

Our reference: FOI/1005889

Mr L Anderson

By email to:

[request-325627-](#)

dbf630b0@whatdotheyknow.com

28 June 2016

Dear Mr Anderson,

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

I refer to our letter of 27 May 2016 and your email of the same date in which you requested an internal review of the IPCC's handling of your request.

Please accept my apologies for the lengthy delay in finalising our response to your request.

This letter contains our response under the FOIA to your three requests that were not answered by our letter of 27 May 2016, namely questions 2(a), 2(b) and 17. You will receive a separate letter regarding the outcome of your internal review in due course.

Our responses to your outstanding requests are as follows:

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

Please find included with this letter a redacted version of the terms of reference for the IPCC managed investigation.

We have decided that you are not entitled to the redacted information because it

engages the exemptions in 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 reasons for refusal of the redacted information are the same as those set out in our previous letter in response to requests 15 and 16.

2(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.

In our previous letter we confirmed that two other cases were reported to the IPCC. We hold information as to the details of these cases but have decided that you are not entitled to it because it engages the exemption under section 40(2) of the FOIA.

Our reasons for refusing this information under section 40(2) are the same as those set out below in response to request 17.

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

The IPCC holds this information but we have decided that it is exempt from the duty to supply you with a copy because it falls within the terms of section 23(5), section 31(1)(a) and (b), section 30(3), section 38(1)(b) and section 40(2) of the FOIA.

In the case of section 31(1)(a) and (b), 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 this report consists of the personal data of a number of police officers and numerous other individuals as well. These data relate 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.

The report also consists of sensitive personal data within the meaning of section 2(g) of the DPA.

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 sensitive nature of the personal information contained in the report, its implications for the reputations of some persons, 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. We do not find that any of these conditions could be met by the disclosure of this 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 31(1)(a) and (b) – law enforcement

Section 31(1)(a) applies when disclosure would or would be likely to prejudice the prevention or detection of crime. Information is exempt under section 31(1)(b) when disclosure would or would be likely to prejudice the apprehension or prosecution of offenders.

The management review of the Staffordshire Police Sensitive Policing Unit (SPU) was commissioned in response to a number of concerns about the work of that unit. The functions of the SPU included the protection of witnesses and the management of covert human intelligence sources (CHIS). As confirmed in the redacted terms of reference, the review report was relevant to the trial of Adam Joof and others and the non-disclosure of the report to the prosecution in that case was amongst the matters investigated under Operation Kalmia.

Guidance from the Information Commissioner's Office (ICO) confirms that both section 31(1)(a) and section 31(1)(b) cover information on general methods and procedures adopted by law enforcement agencies in the investigation of crime, as well as information relating to specific crimes and investigations.

In this instance it is the risk of harm to the police operations and law enforcement techniques discussed in the review that must be considered. The subject matter of this report is such that disclosure would undermine the effectiveness of these operations and techniques to the detriment of the prevention or detection of crime and the apprehension or prosecution of offenders. We conclude, therefore, that the exemptions under sections 31(1)(a) and 31(1)(b) are engaged by this information.

Information can be withheld in reference to section 31(1) 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 the contents of the review report will assist the public in understanding the significance of the report to the trial of Adam Joof and others and form a view as to the professionalism or otherwise of the officers who were part of the SPU. This will assist the public considering how far the senior officers who were responsible for oversight of the SPU can be held accountable for the concerns that led to the report being commissioned. The report will also reveal to the public some

significant evidence in relation to 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 the public can form a view on the extent to which the decisions made in relation to this case by the CPS, Staffordshire Police and the IPCC have been in the interests of justice and the public more generally.

The disclosure of this report would also leave the public better informed about the particular law enforcement techniques deployed by the police in this specialist area of policing, thus enabling them to decide whether the police are effectively fulfilling their role of protecting the public against serious crime.

All of this would, in turn, 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 disclosure of this report would reveal information that would be likely to undermine existing operations by identifying individuals who are connected with them either directly from the report or from this and other information that may be available to members of the public, including criminals.

This information would also be likely to assist criminals by informing them about the particular techniques that fell within the remit of the SPU and how the police service is likely to deploy its resources in operations of this type. This could help criminals to adopt their own techniques that may assist them in avoiding detection in the future.

In addition, making this report available to the public could undermine the effectiveness of police investigations by deterring individuals from cooperating with the police. It is often the case that such individuals assist the police at significant personal risk to themselves and are much less likely to do so if they believe that their cooperation could become a matter of public knowledge. The willingness of individuals to assist the police on the basis of assurances of confidentiality is critical to the detection of the most serious crimes and this willingness could easily be undermined by the release of information that does no more than create a suspicion as to the identity of a witness or informant, whether well founded or not. There is, therefore, a very serious and pressing public interest in protecting the integrity of the law enforcement techniques discussed in the report in that disclosure of this type of information could undermine the effectiveness of law enforcement agencies in tackling the most serious of crimes.

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 to the detriment of public confidence in the police service as well as the interests of justice more generally. This in turn, would be likely to undermine the prevention or detection of crime and the apprehension or prosecution of offenders.

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 31(1)(a) and (b).

Section 38(1)(b) – health and safety

This exemption applies to information the disclosure of which *‘would, or would be likely to endanger the safety of any individual’*. I find that the review report contains information that meets the criteria for this exemption.

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 factors in favour of disclosure are the same as those explained above under section 31(1).

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.

Section 30(3) - investigations

In reference to section 30(3), the IPCC neither confirms nor denies that the Costello 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 31(1) and section 38(1)(b).

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

The management review report has been received from the police service and relates to the sensitive law enforcement issues. 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.

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

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,



Peter Orr
Deputy Director of Operations
Independent Police Complaints Commission (IPCC)