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10/10/2018

FREEDOM OF INFORMATION REQUEST REFERENCE NUMBER: 161/18

Thank you for your request for information regarding New Landscape of Policing Report which has now been considered.

Applicant Question:

On Friday 14th September, 2018 The Times newspaper ran an article that referenced a NPCC report entitled 'Chief Constable preparation, selection, tenure and retirement in the 'New Landscape of Policing', dated June 2018.

It has generated widespread interest and comment on social media.

Please disclose the following:

1. Name of author, or co-authors, of the report.
2. Date work began on the report.
3. Date first draft of the report produced and to whom was it circulated, apart from the six serving chief constables referred to in the report.
4. Please disclose:
 - a. Names of those six chief constables referred to at Q3.
 - b. Name of serving chief constable who contributed to the report.
 - c. Names of thirteen ex-chief constables who were interviewed and contributed to the report.

It is not expected that the NPCC could reasonably rely on s40(2) of the Act as an exemption. All these individuals held high public office and, very likely, actively courted publicity throughout the later stages of the police career. Having provisionally identified three of them, it can be stated that two of them still do.

5. Please disclose the names of the seven interviewees who were drawn from a pool of PCC's, HMICFRS, Home Office.



As at Q4 above, the names of the PCC's cannot, reasonably, be withheld under S40(2). Likewise HMICFRS' contributor. A case could be made out under S40(2) regarding the Home Office official. Please approach him/her for consent, or otherwise.

6. Please disclose any, or all, data relating to assurances given regarding anonymity, confidentiality to interviewees. This should include reference to the fact that the report would be subject to press scrutiny, requests under FOIA.

NPCC Response:

The NPCC is not yet a designated body covered by the terms of the Freedom of Information legislation. Following the dissolution of the Association of Chief Police Officers (ACPO), designation under the Freedom of Information Act did not automatically transfer across to the National Police Chiefs' Council (NPCC).

For these reasons it is important that you understand that not being bound by the legislation means that the NPCC cannot apply exemptions to disclosure, engage the fees regulations and there is no recourse from the applicant's perspective to the Information Commissioner's Office.

It is the intention of the NPCC to comply with the spirit of the legislation, and if the NPCC were bound by legislation, we would have answered the request in the following way:

Section 17 of the Freedom of Information Act 2000 requires the NPCC, when refusing to provide information by way of exemption, to provide you with a notice which: (a) states that fact, (b) specifies the exemption in question and (c) states why the exemption applies. In accordance with the Freedom of Information Act 2000 this letter acts as a refusal notice for those aspects of your request.

The NPCC does hold information captured by parts of your request.

1. The NPCC does hold information captured by your request. This information is withheld by virtue of S38(1) Health & Safety.
2. The NPCC does hold information captured by your request and can confirm that work began on the report in the autumn of 2016.
3. The NPCC does hold information captured by your request. The first draft was produced in November 2017 and shared with one Chief Constable.
4. The NPCC does hold information captured by your request. The first draft was produced in November 2017 and shared with one Chief Constable.
 - a) The NPCC does hold information captured by your request. This information is withheld by virtue of S38(1) Health & Safety.
 - b) The NPCC does hold information captured by your request. This information is withheld by virtue of S38(1) Health & Safety.
 - c) The NPCC does hold information captured by your request. This information is withheld by virtue of S31(g) by virtue of S31(2)(j).
5. The NPCC does hold information captured by your request. This information is withheld by virtue of S31(g) by virtue of S31(2)(j).
6. The NPCC does not hold information captured by your request.

Section 38 Health & Safety

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to –
 - (a) endanger the physical or mental health of any individual, or
 - (b) endanger the safety of any individual

Section 31 Law Enforcement

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

- (2) The purposes referred to in subsection (1)(g) to (i) are-
 - (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work

It may be interpreted as the mental or physical health of a police officer, the requester, or another individual or the public in general.

This provision is in line with a similar provision in the Data Protection Act (DPA) that prohibits subject access where there is a risk of 'serious harm'.

This exemption also has the potential to be linked to the provision of confidential and personal information where identification of the source may place that person at risk.

The NPCC apply this exemption vigorously in respect of protecting the identities (and therefore the safety) of these participants and this cannot be stressed strongly enough.

In my consideration, anything requested that engages S38(1) and S31(g) would have a detrimental effect on the mental well-being of a person.

The published report, has minor S40 redactions. These were redactions relating to personal information that may identify an individual. This is also supported by the fact that there are no names published within the report.

Additionally, whilst S36 Disclosure Prejudicing the Effective Conduct of Public Affairs isn't engaged, the principle remains the same inasmuch as releasing the identity of participants may hinder free and frank exchange of views. This may discourage participation in any future research, analysis or reporting, where the need for anonymity is absolute.

There are no factors favouring the disclosure of the names of participants, including the author of this report that has any real tangible benefit, or would further corroborate information that has already been released into the public domain.

In the case *William Thomas Stevenson v the Information Commissioner and North Lancashire Teaching Primary Care Trust*, the Upper Tribunal commented that health and safety at work legislation "is generally concerned with preventing people being harmed, in the sense of being worse off, physically or mentally, than they would have been if they had not been affected by the work in question." (paragraph 80).

<http://administrativeappeals.decisions.tribunals.gov.uk/judgmentfiles/j3793/GIA%200835%202012-00.doc>

In general the factors to consider in determining whether the exemption can be engaged are those relating to section 31(1)(g). For example, whether there is any evidence that disclosures under FOIA have had the effect of discouraging the voluntary supply of information in the future, or what the effects are of any powers the auditors have to compel engagement with their processes.

It is necessary to consider the public interest in maintaining the exemptions outweigh the public interest in disclosing the information. I have taken into account the FOI Act principles of

transparency and accountability and weighed them against the likely prejudice caused by disclosure and in this case, the balance outweighs non-disclosure.

Yours sincerely

Sherry Traquair
Freedom of Information Officer & Decision Maker

www.npcc.police.uk

COMPLAINT RIGHTS

Internal Review

If you are dissatisfied with the response you have been provided with, in compliance with the Freedom of Information legislation, you can lodge a complaint with NPCC to have the decision reviewed within 20 working days of the date of this response. The handling of your request will be looked at by someone independent of the original decision, and a fresh response provided.

It would be helpful, if requesting a review, for you to articulate in detail the reasons you are not satisfied with this reply.

If you would like to request a review, please write or send an email to NPCC Freedom of Information, c/o PO Box 481, Fareham, Hampshire, PO14 9FS.