



**Gloucestershire Constabulary Freedom of Information Request 2014.5454
Request for FOI Internal Review**

Dear Ms Thompson,

I write concerning your request for a Freedom of Information (FOI) Internal Review relating to the request for information made by you on 13/05/2014. This is not merely a review of the original decision made by the Constabulary, but a complete processing of the request again by another officer of the below request:

1. The final report following the conclusion of the investigation
2. A list of any persons interviewed, and /or job titles, and whether any of these were interviewed under caution
3. Whether or not the CPS were involved and if so, any relevant correspondence.
4. Correspondence between Gloucestershire Constabulary and Carmarthenshire County Council
5. A list, or summary, of all documents in either paper or electronic form which formed part of the investigation.

The Constabulary's response to your request was sent on 11/06/2014.

I have reviewed in full the original request, the response sent to you and your request for an internal review. However, this internal review will focus on the areas that you have specifically challenged:

Points 1 and 5 were considered to be exempt from disclosure. As I said in my request I would have been satisfied with a list of individual documents rather than the documents themselves. I would like you to review your decision and reconsider whether any/all disclosure is possible either in full or as a list.

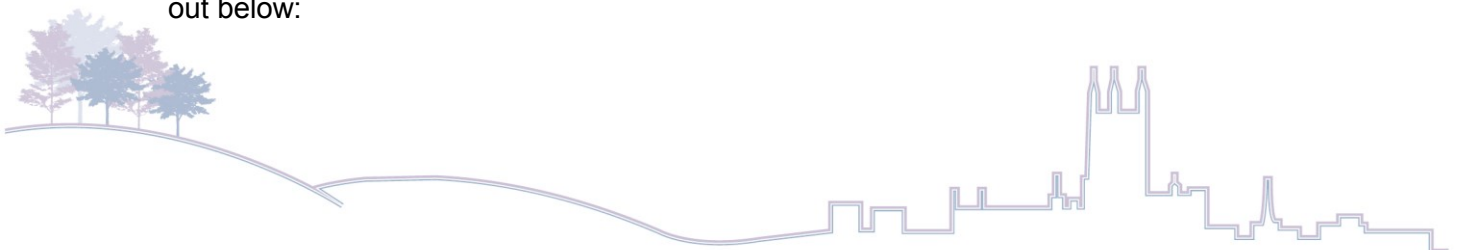
As the investigation has concluded and no criminal findings were made, please also review your decision not to disclose the final report.

With reference to my whole request, this investigation involved two public bodies and I would like to add that transparency is of the utmost importance.

In looking at the exemptions claimed by the Disclosure Officer I have referred to the Act and associated Code of Practice as well as utilising the Association of Chief Police Officers (ACPO) FOI Manual, which is a public facing document and can be found on the Constabulary website at:-

<http://www.gloucestershire.police.uk/foi/Information%20Classes/Policies/item8881.pdf>

Questions 1 and 5 in your original request were considered to be exempt by virtue of Section 30(1)(a)(b), which I uphold but in the section entitled **"Public Interest test- Factors favouring non-disclosure"**, some of the factors were not appropriate given the nature of the information requested. A revised Public Interest test for the section 30 exemption is set out below:





Section 30 – Factors favouring disclosure

Disclosure of this information would provide the public with an awareness of how the Police Service undertakes investigations and enable them to satisfy themselves that an investigation has been thoroughly undertaken.

Section 30 – Factors favouring non-disclosure

Disclosure of information relating to the matters considered by Police as to whether there has been any criminal wrongdoing would involve the disclosure of a substantial amount of information relating to actual or potential civil litigation proceedings. Disclosure under Freedom of Information is disclosure to the world at large and it is not in the public interest to allow the open dissemination of information relating to civil proceedings, which is not already in the public domain.

Balance test

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve and there is a public interest in the transparency of policing operations to ensure investigations are conducted appropriately.

However, the Police are responsible for matters falling within the jurisdiction of the criminal law and it is firmly against the public interest for the Police to disclose information relating to civil proceedings in which the Police are not involved and have no responsibility in terms of the outcome. Disclosure in relation to civil proceedings is subject to the procedures and rules of the Civil Courts and that function should not be potentially usurped by the Police.

