

1. The witnesses from the Northern Ireland Office, the Royal Ulster Constabulary and Her Majesty's Forces are not authorised to testify to the Court about the reports and information which were ordered by the court to be produced to Mr Smyth and which were not produced.

The court is already fully aware of the reasons why the witnesses are unable to testify about these matters. The reasons have been set out by the UK Government in its response to Mr Smyth's second request for documents and in the various declarations and letters filed in support of that response. For these purposes, the UK Government does not rely on its response in so far as it argues that the material is irrelevant - although that line of argument is not abandoned. It does however continue to argue before this court that the requested material is subject to state secret, deliberative process and investigatory files privilege. The court has dealt with this claim by imposing two rebuttable presumptions as a sanction for the UK Government's refusal to turn this material over to the judge for her in camera consideration. It is submitted that this disposes of the matter, and that further penalty should not be imposed for witnesses' refusal to testify about the material.

2. The witnesses are unable to give testimony which, in the opinion of the witness, will or could lead to or produce the consequences explained in paragraphs 3 to 19 below:

(i) Intelligence techniques and operations, including the structure of intelligence systems

3. In Northern Ireland, terrorists can be arrested and charged with offences only if there is evidence against them. Terrorists go to very great lengths indeed to escape arrest and to prevent any evidence becoming available to the courts - eg information about planned attacks is limited to those directly involved; weapons are kept concealed in elaborately constructed hides except

when they are actually being used for attacks; attacks are carried out in clothing which is burned immediately after use; immediately after attacks, terrorists disperse to "wash houses" to remove any trace of forensic evidence from their persons. [Is the RUC content for this to be said?] Consequently, the availability of good intelligence is often absolutely essential to enable terrorists to be arrested in incriminating circumstances and charged with offences, and/or to enable the security forces to take effective action to save lives by preventing terrorist attacks. That is why the protection of intelligence is of paramount importance.

4. Accordingly, any evidence describing how intelligence is obtained by the security forces in Northern Ireland for use against paramilitary organisations, whether republican or loyalist cannot be disclosed. Such evidence could lead to the exposure of intelligence agents or informers, whose lives - and possibly those of their close families - will be put at immediate risk of torture and murder. The Provisional IRA themselves have made it clear on a number of occasions that where they believe people within the organisations to be agents or informers, they can expect no mercy. This usually means torture, followed by a forced confession and murder. The corpse will then be found in a ditch, often many miles from the point of abduction.

5. The large number of members of the Provisional IRA murdered by their fellow members because they were believed to be informers bears this out. There follows a sample list of alleged informers murdered by the IRA since June 1978.

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MURDER OF ALLEGED INFORMERS BY PIRA

1. Daniel James **McERLEAN**, DOB 10.12.52, 15 Drumack Lane,
Rasharkin, Co Antrim
Date: 3.6.78
Body found at Jonesborough Border

2. Michael **KEARNEY**, DOB 20.3.59, [REDACTED] Belfast
Date: 12.7.79
Body found on the Concession Road, Clones

3. Patrick **TRAINOR**, DOB 21.12.52, [REDACTED] Belfast
Date: 22.2.81
Shot dead at Upton Cottages, Belfast

4. John **TORBITT**, DOB 26.4.53, [REDACTED] Lenadoon
Date: 3.1.82
Shot dead in his home

5. Seamus **MORGAN**, DOB 9.8.57, [REDACTED] Dungannon
Date: 5.3.82
Body found at Carrickastriken Road, Forkhill

6. Patrick Michael **SCOTT**, DOB 1953/54, [REDACTED]
Twinbrook
Date: 3.4.82
Found shot dead in an entry between Dunville Street and
Cairns Street, Belfast

7. James YOUNG DOB 24.6.42, [REDACTED] Portaferry
Date: 13.2.84
Body found at the junction of Blaney Road/Corliss Road,
Crossmaglen
8. Damien McCRORY, DOB 24.2.65, [REDACTED] Strabane
Date: 7.10.85
Shot in the head - body found in Brumrallagh Estate,
Strabane
9. Patrick Paul MURRAY, DOB 25.4.56, [REDACTED]
Belfast
Date: 15.8.86
Shot dead - body found in entry in the area of Clonard
Street/Dunmore Street, Belfast.
10. David Sylvester MCVEIGH, DOB 31.12.45, [REDACTED]
Lurgan
Date: 9.9.86
Shot dead - body found on Flagstaff Road Newry on the
Northern side of border
11. Eamon Pius Mary MAGUIRE, DOB 2.6.54, [REDACTED]
Finglass, Dublin
Date: 1.9.87
Body found on main Dundalk/Castleblaney Road $\frac{1}{2}$ mile north
of the border.
Alleged Garda informer
12. Anthony McKIERNAN, DOB 19.10.43, [REDACTED] Belfast
Date: 19.1.88
Body found at the top of Beechmount Crescent. (Gunshot
wound to head)

13. Joseph FENTON, 33 years, [REDACTED] Dunmurry
Date: 26.2.89
Body found in alleyway between Glen Road and Glenveagh Drive (Gunshot wound to head)
14. John McANULTY, 48 year, [REDACTED], Warrenpoint
Date: 17/18.7.89
Abducted on 17.7.89 from Sportsman Inn, Drumadd. Body recovered at Loughross Road, Crossmaglen
15. Patrick Gerard FLOOD, DOB 20.4.60, [REDACTED] Londonderry
Date: 26.7.90
Body found at Coach Road/Dundalk Road junction, Newtownhamilton (Gunshot wound to head)
16. Rory FINNIS, 21 years, [REDACTED] Londonderry
Date: 6.6.91
Body found hands tied between his back and eyes taped closed at Central Drive, Londonderry (Gunshot wound to head)
17. Thomas OLIVER, DOB 1.7.58, [REDACTED] Riverstown, Dundalk
Date: 19.7.91
Body found in field in area of Belleeks
18. John Patrick DIGNAM, dob 2.8.59, [REDACTED] Portadown
Date: 1.7.92
Body found Mountain Road, Belleeks (Gunshot wound to head)

19. Gregory James BURNS, dob 29.8.58, [REDACTED]
Portadown
Date: 1.7.92
Body found Cullaville Road, Crossmaglen (Gunshot wound to head)
20. Aiden Martin STARRS, DOB 30.1.63, [REDACTED]
Portadown
Date: 1.7.92
Body found Dundalk Road, Newtownhamilton (Gunshot wound to head)
21. Robin Patrick HILL, DOB 8.7.70, [REDACTED] Coalisland
Date: 11.8.92
Body found Beechmount Crescent, Belfast (Gunshot wound to head)
22. John HOLMES, DOB 29.4.57, [REDACTED], Londonderry
Date: 22.11.92
Body found in alleyway at Rinmore Road, Londonderry
(Gunshot wound to head)
23. Christopher HARTE, DOB 1.5.68, [REDACTED]
Belfast
Date: 12.2.93
Body found Carn Road, Castlederg (Gunshot wound to head)
24. Joseph MULHERN, DOB 29.6.69, [REDACTED] Belfast
Date: 23.6.93
Body found Ballymongan, Castlederg

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6. The security forces do not confirm in any case whether or not a person was an informer. In a number of cases, persons murdered by the IRA have not been informers [RUC: OK to say this?] Furthermore, in other cases alleged informers have had to leave Northern Ireland at a moment's notice and start a new life elsewhere, knowing that they can never return to their homes without facing the prospect of torture and murder, possibly having to cut off their links with close family members in order to avoid the risk of their new location being revealed. (Loyalist paramilitaries are also responsible for the murder of alleged informers.)

7. Evidence describing how evidence is obtained could also compromise the modus operandi of the intelligence agencies and reduce their capacity to gather intelligence and so to save lives and property. And by compromising intelligence agents and informers, apart from exposing them to a strong risk of torture and murder, such evidence could lead the source of intelligence to dry up - or become unreliable because it would be turned into a conduit of disinformation. The same can be said of other sources of intelligence including surveillance, whether electronic or otherwise. As a result, the security forces could lose valuable means of learning about terrorist activity and thus preventing or thwarting future terrorist operations. This could lead to the destruction of property and civilian injuries - including fatal injuries.

8. Any disclosure of sources or techniques of intelligence runs the risk that terrorists will be able to take countermeasures. They will then be more likely to be able to carry out murder and destruction without the security forces being able to prevent such attacks or arrest those responsible.

9. The risks set out above apply not only to evidence on the methods by which intelligence about terrorist organisations in Northern Ireland is obtained by the security forces, but also the

manner in which intelligence is disseminated and acted upon to prevent terrorist activity and thereby to save lives and property. Knowledge of many of those methods of operation, because of their acute sensitivity and the paramount need to protect those sources and methods of intelligence acquisition, is necessarily confined to the most limited circles within the security forces.

10. Further, these risks apply - for the same reasons - to any evidence dealing with matters relating to the structure of intelligence systems in Northern Ireland.

(ii) Special units concerned with Security and Intelligence

11. There are special units of the security forces which carry out security and intelligence work in support of, and under the direction of, the RUC. These special units form a vital part of the Government's efforts to protect the community against terrorist in all its forms, both republican and loyalist. Members of these units are employed for such tasks as intelligence gathering, surveillance and other special duties conducive to the arrest of dangerous terrorists.

