

Our reference: FOI/1006035

Mr L Anderson

By email to:

[request-342736-](#)

[11f285d5@whatdotheyknow.com](mailto:11f285d5@whatdotheyknow.com)

30 August 2016

Dear Mr Anderson,

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

Please accept my apologies for the delay in answering your request of 29 June 2016.

We have considered your request under the FOIA and our responses to each of your questions are as follows:

1. *Full details of any document sharing or confidentiality agreement between the IPCC and Staffordshire Police.*

Based on what you say in your email, we have understood this part of your request as referring to any written agreement between the IPCC and Staffordshire Police that could restrict or prevent either party from disclosing documents including any reports, under the FOIA.

The IPCC does not hold any information falling within the terms of this request.

2. *The exact date on which the IPCC concluded their involvement in the managed investigation known as Operation Kalmia.*

The IPCC's management of this matter is ongoing and will not be concluded until the decisions around publication are finalised.

*3. Details of any verbal or written discussions between Staffordshire Police and the IPCC in respect of FOI requests for the release of the Costello Report*

Included with this letter is a document consisting of correspondence between the IPCC and Staffordshire Police about a FOIA request received by Staffordshire Police for the Costello report.

We have decided that you are not entitled to the redacted information because it engages the exemption in section 40(2) of the FOIA.

Section 40(2) is an absolute exemption, meaning that there is no entitlement to the information once it has been established that the exemption applies to it. This exemption preserves the Data Protection Act 1998 (DPA) restrictions on disclosure of personal information. Section 40(2) and 40(3)(a)(i) together exempt personal information of persons other than the applicant, when disclosure would contravene any of the data protection principles.

The redacted information consists of data that relates to certain individuals in a context which is personal to them and from which they can be identified. This means that 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 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.

In this case it is the first data protection principle that must be considered. This requires that the processing of personal data shall be fair and lawful and that at least one of the conditions in Schedule 2 of the DPA must be met. If disclosure should fail to satisfy any one of these criteria, then the information is exempt from disclosure.

In considering the fairness of complying with your request insofar as it relates to this personal data, we have considered the consequences of disclosure on the subjects of this data, their reasonable expectations arising from the purposes for which the information was collected by the IPCC, and the balance between any legitimate interest in the public seeing this information and the rights and freedoms of the individuals.

Taking into account the roles and the seniority of the individuals concerned we do not consider that any significant public interest would be served by disclosing their

names and contact details in this context, especially when their job titles have not been redacted. Accordingly, the interests of the public in receiving this personal data do not outweigh the legitimate interests of the individuals in protecting their privacy in respect of this data. Similar arguments apply to the direct contact details of the IPCC Commissioner. While Ms Green should be prepared to accept a degree of interference to her rights and freedoms by virtue of her a public facing role, her accountability to the public in her professional capacity is not assisted by the disclosure of these details when she can be contacted by means of the details published on our web site.

We conclude, therefore, that disclosure of this redacted data would contravene the first data protection principle, so that the exemption under section 40(2) of the FOIA is engaged.

*4. The time and dates of any meeting that have taken place between the IPCC and Staffordshire Police in which the release of the Costello Report under the FOI has been discussed.*

There have been no such meetings and, therefore, we do not hold any relevant information.

*5. The names of the IPCC, Staffordshire Police representative and any other third parties present at any meeting as at (4) above.*

The IPCC does not hold any relevant information for the reasons given in the third part of our request.

*6. Details of any correspondence received by the IPCC from Staffordshire Police requesting advice or instructions in respect of the FOI requests relating to the Costello Report.*

Please see our response to the third part of your request. We do not hold any information in addition to the information we are disclosing to you and the information we have redacted from that document.

*7. Details of any instruction or advice given by the IPCC to Staffordshire Police in connection with the FOI requests in respect of the Costello Report*  
See 3.

Please see our response to the third part of your request. We do not hold any information in addition to the information we are disclosing to you and the information we have redacted from that document.

*8. Having concluded the managed investigation does the IPCC retain any statutory responsibility or duty to direct Staffordshire Police in respect of any FOI requests it may have received.*

The IPCC is not subject to any duty, responsibility or statutory power pursuant to which it can direct any other public authority, including Staffordshire Police, as to how it should respond to the FOIA requests it receives. This is because the duties under section 1 of the FOIA apply solely to the public authority that receives the request. These duties are disapplied only in the limited circumstances defined in section 12, 13 and 14 and Part II of the Act. While there may sometimes be legal prohibitions on disclosure that engage the absolute exemption under section 44, nowhere in the FOIA is there a provision that empowers any third party to direct a public authority in regard to its FOIA obligations.

The correspondence we have provided to you relates to consultation between the Staffordshire Police and the IPCC in accordance with Part IV of the Code of Practice under section 45 of the FOIA. This is available on line at <https://www.gov.uk/government/publications/code-of-practice-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act-2000>

Guidance on Part IV of the section 45 Code of Practice from the Information Commissioner's Office (ICO) states:

*The statutory duty to release information, even if it was originally provided by a third party, lies with the public authority. Although the third party may refuse consent to release this information, any refusal would not be binding on the public authority.*

This ICO guidance is available at: <https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

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 'Peter Orr', with a long horizontal stroke extending to the right.

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