following information from PSNI:

"We request an unredacted copy of a report compiled by John Percival Morton CMG OBE, also known as Jack Morton. In 1973, Jack Morton produced a report, referred to as the 'Morton Report', which contained advice on the relationship between the RUC¹ and the Army. Specifically, the report would consider the structure, function role [sic] of RUC Special Branch".

¹ The Royal Ulster Constabulary (RUC) was the predecessor body to PSNI. PSNI was established in 2001, see <https://www.psni.police.uk/inside-psni/our-history/a-history-of-policing-in-ireland/>

4. PSNI responded on 7 March 2022. It confirmed that it held the requested information but refused to disclose it, citing the exemption at section 23(1) of FOIA (security bodies).
5. Following an internal review PSNI wrote to the complainant on 26 April 2022. PSNI maintained its decision to refuse the request under section 23(1) of FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 30 May 2022 to complain about the way their request for information had been handled.
7. Both the complainant and PSNI have referred to a previous decision made by the Commissioner in respect of a request for the same information, ie the Morton Report.²
8. In that case the Commissioner found that PSNI was entitled to rely on the exemption at section 23(1) to refuse the request. The previous decision notice was appealed to the First-tier Tribunal (FTT), who upheld the decision.³
9. The complainant has asked that the Commissioner make a fresh decision as to whether or not PSNI is entitled to rely on section 23(1) in order to withhold the Morton Report. The Commissioner notes that FTT decisions are not binding, so has considered all the circumstances of this particular case alongside the FTT's decision.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614890/fs50705592.pdf>

³ [https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2940/Miller,Phil%20-%20EA-2019-0183%20\(06.08.21\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2940/Miller,Phil%20-%20EA-2019-0183%20(06.08.21).pdf)

Reasons for decision

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

10. Section 23(1) of FOIA states:

“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)”.

11. To engage the exemption at section 23(1), a public authority is only required to demonstrate one of the following:

- that the information was supplied by any of the named security bodies, either directly or indirectly; or
- that the information relates to any of the named security bodies.⁴

12. This means that if the requested information falls within either class it is absolutely exempt from disclosure under FOIA. There is no requirement for the public authority to demonstrate that disclosure would result in harm and the exemption is not subject to the public interest test.

13. The Commissioner is mindful that in the previous decision notice (referred to at paragraph 7 above) he accepted PSNI’s position regarding its application of section 23(1) of FOIA to the Morton Report. PSNI had verified the provenance of the report with the Security Service, who had confirmed that the report was directly supplied to the then RUC by MI5.

14. PSNI had further explained 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.

15. Consequently the Commissioner accepted that the information was supplied directly to the RUC, by MI5, a body falling within section 23(3)(a) of the FOIA.

⁴ A full list of the bodies detailed in section 23(3) is available here: <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

16. The Commissioner is mindful of the FTT's findings in the subsequent appeal:

"...it is also clear to us that the information sought, in terms of the report, was 'directly supplied' by the Security Service and is therefore covered by that limb of s23(1) FOIA."⁵

17. The complainant has pointed out that PSNI released "a similar report on RUC Special Branch that was compiled by a different MI5 officer later in the conflict". This was the "Walker Report", produced in 1980 by Sir Patrick Walker.
18. The Commissioner issued a decision notice⁶ in 2017 finding that PSNI was entitled to rely on section 23(1) of FOIA to withhold the Walker Report. The complainant in that case appealed the Commissioner's decision to the FTT.⁷ PSNI subsequently disclosed a redacted version of the Walker Report, outside the provisions of FOIA, for the purposes of an inquest. The FTT found that PSNI was entitled to rely on section 23(1) of FOIA in respect of the remaining withheld information.
19. The complainant argued that similar considerations should apply to the Morton Report, ie that not all of it would be exempt under section 23(1) and PSNI ought to be able to disclose a redacted version.
20. The Commissioner is mindful that the Walker Report and the Morton Report are two entirely separate documents. The fact that PSNI disclosed parts of the Walker Report does not mean that it can be required to disclose any part of the Morton Report. The question for the Commissioner is whether PSNI is entitled to rely on the exemption claimed, ie section 23(1). The Commissioner cannot require PSNI to consider disclosing information that it is entitled to withhold under FOIA.
21. Having considered the FTT's previous decision, the Commissioner is not persuaded that he should reach a different conclusion. The Commissioner is satisfied that the exemption at section 23(1) is

⁵ Para 25

⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014763/fs50640773.pdf>

⁷ Committee on the Administration of Justice v Information Commissioner, appeal no EA/2017/0219

engaged with respect to the entirety of the Morton Report, on the basis that it was directly supplied by the Security Service.

22. The Commissioner acknowledges the complainant's view that the Morton Report was nearly 49 years old at the time of the request. The passage of time may in some cases mean that information becomes less sensitive. However, in this case the Commissioner is satisfied that PSNI is entitled to rely on section 23(1), an absolute exemption. Having made this finding the Commissioner cannot require PSNI to consider the age of the information, or the public interest in disclosure.
23. In light of the above the Commissioner finds that PSNI was entitled to refuse to disclose the requested information, ie the Morton Report, relying on the exemption at section 23(1) of FOIA.

Right of appeal

24. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF