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Local & National

Is families' wait still not over?

A House of Lords ruling last week was meant to free up a series of controversial Troubles inquests frozen by years of legal wrangling. But, as Chris Thornton reports, the families of the dead could still be waiting for answers

Monday, April 02, 2007

The shots that killed Roseanne Mallon were heard by a team of soldiers dug into the Co Tyrone countryside nearby.

The soldiers reported the 1994 attack as the UVF killers of the 76-year-old drove off. They were told "not to react", one recalled later.

The soldiers were there to guard a secret surveillance camera for monitoring republicans, so that's what they continued to do. No one was caught for the murder. Nearly ten years later, an inquest opened into Roseanne Mallon's murder, but it quickly emerged that the coroner had not even been told about the soldiers who first reported the attack, never mind receiving the statements they gave police.

Police supplied the statements, but they were heavily edited. Miss Mallon's family said they should also supply film from the camera that overlooked the scene: police argued that the camera was off at the time of the killing, because it couldn't record at night.

But its video was still relevant, because the killers had scouted the scene in the same car earlier in the day.

For nearly two years, the coroner asked police for access to the video and the complete statements by the soldiers. The PSNI refused to hand over the material, although they said they were willing to allow the coroner to view some of the video in a police station.

Last week, a ruling by the House of Lords, looked like it had ended the row. Law Lords ruled in a similar case - concerning an SAS ambush of two IRA members, Martin McCaughey and Desmond Grew - that police should hand over previously withheld material.

The Law Lords said it would "plainly frustrate the public interest in a full and effective investigation if the police were legally entitled... to withhold relevant and perhaps crucial information".

He noted that there could be exceptions, where there was "any relevant privilege or immunity".

The ruling seemed to unlock a series of inquests that have been on hold because police refused to release evidence to the coroner.

In the case ruled on by the Lords, the family of IRA man Martin McCaughey were seeking the release of the intelligence reports and the investigating officer's report into the killings. Any material that had been released was edited.

Peter Madden, the solicitor for the McCaugheys, said: "The documents supplied by the police to the coroner were so heavily redacted that they were unintelligible. This decision changes that."

But the PSNI argue that they already comply with their obligations under the ruling, arguing that any material already withheld is covered by the exceptions of "privilege or immunity".

A PSNI spokeswoman said that "in general terms, material is sometimes withheld or redacted for a number of reasons including the public interest."

She said those reasons might include an ongoing police investigation or human rights considerations.






This means the long wait for the inquests - 17 years in the McCaughey case - may not yet be over.

According to several practising lawyers, police claim they can withhold documents in a practice known as "public interest immunity".

Normally this requires an official gagging order, a Public Interest Immunity Certificate issued by a minister.

In the inquests, police have asserted public interest immunity - meaning they intend to get a ministerial gag.

The trouble is, PIIICs aren't issued that often, partly because ministers don't enjoy answering questions about hiding things from public scrutiny.

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According to British Irish Rights Watch, PIICs have only ever been issued for four inquests. Gaggling all these cases would require a minister prepared to double that total and acquire a reputation for secrecy.

If it gets that far. One legal source suggested police could continue to assert that the withheld documents have public interest immunity, even without a certificate, simply because a coroner can't say otherwise.

If that's right, more legal battles loom. In one of the cases, the only witness to the murder of Kevin and John McKearney has died waiting for the inquest to start. Old age could claim others before this is over.

Case Studies: background to disputed killings

The dead: Martin McCaughey and Desmond Grew.

Time without an inquest: 16.5 years.

What happened: SAS soldiers shot the two IRA members at Lislasley, near Loughgall, Co Armagh on October 9, 1990. They were apparently collecting weapons.

What police have withheld: The investigating officer's report and parts of statements by soldiers.

The dead: Roseanne Mallon.

Time without an inquest: 13 years.

What happened: UVF members shot her in her sister-in-law's home on May 8, 1994. It later emerged that the Army had secret surveillance camera on the scene and a team of soldiers dug in nearby.

What's withheld: A video from the surveillance camera, sections of a report on the camera and parts of the statements by soldiers who reported the attack.

The dead: Kevin and John McKearney.

Time without an inquest: 15 years.

What happened: Kevin McKearney and his uncle John (70) were shot by a UVF gunman in the family butcher shop on January 3, 1992.

What's withheld: The investigating officer's report and material about security force patrols and UVF threat levels.

The dead: Tony Doris, Lawrence McNally and Peter Ryan.

Time without an inquest: 16 years.

What happened: The three IRA members were on their way to carry out an attack when they were shot by SAS soldiers in Coagh, Co Tyrone on June 3, 1991. Their families want the inquest to establish if they could have been arrested.

What's withheld: Parts of statements by soldiers about their briefing.

The dead: Kevin Barry O'Donnell, Sean O'Farrell, Peter Clancy and Daniel Vincent.

Time without an inquest: 15 years.

What happened: The four IRA members were shot by SAS soldiers waiting for them in Clonoe, Co Tyrone, minutes after they attacked nearby Coalisland police station on February 16, 1992.

What's withheld: Parts of statements by soldiers.

The dead: David McIlwaine and Andrew Robb.

Time without an inquest: Seven years (An inquest into the killings may not take place if a pending murder trial goes ahead later this year).

What happened: Their throats were cut by UVF members near Tandragee, Co Armagh on February 19, 2000.

What's withheld: Parts of witness statements and forensic reports.

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