

Our reference: 1007901

Dennis Fallon
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21 October 2019

Dear Mr Fallon

Your request for information

Thank you for your information request received on the 23 September 2019. We have considered your request under the Freedom of Information Act 2000 (FOIA) and this letter sets out our response.

Your request relates to the IOPC investigation of the incident described in the hyperlinked Mail Online article to which you refer. You request the following information:

FOI Q1. What was the reason the police requested Olivya Poole's car to stop, was her car stationary when first approached or driving in a dangerous or manner, or what other reason?

FOI Q2. Please disclose the initial police referral to the IOPC.

FOI Q3. Please disclose the IOPC report into the incident.

We can confirm that the IOPC holds this information.

You may not be aware that a summary of the IOPC investigation has been published on our web site [here](#). The first paragraph of this summary answers part one of your request, meaning that this information is 'reasonably accessible' to you in accordance with the exemption under section 21 of the FOIA. Therefore we are not obliged to supply this information to you in response to your request.

In regard to the second part of your request, a redacted version of the referral form is included with this letter. We have decided that you are not entitled to the redacted information because it engages the exemption under section 40(2) of the FOIA.

The full investigation report engages the exemptions under 30(1)(a)(i) and section 40(2) of the FOIA. We are refusing the report under section 30 after concluding that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Section 40 is an 'absolute' exemption meaning that there is no requirement to consider the balance of the public interest before refusing the information.

Our specific reasons for withholding the information are set out below.

Section 30 – investigations and proceedings conducted by public authorities

We are refusing the investigation report under this exemption.

Section 30(1)(a)(i) exempts material *“held by a public authority for the purposes of any investigation which the public authority has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence”*.

The IOPC carried out its own investigation into this case in line with its functions under the Police Reform Act 2002. These include considering whether the investigation report indicates that a criminal offence may have been committed, and referring the report to the Director of Public Prosecutions (DPP) when we conclude that it does. As the IOPC is required to make these decisions, the information we hold about this investigation falls within the class of information covered by section 30(1)(a)(i).

Information can be withheld under section 30 only when the public interest in maintaining the exemption outweighs the public interest in disclosure.

We accept that there is in general a legitimate and important public interest in publishing information about an investigation into the conduct of police officers, as this serves to inspire public confidence around the police complaints process. In turn this would serve the public interest in openness and in accountability for decision making and the use of public funds.

The release of our full report without any redaction would confirm all of the evidence that was taken into account under the IOPC investigation and how this was related to the investigation findings.

However the exemption under section 30 is concerned with preserving the safe space that can be critical to the investigation and prosecution process. As confirmed in guidance from the Information Commissioner's Office, section 30 is designed to protect the independence of the judicial and prosecution processes by preserving the criminal court as the sole forum for determining guilt.

There is a considerable public interest in ensuring that investigations, proceedings and prosecutions are conducted effectively. This requires the avoidance of prejudice either to particular investigations or proceedings, or to the investigatory and prosecution process more generally. In addition, the protection of individuals who co-operate with the police ensures that people are not deterred from making statements or reports by the fear that they may be publicised. In general these factors mean that a degree of confidentiality should normally be maintained in respect of the investigation process and the evidence it produces.

The investigation summary has been published on our web site in line with our [publication policy](#). We consider this information to be a proportionate response to the public interest in

transparency and accountability, taking into account the competing public interest in preserving the confidentiality of investigations and the persons to whom they relate. In addition, it is highly likely that a version of the report which has been redacted in line with FOIA exemptions would not leave the public any better informed about this case.

As you are aware, a member of the public has been convicted and sentenced in connection with this incident. The trial took place in open court before a jury and has been reported by the media. As confirmed in our published summary, the IOPC considered the evidence as to the standard of police driving and compliance with relevant procedure and concluded that there was no indication that any officer had behaved in a manner that would justify disciplinary proceedings, or had committed an offence.

We further note that there has been no suggestion that the IOPC investigation was flawed, or that its findings should be revised.

In our view, the public interest in disclosure of the full report is significantly reduced by all of these factors, especially when considered together with the information we have published on our web site.

Taking all of the above into account we conclude that the public interest in maintaining the exemption under section 30 outweighs the public interest in disclosure.

Section 40 – Personal information

This exemption relates to the information we have redacted from the referral form and to personal data in the investigation report.

Section 40(2) applies to personal data about someone other than the requester when disclosure would breach any of the data protection principles contained in Article 5 of the General Data Protection Regulation (GDPR). In this case we have considered Article 5(1)(a), which requires that personal data shall be processed lawfully, fairly and in a transparent manner in relation to the individuals concerned.

A number of individuals can be identified from this information. It may be helpful to explain that personal data does not only constitute names, addresses and dates of birth but encompasses any data that would be reasonably likely to result in the identification of an individual.

In assessing whether disclosure under the FOIA may be compliant with the GDPR, it is necessary to recognise that such disclosure is effectively an unlimited disclosure to the world at large, without conditions, which could lead to unwarranted intrusion resulting in damage or distress. In addition, there is no presumption under the GDPR that openness and transparency should take priority over personal privacy.

Some of the information is criminal offence data as defined in section 11(2) of the Data Protection Act 2018, meaning that it must be processed in accordance with the conditions imposed by section 10(5) of the DPA. We do not consider that disclosure under your request would meet any of these conditions; in particular, neither Part 3 paragraph 29 (consent from the data subject) nor Part 3 paragraph 32 (data made manifestly public by the data subject) would be satisfied by compliance.

Other information in the referral and report is 'special category data' under Article 9(1) of the GDPR because it relates to health and medical matters. Special category data cannot be disclosed unless one or more of the conditions for lawful processing under Article 9(2) would be satisfied. The Information Commissioner's Office confirms that the only Article 9 conditions that could be relevant under the FOIA are conditions (a) (consent from the data subject), or (e) (information manifestly made public by the data subject), neither of which apply to your request.

In our view none of the conditions under Article 6 or 9 of the GDPR would support release of the personal data we are withholding and there does not appear to us to be any legitimate interest in disclosure of this personal data that could justify any intrusion upon the rights and freedoms of these individuals that would be likely to result. This takes into account the criminal justice context of this personal data and the information published about this investigation on our web site.

This means that disclosure of this personal data would not be lawful, with the result that it is exempt under section 40(2) of the FOIA.

If you have any questions about this request please contact us. Please remember to quote reference number 1007901 in any future correspondence about this request.

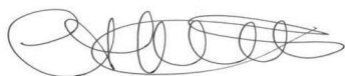
If you are not satisfied with this response you may request an internal review by an independent internal reviewer, who has had no involvement in dealing with your request. If you wish to complain about any aspect of this decision, please contact:

Reviewing Officer
Independent Office for Police Conduct
PO Box 473
Sale M33 0BW

All emails requesting a review should be sent **directly** to: dpo1@policeconduct.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 IOPC's own internal complaint mechanism before complaining to the Information Commissioner.

Yours sincerely



pp

Derrick Campbell
Regional Director
Independent Office for Police Conduct (IOPC)