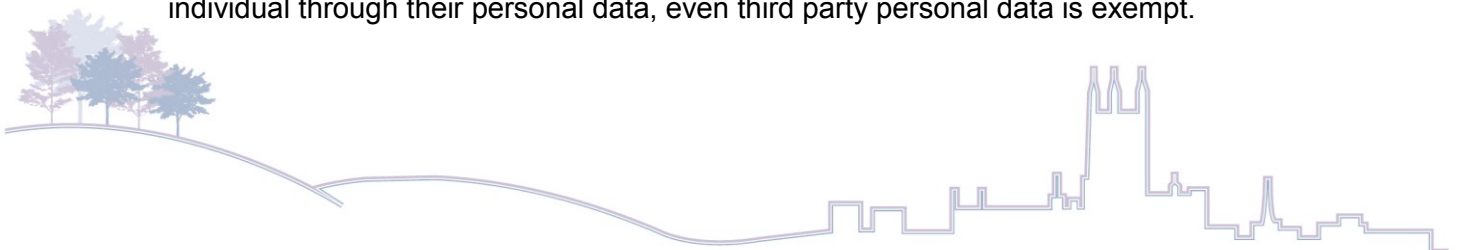
In view of the above, it is our opinion that the public interest in maintaining the exemption outweighs the public interest in disclosure.

In addition to the section 30 exemption applied in the original response, the following exemptions also apply to parts of the report and should have been provided in the original response:

Section 40(2)- Personal Information

Section 40(2) applies to third party personal data. This would not be released under the Freedom of Information Act unless there is a strong public interest. This is because any release would breach the Data Protection Principles contained with the Data Protection Act (1998), namely the first principle which requires that personal information be processed fairly and lawfully.

One of the main differences between the DPA and the FOI is that any information released under FOI is released into the public domain and not just to the individual requesting the information. As such, any release that identifies an individual or information relating to an individual through their personal data, even third party personal data is exempt.





Personal Data is defined under the DPA as data that is this is biographical in nature, has the applicant as its focus and/or affects the data subjects privacy in their personal, professional or business life.

All members of the public have the right to privacy and these rights are protected by virtue of the Human Rights Act and the DPA. Release of the information requested here is likely to compromise those rights.

This exemption is absolute and class based therefore I am not required to apply either the public interest test or harm test in disclosure.

Section 42- Legal Professional Privilege

This exemption is qualified and class based, therefore a public interest test is required.

Section 42- Factors favouring Disclosure

Disclosure of the information would ensure transparency and accountability by enabling the public to satisfy themselves that a thorough investigation has been undertaken.

Section 42- Factors favouring Non-Disclosure

The concept of legal privilege is a fundamental requirement of the English legal system which protects the confidentiality of communications between a lawyer and client. It recognises the client's fundamental human right to speak freely and frankly with his or her lawyers without the fear of later disclosure to their prejudice. It safeguards openness in the client/ lawyer relationship and ensures that individuals have access to full and appropriate legal advice. This helps to ensure complete fairness in legal proceedings.

Balance Test

Whilst there is a clear public interest in ensuring the transparency of police investigations, the public interest in maintaining the principle of legal professional privilege is inherently strong. The ability for an individual to obtain full and frank legal advice ensures fairness in legal proceedings and is fundamental to the administration of justice.

Gloucestershire Constabulary has conducted a thorough investigation as an independent party and in accordance with its policing obligations. The result of that investigation has been made public and you were provided with a copy of the Press Release issued by Dyfed Powys Police following completion of the investigation.

In view of the above, it is our opinion that the public interest in maintaining the exemption outweighs the public interest in disclosure.





Gloucestershire Constabulary

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I have therefore concluded following this review that the response to your request was accurate in that the information requested was withheld from disclosure. However, there was an error in the public interest considerations for the section 30 exemption and additional exemptions should have been applied to parts of the documentation.

I hope that you are satisfied with the outcome of this internal review. If you are not satisfied with this response or any actions taken in dealing with your request, you have the right to direct your complaint to the Information Commissioner for consideration at the Information Commissioner's Office, Wycliffe House, Water lane, Wilmslow, Cheshire SK9 5AF or www.ico.gov.uk

Yours sincerely

Mrs J Steedman
Disclosure Officer
Gloucestershire Constabulary

