

Our reference: FOI/1005889

Mr L Anderson

By email to:

[request-325627-](#)

[dbf630b0@whatdotheyknow.com](mailto:dbf630b0@whatdotheyknow.com)

27 May 2016

Dear Mr Anderson,

Re: Your request under the Freedom of Information Act 2000 (FOIA)

Thank you for your email of 31 March 2016 in which you make a request for information. Please accept our apologies for the delay in replying.

You have requested information relating to operation Kalmia. Our responses to each of your specific questions are set out below. We regret that we are not yet in a position to answer parts 2(a), 2(b) and 17 of your request.

*1. The date that the IPCC's management of the investigation started.*

Response: The IPCC's management of this investigation started on 24 November 2011.

*2. (a) The formal remit of the IPCC's investigation*

Response: We have yet to make our final decision on the disclosure of this information and will be contacting you in the near future with our response to this part of your request.

*(b) Details of any other cases which were reported to the IPCC in the course of Operation Kalmia, but did not form part of the formal remit.*

Response: Two other cases were reported to the IPCC. Staffordshire Police commissioned the Head of Cheshire Police Professional Standards Department to review these. These did not form part of the formal remit. While we hold information as to the details of these two cases, we have yet to make our final decision on disclosure and will be contacting you in the near future with our response to this part of your request.

*(c) Details of the authority or other body that the additional matters were referred to.*

Response: Please see response to (c) above.

*3. The date that any decision not to continue with any Criminal Proceedings was taken.*

Response: 19 November 2014

*4. The date that the IPCC's initial recommendations were issued to the relevant Police Authorities.*

Response : 5 June 2015.

*5. The date that the IPCC concluded Operation Kalmia.*

Response: 21 November 2014

*6. The total cost of Operation Kalmia.*

Response: This information is not held. The IPCC managed investigation was carried out by an outside force and no information as to the cost to that force has been provided to the IPCC.

*7. The number of former or still serving officers that were investigated as suspects as part of Operation Kalmia.*

Response: 14 officers.

*8. The number of civilians suspects that were investigated as part of Operation Kalmia.*

Response: No civilian suspects were investigated.

*9. A breakdown of the number of officers under investigation by the following categories.*

*(a) Retired at the time the IPCC investigation commenced.*

Response: 4 officers were retired.

*(b) Still serving at the time the IPCC investigation commenced but retired prior to the date Criminal Proceedings were ruled out (i.e. Point 3 above)*

Response: 4 officers were still serving at the time the IPCC investigation commenced but had retired before criminal proceedings were ruled out.

*(c) Still serving at the time the IPCC investigation commenced but retired between the date Criminal Proceedings were ruled out (i.e. Point 3 above) and the date of the IPCC initial recommendations (i.e. Point 4 above)*

Response: None

*(d) Still serving at the date of the IPCC initial recommendations (i.e. Point 4 above) but retired prior to any disciplinary action being taken.*

Response: 2 officers

*10. (a) Number of officers that the IPCC's initial report recommended action against.*

Response: The report recommended action against eight serving officers and retrospectively commented that a further six officers, if they had been still serving, should face action.

*b) The number of officers that IPCC's initial report did not recommend action against*

Response: One officer (retired).

*(c) Number of officers that were disciplined in as per with the IPCC's recommendations.*

Response: No officers were disciplined but one received management action.

*11. The number of police officers suspects that were arrested as part of Operation Kalmia.*

Response: No arrests were made.

*12. The number civilian suspects that were arrested as part of Operation Kalmia.*

Response: No arrests were made.

*13. The number of private addresses of police suspects (i.e. homes or offices used by any suspect) that were searched as part of Operation Kalmia.*

Response: No searches were carried out.

*14. The number of private addresses of Civilian suspects (i.e. homes or offices used by any suspect) that were searched as part of Operation Kalmia.*

Response: No searches were made

*15. A copy of the senior investigating officer's report to the IPCC.*

*16. A copy of the IPCC's report.*

We have decided that the senior investigator's draft report and the final IPCC report are exempt from the duty to supply you with a copy because they fall within the terms of sections 23(5), 30(1)(a)(i), 30(3) section 38(1)(b) and section 40(2) of the FOIA.

In the case of section 30(1)(a)(i), section 30(3) and section 38(1)(b) we are refusing to provide the information because the public interest in maintaining the exemption outweighs the public interest in disclosure.

Section 23(5) and section 40(2) are absolute exemptions, meaning that there is no entitlement to the information once it has been established that the exemption it is engaged. Therefore, there is no requirement to consider the balance of the public interest in regard to these exemptions.

Our specific reasons for refusal under each of these exemptions are as follows.

#### Section 40(2) FOIA

We consider that these reports consist of the personal data of the officers whose conduct was the subject of the IPCC investigation. In addition, the reports include the personal data of numerous other individuals as well. The data relates to these 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, 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.

These reports also consist of the sensitive personal data of the subject officers within the meaning of section 2(g) of the DPA. In addition, the reports include the section 2(g) sensitive personal data of certain members of the public connected with the investigation.

Information which, if disclosed, would contravene one or more of the data protection principles is exempt from the general right of access under section 40(2) in combination with section 40(3)(a)(i) of the FOIA.

The starting point when considering the disclosure of information to which the DPA applies is that the processing (in this case the disclosure) must be justified, taking into account the interests of the data subject.

To the extent that a legitimate interest may be served by compliance with questions 15 and 16, we do not consider that this could justify the detriment to individuals that would be likely to result from this information being placed in the public domain. This takes into account the highly sensitive nature of the personal information contained in the report and the potentially serious consequences of identifying certain individuals. For other persons, no legitimate interest sufficient to justify disclosure suggests itself. We find, therefore, that the rights and freedoms of these individuals are not outweighed by the legitimate interests of you or the public in being supplied with this information. This means that none of the conditions under schedule 2 of the DPA would be satisfied by compliance with these parts of your request.

