

Your Reference:
Our Reference: FOI/PJ/1002078

Family Y
By e-mail to:
request-30512-1cfd6dd0@whatdotheyknow.com

11 June 2010

IPCC Contact:
Philip Johnston
Tel: 020 7166 3000

Dear Family Y,

YOUR REQUEST FOR INFORMATION

I am sorry about the delay in replying to your e-mail of 10th March 2010, in which you request information held by the IPCC in connection with complaints against ex Chief Constable Tonge and ex-Assistant Chief Constable Horne of Gwent Police.

I would emphasise that the IPCC is not aware of the details of all complaints against police. Only after a complaint has been formally recorded by the respective police force or police authority will the complaints and misconduct provisions of the Police Reform Act 2002 be applied to it. The majority of complaints are made directly to the police and only in the limited circumstances defined in the Police Reform Act 2002 will a complaint be brought to the attention of the IPCC after the recording decision has been made. When a complaint made directly to the IPCC is passed to the police to consider whether it should be formally recorded, they are not required to inform the IPCC what they decide. Only if the matter comes back to the IPCC, as would be the case, for example, if it is a very serious matter or the complainant makes an appeal, would the IPCC find out whether or not the complaint has been recorded. I would recommend, therefore, that you contact the Gwent Police Authority if you require a comprehensive account of all complaints made and/or recorded against these two Chief Officers.

My responses to each of your questions are as follows.

Question 1: *How many complaints have been made to the IPCC concerning (Gwent Police) ex-Chief Constable M Tonge?*

Nine complaints have been made directly to the IPCC about Mr Tonge.

Question 2: *How many complaints have been made to the IPCC concerning (Gwent Police) ex-Assistant Chief Constable W Horne?*

No complaints have been made directly to the IPCC about Mr Horne.

Question 3: *How many complaints have been recorded by the Gwent Police Authority concerning the (Gwent Police) ex-Chief Constable M Tonge, yet the Gwent Police Authority have applied to the Independent Police Complaints Commission for dispensation?*

The IPCC has received one application for dispensation in respect of a complaint against Mr Tonge. No information is held by the IPCC as to the date on which this complaint was recorded.

Question 4: *Supply the manner and dates of the complaints made against the (Gwent Police) ex-Chief Constable M Tonge.*

The details of the nine complaints received by IPCC are as follows.

- Complaints 1 - 4: on 20th March 2007, the IPCC received the same written complaint from four complainants. The alleged conduct by Chief Constable Michael Tonge giving rise to this complaint was as follows:
 - i. He perverted the course of justice because informants and their family/friends were being given 'preferential treatment over innocent victims of crimes'.
 - ii. When written complaints were made regarding Gwent Police Officers, Mr Tonge replied stating these matters would be addressed, but allowed these officers to continue to approach and harass the complainants.
 - iii. He ignored written correspondence from Welsh Assembly Member, Lynne Neagle, Welsh Assembly Community Safety Unit and Sir Ian Blair, regarding these complaints.
 - iv. He allowed Gwent Police Officers to abuse their powers.
 - v. He ignored numerous letters from the complainants.
 - vi. He ignored criminal acts personally reported to him in writing and these criminal acts never appeared in police records.
 - vii. He ignored questions as to what alternative forms of identification would be acceptable to enable the complainants to obtain information about themselves from Gwent Police.
 - viii. He allowed an officer to threaten the complainants for continuing with a complaint against a superior officer in Gwent Police.

The four complainants stated that all incidents occurred within Mr Tonge's jurisdiction 'from 04 July 2003 to the present'.

- Complaint 5: complaint of other neglect or failure in duty received by IPCC in writing on 9th May 2007. The complainant alleged that he was "deprived of a full investigation" into the circumstances of a relative's unlawful killing, had not been treated as an interested party, and had not been provided with adequate information regarding the background to the incident. Chief Constable Tonge was identified as the officer subject of complaint.
- Complaint 6: complaint of damage to property received by IPCC in writing on 28th July 2008. The complainant alleged that his property was searched by police and that he holds the Chief Constable and his officers responsible for the damage and for the estimated repair cost of over £3,000.
- Complaint 7: complaint of other neglect or failure in duty received by on-line form on 8th September 2008. The complainant wrote to the Chief Constable to request that all her personal samples be destroyed, however there was a delay before she received any reply. She then received a letter from the Police Authority, which apologised for the delay and advised her that she would get a full response shortly. She complained that five months later she had yet to receive a reply from the Chief Constable.
- Complaint 8: complaint of improper disclosure of the complainant's personal data in breach of the Data Protection Act, received by e-mail to IPCC on 17th January 2009. The complainant named Chief Constable Tonge as the officer subject of complaint.
- Complaint 9: complaint of breach of common law requirements relating to the use and retention of information. It was alleged that the force sent a letter about the complainant to a third party containing erroneous content relating to the complainant's status in relation to a pending prosecution. It was alleged that the case against the complainant had already been dismissed when the letter was sent. The complainant stated that he held Chief Constable

Tonge responsible for the content of the letter. The complaint was received at IPCC by on-line form on 14th January 2009.

Question 5: *How many complaints have been recorded by the Gwent Police Authority concerning the (Gwent Police) ex-Assistant Chief Constable W Horne, yet the Gwent Police Authority have applied to the Independent Police Complaints Commission for dispensation?* The IPCC has received one application for dispensation in respect of Mr Horne. The date on which this complaint was recorded has not been confirmed to the IPCC; however, please see the response to Question 8, below.

