

Our reference: 1005889

Mr L Anderson

By email to: request-325627-dbf630b0@whatdotheyknow.com

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4 October 2017

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Dear Mr Anderson,

Re: Your request of 31 March 2016 – Freedom of Information Act 2000 (FOIA)

I refer to our previous correspondence concerning your request for the Operation Kalmia report and your complaint to the Information Commissioner's Office (ICO). This letter sets out my revised response to your request. Please accept my apologies for the long delay in letting you know the final outcome of your request for review.

Whereas we had previously refused the Operation Kalmia report in its entirety, I am now disclosing a redacted version, which has today been published on our website, together with a number of other relevant documents. You can find it here:

<http://www.ipcc.gov.uk/investigations/disclosure-and-protected-witness-staffordshire-police>

I have decided that the IPCC is not obliged to communicate the redacted information to you because it is exempt under section 30(2), 38(1), 40(2) and 40(5)(a) of the FOIA and because, in the case of information falling under sections 30(2) and 38(1), the public interest in maintaining the exemption outweighs the public interest in disclosure.

Section 40(2) and 40(5)(a) are absolute exemptions meaning that there is no requirement to consider the balance of the public interest before deciding that the information can be disclosed.

My specific reasons for refusal of the redacted information are set out below.

Section 30(2)(b) – confidential sources

Section 30(2)(b) exempts information that relates to the obtaining of information from confidential sources. For this exemption to apply the information must relate to the public authority's investigations or proceedings *and* relate to the obtaining of information from confidential sources. In this instance the information is held in respect of the IPCC's functions under section 30(1)(a)(i) because Operation Kalmia was an investigation that the IPCC had a duty to conduct with a view to it being ascertained whether a person should be charged with an offence. The particular reasons why section 30(1)(a)(i) applies to this report were explained to you in our letter of 27 May 2016.

Section 30(2)(b) is engaged by information contained in the report that could lead to the identification of a confidential source, or consists of information about police interactions with, or procedures in relation to, confidential sources.

My findings as to whether the public interest in maintaining the exemption outweighs the public interest in disclosure are as follows.

The public interest in release:

This particular information consists of the detailed facts and surrounding circumstances as to the handling of a protected witness by officers of Staffordshire Police. The IPCC managed investigation was focused on the conduct of the officers involved in managing this witness. Disclosure of the redacted details would leave the public better informed as to the matters that gave rise to the investigation and may, together with the remainder of the report, assist them in forming a view as to whether the criminal and police disciplinary outcomes of Operation Kalmia are properly supported by evidence. This information may also help to clarify the concerns that led to appeals against conviction being allowed in the case of *R v Joof and others*.

More generally, the public interest in openness and accountability would be served by disclosure of this redacted information by assisting the public in their understanding of how information relating to confidential sources is used and how the intelligence received assists in police operations, the prevention and detection of crime, the apprehension and prosecution of offenders and the administration of justice.

The public interest in maintaining the exemption:

Information received from confidential sources is essential to effective law enforcement. Any disclosure that may reduce the flow of information from such sources would prejudice the ability of law enforcement agencies to obtain reliable and accurate intelligence and identify, apprehend and prosecute serious offenders. The disclosure of information that would or would be likely to compromise the effectiveness of important law enforcement

measures, including specific investigations, is clearly not in the public interest. In addition, it would not be in the public interest to place such sources at risk of harm by releasing information that could assist in their identification in the public domain.

Balance of the public interest under section 30(2)(b)

There is a very substantial public interest in avoiding any disclosure that could have a deterrent effect on the level of cooperation from individuals who supply confidential information to the police.

Set against this is the significant public interest in accountability for the conduct of the officers who are the subjects of this investigation and in providing sufficient information to enable the public to form a view on whether this matter has been thoroughly investigated and its findings are supported by evidence. It is the conduct of the officers that is the focus of the IPCC managed investigation and the public interest in openness and accountability for this issue is, in my view, served to a very significant degree by the information that we are disclosing together with information that is already in the public domain about this case.

In particular, I consider the information that is accessible to the public as a result of this and other disclosures is sufficient for them to be reassured that the necessary steps have been taken to identify lessons learned and prevent a recurrence of the police failings in respect of this very serious matter.

While it cannot be disputed that there is a significant public interest in the disclosure of all the detailed evidence as to what happened in this case, I have decided that this does not outweigh the public interest in safeguarding the relationship between the police and confidential sources, when a substantial amount of information revealing and explaining the issues in this case is now available.

Accordingly, I have concluded that the public interest in maintaining the exemption under section 30(2)(b) outweighs the public interest in disclosure of this case.

Section 38(1)(b) – health and safety

This exemption applies to information that *'would, or would be likely to endanger the safety of any individual'*. I find that the report contains information that meets the criteria for this exemption insofar as it could assist in identifying and locating certain individuals who would be at serious risk of harm owing to assistance they have provided to the police.

