

Your Reference:  
Our Reference: 1002019-004

Derek Canning  
By e-mail to:  
[request-28572-0a6c9040@whatdotheyknow.com](mailto:request-28572-0a6c9040@whatdotheyknow.com)

02 July 2010

IPCC Contact:  
Philip Johnston  
Tel: 020 7166 3000

Dear Mr Canning,

### YOUR REQUEST FOR INFORMATION

I am sorry about the delay in replying to your e-mail request of 9<sup>th</sup> February 2010 in which you ask for the following information:

*Please supply all the information that you hold on the following article especially in relation to the IPCC protecting the police no matter what they do*

The article you refer to relates to the decision by the Police Action Lawyers Group (PALG) in January 2008 to resign from the IPCC Advisory Board.

Please find included with this letter:

1. A redacted copy of the dossier produced to IPCC by the PALG in October 2005 (Annex 1A)
2. A copy of the PALG letter of resignation of 11<sup>th</sup> January 2008 (Annex 1B)
3. A copy of an e-mail of 13<sup>th</sup> March 2007 from Raju Bhatt (Annex 1C)
4. A copy of a letter of 17<sup>th</sup> January 2008 from the IPCC Chair to Raju Bhatt and Tony Murphy (Annex 1D)

Some of the information in the dossier has been withheld where it engages the exemptions from the right to know contained in section 44 and sections 40(2) and 40(3)(a)(i) of the Freedom of Information Act (FOIA). My reasons for withholding information in reference to these exemptions are as follows.

#### Section 44 FOIA

The dossier largely consists of correspondence between the IPCC and firms of solicitors acting for individual private clients concerned with cases that the IPCC was handling. A handful of these cases were 'legacy cases', meaning that they were cases which the IPCC inherited from its predecessor organisation the Police Complaints Authority (PCA) and to which the provisions of the Police Act 1996 applied.

I find that there is no general right of access to information received by the IPCC in connection with its functions under the Police Act 1996. This is because such information falls within the terms of the absolute exemption under section 44 FOIA, which concerns prohibitions on disclosure.

Section 80 of the Police Act 1996 carries a criminal penalty if contravened by an officer of the IPCC and its practical effect is that we cannot disclose information which has been received from the police under the 1996 Act. Section 80 provides:

*'(1) No information received by the Authority in connection with any of their functions under sections 67 to 79 or regulations made by virtue of section 81 shall be disclosed by any person who is or has been a member, officer or servant of the Authority except*

*(a) to the Secretary of State or to a member, officer or servant of the Authority or, so far as may be necessary for the proper discharge of the functions of the Authority, to other persons,*

*(b) for the purposes of any criminal, civil or disciplinary proceedings, or*

*(c) in the form of a summary or other general statement made by the Authority which does not identify the person from whom the information was received or any person to whom it relates.*

*'(2) Any person who discloses information in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.'*

Although now repealed for complaints and referrals made after 1 April 2004, by virtue of the Independent Police Complaints Commission (Transitional Provisions) Order 2004 No. 671, Section 80 continues to apply to complaints and referrals made earlier and, where it refers to 'the Authority', it now applies to the IPCC.

Section 44(1) of the Freedom of Information Act 2000 provides:

*'Information is exempt information if its disclosure (otherwise under this Act) by the public authority holding it -*

*(a) is prohibited by or under any enactment,*

*(b) ...*

*(c) ...'*

The effect of section 80 is to make information received by the PCA under the 1996 Act, in the hands of the IPCC, exempt information for the purposes of section 44. It follows from this that you are not entitled to access the information contained in the dossier which was received by the IPCC under the Police Act 1996.

#### Sections 40(2) and 40(3)(a)(i) FOIA

Section 40 FOIA preserves the Data Protection Act 1998 (DPA) restrictions on the disclosure of personal information.

The remaining cases contained in the dossier are not legacy cases but are IPCC cases dealt with under the Police Reform Act 2002. I have considered this information for disclosure to you as well. Information as to an individual's involvement in a complaint against police falls within the definition of personal data when the individual is identifiable, so that the Data Protection Act 1998 is engaged. The information I am disclosing to you as to two of the cases in the dossier does not identify the individual complainants so that the provisions of the Data Protection do not apply.

Section 40 sub-section (2) and (3) FOIA exempt personal information relating to persons other than the person making the request where disclosure of this personal information would contravene any of the data protection principles. In this case it is the first principle that must be considered. This requires that the processing of personal data should be fair and lawful and that at least one of the conditions in Schedule 2 of the DPA must be met.

In considering whether or not complying with your request in full would be unfair on the individuals concerned and, therefore, contravene the requirements of the first principle, I have taken into account the individual's reasonable expectations of what would happen to their personal data in the hands of the IPCC. I find that the complainants whose identities I have withheld would have a reasonable expectation that their personal data connected with their police complaints would not be released to the general public on request without their consent.

Under Condition 6(1) of Schedule 2 DPA it is necessary to balance the legitimate public interest in disclosure against the interests of the individuals whose data it is. While it is accepted that a legitimate public interest exists in the disclosure of information that would enable the public better to understand the background to the resignation of the PALG from the Advisory Board, it is not accepted that there is a legitimate public interest in the disclosure of the personal information about the individuals involved in these cases that would be sufficient to justify the degree of risk to their privacy that would be likely to result.

I have concluded, therefore, that the release of further information connected with the cases contained in the dossier would contravene the DPA, thus engaging the absolute exemptions arising from section 40(2) and section 40(3)(a)(i) of FOIA.

You request information arising from the quoted article 'especially in relation to the IPCC protecting the police no matter what they do'. I can confirm that the IPCC does not hold any information in relation to this aspect of your request. This is because it is a matter of subjective opinion as to whether any of the information you are requesting actually exists. In these circumstances the information cannot be identified from the description given.

I recognise that this response is a number of weeks outside of the statutory 20 working day time limit for dealing with FOI requests.

If you are not satisfied with this response you may request an independent internal review by our FOI appeals officer, who has had no involvement in dealing with your request. If you wish to complain about any aspect of this decision, please contact:

Amanda Kelly  
Director of Corporate and Legal Services  
IPCC  
90 High Holborn  
London  
WC1V 6BH

E mails should be clearly marked 'Complaint against FOI decision' and sent to: [foi@ipcc.gsi.gov.uk](mailto:foi@ipcc.gsi.gov.uk).

Should you remain dissatisfied after this internal review, you will have a right of complaint to the Information Commissioner; however, I should point out that under section 50(2)(a) of the Freedom of Information Act, you are normally obliged to exhaust the IPCC's own internal complaint mechanism before complaining to the Information Commissioner.

Yours sincerely

**Philip Johnston**  
**Independent Police Complaints Commission**