Question 6: *Supply the manner and dates of the complaints made against the (Gwent Police) ex-Assistant Chief Constable W Horne.*

The following allegations were made by four complainants in the same correspondence which was sent to Gwent Police:

- i. That ACC Horne improperly condensed and summarised their allegations
- ii. That ACC Horne ignored their appeal against the decision in respect of their complaints.
- iii. That ACC Horne did not include a statement submitted by the complainants in police records, despite having acknowledged receipt.
- iv. That there were substantial differences between reports submitted by ACC Horne to the complainants and to the IPCC. The reports related to the investigation of complaints made by these complainants.
- v. That ACC Horne ignored the evidence of an independent eye witness to the incident subject of complaint.
- vi. That the report submitted by ACC Horne to the complainants about their complaints omitted to include documentation from a DI from the standards unit.
- vii. That ACC Horne claimed in his report to the IPCC that a statement was taken from a witness who had in fact died a number of years before the incident giving rise to the complaints.
- viii. That in stating that one of the complainants "would never be satisfied", ACC Horne had made an unprofessional comment based upon opinion rather than fact.
- ix. That ACC Horne had made contradictory statements by saying in a report to IPCC that one complaint of neglect of duty had been recorded but saying in a report to the complainants that no complaints had been recorded.

Correspondence from the complainants to the IPCC indicates that these allegations were made by letter of 20th July 2005, received by the Police Authority on 22nd July 2005.

Question 7: *Supply the dates of the complaints made against the (Gwent Police) ex-Chief Constable M Tonge were recorded and as applicable the dates the complaints were grant dispensed.*

No information is held as to the dates of recording. A dispensation was granted by the IPCC in respect of complaints 1-4 on 22nd August 2007. While it is clear that these four complaints were recorded, the date of recording has not been confirmed to the IPCC. The IPCC holds no information as to whether or not the remainder of the complaints listed above were recorded.

Question 8: *Supply the dates of the complaints made against the (Gwent Police) ex-Assistant Chief Constable W Horne were recorded and as applicable the dates the complaints were dispensed.*

The information held by the IPCC indicates that only one of the nine allegations against Mr Horne was recorded as a formal complaint by the Gwent Police Authority. This was allegation number viii. The Police Authority has not confirmed to the IPCC the date on which this complaint was recorded but IPCC records suggest that it was probably recorded during

December 2005. This complaint was the subject of an application for dispensation as a result of which dispensation was granted by the IPCC on 26th March 2009.

Question 9: *On what grounds were the recorded complaints against (Gwent Police) ex-Chief Constable M Tonge dispensed upon?*

On 22nd August 2007, dispensation was granted by the IPCC in respect of complaints 1-4 (as listed above) on the ground that the complaints were vexatious, oppressive or otherwise an abuse of procedure (i.e. under the ground specified in Regulation 3(2)(d) of the Police (Complaints and Misconduct) Regulations 2004).

Question 10: *On what grounds were the recorded complaints against (Gwent Police) ex-Assistant Chief Constable W Horne dispensed upon?*

Dispensation was granted on 26th March 2009 on the ground that the complaint was vexatious, oppressive or otherwise an abuse of procedure (i.e. under the ground specified in Regulation 3(2)(d) of the Police (Complaints and Misconduct) Regulations 2004).

Question 11: *What complaints made against the (Gwent Police) ex-Chief Constable M Tonge were referred to the Board members of the Gwent Police Authority?*

This information is not held by the IPCC. I would suggest that you contact the Police Authority for further information.

Question 12: *What complaints made against the (Gwent Police) ex-Assistant Chief Constable W Horne were referred to the Board members of the Gwent Police Authority?*

This information is not held by the IPCC. I would suggest that you contact the Police Authority for further information.

I have decided that the IPCC is not obliged to release any further information in response to your request. This is because this information engages the exemption from the right to know contained in section 40(2) and 40(3)(a)(i) of the Freedom of Information Act. My reasons for withholding this information in reference to this exemption are as follows:

Section 40 of the Freedom of Information Act preserves the Data Protection Act restrictions on the disclosure of personal information. Section 40 sub-sections (2) and (3) exempt personal information relating to persons other than the person making the request where disclosure of this personal information otherwise than under FOIA would contravene any of the data protection principles.

The information I have withheld as to complaints against Mr Tonge and Mr Horne identifies the complainants by name and the data describing the incidents subject of the complaints 'relate to' these individuals, so that the Data Protection Act 1998 is engaged.

I consider that disclosure of this personal data in response to your freedom of information request would be unfair because only in exceptional cases would these individuals reasonably anticipate that personal information obtained by the IPCC for the purposes of its functions under the Police Reform Act would be made available to the general public on request. This is especially so where the information in question has the potential to adversely affect their personal reputations. There are no exceptional circumstances (e.g. strong public interest factors) in relation to these complaints. Consequently, the release of this personal data would be unfair on these individuals and thus would contravene the First Data Protection principle.

I find, moreover, that none of conditions set out in schedule 2 of the Data Protection Act would be satisfied by further compliance with your request. In particular I do not consider that disclosure is necessary for the purposes of the legitimate interests of the IPCC or the public at large when the potential prejudice to the rights, freedoms and legitimate interests of these persons is weighed in the

balance. Therefore, I find that the exemption at section 40(2) and 40(3)(a)(i) of the Freedom of Information Act is engaged and the IPCC is not obliged to provide you with further information.

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 write to:

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.

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 public authority's own internal complaint mechanism before complaining to the Information Commissioner.

Once again, I am sorry about the delay in replying.

Yours sincerely

Philip Johnston
Independent Police Complaints Commission