Information can be withheld in reference to section 38(1)(b) only when the public interest in maintaining the exemption is outweighed by the public interest in disclosure.

The public interest in release:

The public interest factors favouring the disclosure of this redacted information are the same as those I have identified under section 30(2)(b), save that I do not consider that this information, which consists only of information that would increase the risk of identification of certain individuals, would serve the public interest to the same degree as would the information redacted under section 30(2)(b).

The public interest in maintaining the exemption:

There is a clear and compelling public interest in avoiding any disclosure that carries a real risk of endangering the safety of any individual.

Balance of the public interest under section 30(2)(b)

As noted above, the redacted report already meets the public interest in openness and accountability to a significant degree and the information to which this exemption applies accounts only for a relatively small amount of the information being withheld. In the circumstances of this case, the risk of endangerment to certain individuals clearly outweighs the public interest in disclosure.

Section 40(2) – Personal Information

The report contains information that identifies and relates to a number of individuals in a context which is personal to them and from which they can be identified either directly, or from those data together with other data in the possession of the IPCC as data controller. Accordingly, at least some of the requested information meets with the definition of personal data under section 1(1) of the Data Protection Act 1998 (DPA) and must be processed in accordance with the data protection principles.

In combination with section 40(3)(a)(i), section 40(2) of the FOIA exempts a public authority from the duty to communicate the information if doing so would:

- constitute a disclosure of the personal data of someone other than the person making the request; and
- this disclosure would breach any of the Data Protection principles

This means that a public authority is obliged to disclose personal data which has been requested under FOIA but only to the extent that such disclosure does not contravene the data protection principles. In order to strike this balance in regard to this report, we have restricted our redactions under section 40(2) to information that would be reasonably likely to result in the identification of certain individuals. In regard to the police officers whose conduct was the subject of the investigation, only the more senior officers have been named.

The relevant principle in this case is the first data protection principle, which requires that the processing of personal data should be fair and lawful and that it shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met, and in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

To the extent that a legitimate interest may be served by disclosure of the redacted identifiers (for example, the factors favouring disclosure identified above) , I do not consider that this could justify the detriment to these individuals that would be likely to result from their data being placed in the public domain. This takes into account the highly sensitive nature of some of the personal information contained in the report and the potentially serious consequences of identifying certain individuals. In regard to some persons, the report contains critical comments and information about their private lives. For other persons, while their information may not be so sensitive, no legitimate interest sufficient to justify disclosure suggests itself in the circumstances of this case, taking into account the degree to which the interests of openness and accountability are served by the information I am disclosing.

Having also noted that the identification of these individuals in this context would not be within their reasonable expectations, I have concluded that their rights and freedoms are not outweighed by the legitimate interests of you or the public in being supplied with this information. This means that disclosure of these identifiers would not be fair and that none of the conditions under schedule 2 of the DPA would be satisfied by disclosure.

The definition of 'sensitive' personal data includes, under section 2(g) of the DPA, information as to "the commission or alleged commission of an offence". Some of the information in the report relates to criminal allegations relating to the data subjects. As regards these individuals, we have considered whether their identification in this report can be brought within any of the conditions under Schedule 3 of the DPA, which sets out the circumstances under which sensitive personal data can be processed legitimately. In the absence of explicit consent to disclosure from the persons whose data this is, I do not find that any of these conditions could be met by the disclosure of their sensitive personal data in compliance with your request.

In reaching my decision on whether the redacted information identifying certain persons is exempt, I have noted the ICO's guidance on section 40 which states: "*If a schedule 2 condition (and where relevant a schedule 3 condition) is not met the information must not be disclosed*". I conclude, therefore, that disclosure of the redacted personal data would contravene the first data protection principle, so that the exemption under section 40(2) is engaged.

Section 40(5)(a) – personal information

Section 40(1) of the FOIA exempts the release of personal information that consists of the requester's own personal data, while section 40(5)(a) exempts a public authority from the duty to confirm or deny whether the information is held where the giving of that confirmation or denial would involve the disclosure of information that consists of the requester's personal data.

In reference to section 40(5)(a), I have decided that the IPCC is under no obligation to confirm or deny whether these reports contain information that consists of your own personal data.

It may be helpful to set out that our refusal under section 40(5)(a) applies the Information Commissioner's guidance 'Neither confirm nor deny in relation to personal data' (available at <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>) and the Information Commissioner and Tribunal decisions to which that guidance refers. Please see in particular paragraphs 10 to 13 on pages 4 to 5 of the Information Commissioner's guidance.

If, having considered our revised decision, you decide to withdraw your complaint to the ICO, we would be grateful if you would let us know. If, on the other hand, you are not satisfied with this response, it is our understanding that you can request the ICO to continue its investigation with a view to issuing a formal decision notice.

A copy of this letter goes to the ICO.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D.M. Knight'.

David Knight
Director, Operations
Independent Police Complaints Commission