12. Soldiers serving with these units are in all respects accountable to the law just like any other soldier, and are subject to exactly the same rules of engagement. They differ from soldiers serving with other types of unit simply in that they are trained to a very high level in the military skills which they need for their specialised tasks. The very nature of the work of these units requires secrecy if it is to be effective. Similarly, policemen within these units are expected at all times to operate within the law.

13. Terrorists have recognised that the operations of these units are a particular danger to them, in that the actions of soldiers serving with such units are particularly likely to result in their arrest and prosecution for offences. A primary objective of terrorists is therefore to damage the effectiveness of these special units. Terrorists are also extremely anxious to obtain information about special units, in particular such matters as the identity, location, organisations, chain of command, methods of operation, capabilities and training of special units and those who serve in them. The terrorist would then be in a position to damage the effectiveness of such units by murdering individuals identified as serving in them, attacking the locations where they train or are based, or otherwise taking countermeasures.

14. On many occasions, the RUC have tasked special units to arrest dangerous terrorists. On a number of such occasions, terrorists have successfully been arrested without the need for any shots to be fired, and have been charged and subsequently convicted of serious offences. But, on other occasions, the actions of the terrorists have given the members of special units no option but to open fire in order to protect their own lives. These latter incidents have resulted in a very much increased awareness by terrorists of the importance of special units of the security forces in the Government's efforts to prevent terrorist attacks and secure the arrest of terrorists. Such incidents have also given terrorists an additional and powerful motive of revenge against special units generally, and against personnel serving with them.

15. It is therefore the Government's policy not to disclose any information of this sort. In the case of court proceedings in the UK, it is the policy of the Government to seek protection for all such information by means of a Public Interest Immunity Certificate. For the same reasons, the Government seeks to protect all such information in court proceedings outside the UK.

(iii) Specific Operations by special units of the RUC and Armed Forces

16. Government witnesses will also not give evidence about specific operations involving special units of the security forces where in the opinion of the witnesses it tends to:

- (a) reveal the modus operandi of the security forces and thus enable terrorist organisations (including loyalist terrorists) to develop countermeasures;
- (b) reveal the identities of the operators involved in particular operations, putting them at risk and making them operationally useless;
- (c) generate additional risks to sources, human or otherwise; or
- (d) risk prejudicing future legal proceedings.

17. The intelligence on which such operations are based must at all times remain secret and known only to a limited number of those within the security forces. The very nature of security and intelligence work requires secrecy if it is to be effective.

18. The IRA, at least, is known to study publicly available material closely for information useful in any of the contents mentioned above.

(iv) Information which may facilitate terrorist attack

19. On a number of occasions republican terrorists have attacked individuals and locations associated with arrest or prosecution of terrorists, with counter-terrorist operations or with law and order in Northern Ireland more generally. Such attacks have taken place both within Northern Ireland and elsewhere. They include the murder of judges and magistrates in

Northern Ireland [statistics/examples]; a massive bomb attack on the Northern Ireland Forensic Science Laboratory; bomb attacks on Northern Ireland courts [statistics/examples]; murders of prison officers, police officers and soldiers, both on and off duty, including attacks on soldiers and barracks in Great Britain [statistics/examples]. Consequently, witnesses will not be prepared to give evidence which identifies individuals or locations liable to terrorist attack and which might facilitate or encourage such attacks.

Conclusion

20. The Government is most anxious that the court should not conclude that the concerns expressed in this submission are fanciful or over-stated. It can only set out for the court's consideration the facts about the situation in Northern Ireland in 1993 rather than in several years hence, when Mr Smyth - if he is returned to Northern Ireland as a result of these proceedings - will eventually be released from prison. However, the court should be aware that in a sparsely populated community of 1½ million people, in which crime unrelated to the Troubles is relatively rare, 39 people had been killed by 9 August this year. 3 of those were officers of the RUC; 6 were soldiers. In 1992, 85 people were killed in Northern Ireland as a result of the security situation. 94 died in 1991, and 76 in 1990. By 27 June, there had been 247 shootings and 106 bombings in 1993. By 1 July, 100 firearms and 27 rocket or mortar launchers had been recovered from terrorists by the security forces. 317 kilograms of explosives had been found and 1413 kilogrammes had been neutralised. Recent significant finds include four shotguns, two rifles, three pistols, two bombs and a hand grenade recovered in and around Belfast. On the night of 11/12 August 1993, a 3000 lbs bomb was defused in Northern Ireland [I daresay all these facts can be improved upon and updated]. The Government is and remains implacably opposed to any action which could place lives in Northern Ireland at any greater risk than exists already.