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". We must therefore consider whether disclosure 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 our decision on whether section 40 applies to the report, we have noted the ICO's guidance on this exemption which states: *"If a schedule 2 condition (and where relevant a schedule 3 condition) is not met the information must not be disclosed"*. We conclude, therefore, that disclosure of these reports would contravene the first data protection principle, so that the exemption under section 40(2) of the FOIA is engaged.

### Section 30(1)(a)(i) – investigations conducted by public authorities

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 IPCC determined this matter as a ‘managed’ investigation under paragraph 18, Schedule 3 of the Police Reform Act 2002 (PRA). Under a managed investigation, the person appointed to investigate the complaint is under the direction and control of the IPCC.

Paragraph 23 of Schedule 3 provides that on receipt of the report of a managed investigation, the IPCC shall, amongst other things, consider whether the report indicates that a criminal offence may have been committed by any person under investigation and, if the report does so indicate, to consider whether it is appropriate to refer the matter to Director of Public Prosecutions (DPP). Where both of these conditions are satisfied, the IPCC must send a copy of the report to the DPP.

We have concluded, therefore, that the information you have requested is held by the IPCC for the purposes of an investigation it has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.

### Section 38(1)(b) – health and safety

This exemption applies to information the disclosure of which under the FOIA *‘would, or would be likely to endanger the safety of any individual’*. I find that the reports requested contain information which meets the criteria for this exemption.

### Section 30(1)(a)(i) and section 38(1)(b) – balance of the public interest test

Information can be withheld in reference to section 30(1)(a)(i) and 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 release of further detail about this case, including information that could identify some the individuals concerned, would enable the public to consider the evidence surrounding the handling of a witness by Staffordshire Police and the disclosure issues prior to the 2008 trial of five men for the murder of Kevin Nunes. Based on this information they can then form a view on the extent to which the decisions that were made by the IPCC and CPS in this case were reasonable and supported by evidence.

In addition, the public would expect to be reassured that all necessary steps have been taken to identify lessons learned and prevent a recurrence of the police failings in respect of this very serious category of offence.

This, in turn, would serve the general public interest in openness and in accountability for decision making and the expenditure of public funds.

The public interest in refusal of the information:

The general public interest served by section 30 is the effective investigation and prosecution of offences, which requires the avoidance of any prejudice to effective law enforcement, the protection of witnesses, the need to maintain the independence of the judicial and prosecution processes and the need to preserve the criminal court as the sole forum for determining guilt.

The protection of individuals who co-operate with the police ensures that people are not deterred from making statements or reports through fear that they may be publicised. In general, this means that confidentiality should be maintained in respect of the evidence gathered for a criminal investigation, whether or not the investigation or any related proceedings are still in progress. Accordingly, confidentiality can serve to promote rather than detract from investigations.

It is also relevant that the release of confidential information which has been provided by the police service to enable the IPCC to pursue this sensitive investigation could undermine the working relationship between the IPCC and the police service. This working relationship is essential to the effective operation of the system for regulating police complaints and misconduct. Disclosure of sensitive investigation material could thus hinder the system for dealing with police misconduct as well as the interests of justice more generally.

In addition, the report reveals the use of certain law enforcement techniques the disclosure of which carries a real risk to the investigation of serious crime. The disclosure of such information is clearly not in the public interest.

Turning to the public interest in favour of maintaining the exemption under section 38, there is a clear and compelling public interest in avoiding any disclosure that carries a real risk of endangering the safety of any individual. In the circumstances of this case, this risk clearly outweighs the public interest in disclosure.

We conclude that the public interest factors in favour of disclosure are significantly outweighed by the factors in favour of maintaining the exemptions under section 30(1)(a)(i) and section 38(1)(b).

### Section 30(3) - investigations

In reference to section 30(3), the IPCC neither confirms nor denies that the investigation report includes any information which may relate to the obtaining of information from confidential sources. This should not be taken as an indication that the investigation report does or does not include any such information. The duty to confirm or deny can be excluded in reference to section 30(3) only when the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds any relevant information.

We have decided that the public interest is in favour of maintaining the exclusion of the duty to confirm or deny whether the report includes information as to the involvement or non-involvement of confidential sources. In reaching this conclusion we have taken into account, in addition to other matters, our assessment of the balance of the public interest in relation to the exemptions under section 30(1)(a)(i) and section 38(1)(b).

### Section 23(5) - information supplied by or relating to matters dealing with security bodies

Some of the information contained in the IPCC investigation report has been received from the police service. The police service works in partnership with other law enforcement agencies in order to combat serious crime. As such, information may sometimes be provided by bodies listed at section 23(3) of the Act. I am unable to confirm or deny whether the investigation report includes any information to which section 23(1) applies and section 23(5) is cited to protect the involvement or non-involvement of bodies listed at section 23(3). Section 23(5) is an absolute exemption and as such no public interest test is required.

*17. A copy of the report referred to as the "Costello Report" which in part led to the IPCC managed investigation.*

We have yet to make our final decision on the disclosure of this report and will be contacting you in the near future with our response to this part of your request.

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 contact:

Senior Reviewer  
Independent Police Complaints Commission  
90 High Holborn  
  
London WC1V 6BH



All emails requesting a review should be sent **directly** to: [foi@ipcc.gsi.gov.uk](mailto: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 IPCC's own internal complaint mechanism before complaining to the Information Commissioner.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'A Rowe', with a stylized circular flourish at the beginning.

**Amanda Rowe**  
**Deputy Director of Operations**  
**Independent Police Complaints Commission (IPCC)**