Section 22 Notice - Operation Naples

Conviction of Robert Trigg

13/07/2017

Section 22 (1) (a) Information Intended for Future Publication
(1) Information is exempt information from disclosure if -
(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)

Section 22 exempts information from disclosure which is intended for future publication. The key to it is that the decision to publish must have been made prior to any request for the information being received. That decision does not have to have been made by the Public Authority receiving the request, but can be made by any party who also holds the same information. This publication strategy is therefore transferrable between all the relevant parties.

The identified benefits of engaging this exemption are that dealing with requests for certain data whilst reviews are ongoing can be complex and resource intensive. Also, random piecemeal disclosures may in fact damage the review process and affect its' strategic aim.

This can manifest itself in many different ways but can include the raising of unfounded concerns by witnesses and family members. There will also be an appetite from the media to gain exclusive knowledge and data, via FOI, which enables them to undermine the media strategy and potentially disrupt the reviews.

The application of this exemption also allows a sterile period, prior to publication, where all the stakeholders are able to engage, ensuring the terminal publication meets the full needs of the public and the authorities involved. This co-ordinated approach to publication mitigates any harm that may be caused by random incomplete information entering the public domain.

What is critical to the success of this strategy is that any rationale for not complying with the section 22 approach is recorded so that a precedent is not set which undermines others ability to engage the exemption. This is expected to take the shape of some overriding, compelling, public interest factor, specific to an individual request, as the exemption itself is subject to a public interest test.

Public interest test
Factors favouring disclosure

Although a publication strategy is currently being compiled there is no firm date as yet for publication. Therefore disclosure at this time would provide the public with an awareness of the cost to the public purse to date and other related matters such as how the investigations were planned and undertaken.

Factors favouring non-disclosure:-

As this operation is high profile, may be subject to ongoing investigation and Sussex Police may have a duty to present information to another body or person for scrutiny. Disclosure at this time could undermine the continuing process.

There is no doubt this investigation and subsequent reviews may be at considerable expense to public funds. As a decision has been made to publish this information in future in consideration of continuing activities, the release for example of current and final costs and the spending of additional funds together with details of officer and staff matters and other relevant matters relating to the investigation and review, would not be in the public interest until definitive and accurate details can be provided.

Balancing Test

As the reviews, both internally and externally are still current, the information held at this time may not, for example, include all the conclusions for this investigation, it may also not be accurate and could change when eventually finalised and published.

There needs to be a real and valid reason which identifies a tangible benefit to the public from disclosure of information. In this case a decision has been made to disclose the information when fully collated and accurate. The additional cost to the force to deal with the request at this time would not be in the public interest.

For the reasons outlined above the balancing test for disclosure at this time is not made out.

Roger Brace
FOI Officer – Sussex Police
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