

Our reference: FOI/1006035

Mr L Anderson

By email to:

[request-342736-](#)

11f285d5@whatdotheyknow.com

28 March 2017

Dear Mr Anderson,

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

On 29 June 2016 you made a request for information regarding Op Kalmia (IPCC ref 1006035). A response was sent to you on 30 August 2016. On 1 September you sent an email in which you indicated that you might seek an internal review of our decision, but first sought clarification of the IPCC response to request 1 – “Full details of any document sharing or confidentiality agreement between the IPCC and Staffordshire Police.”

On 3 February 2017 you made a request for internal review of our decision under 1006035 pointing out that you had not had any response to your correspondence on this matter.

That request for an internal review has now been passed to me.

I am very sorry that you have not had an earlier response. In my view, we should have treated your September request for clarification as if it were a request for internal review from the outset: it might then have been dealt with more promptly. I can only apologise.

Although you did not receive a reply, as you should have done, I can see from our records that steps were taken to try to get to the bottom of the matter.

Our original response interpreted your request as relating to any agreement between the IPCC and Staffordshire Police that could have restricted or prevented disclosure of Kalmia related information under FOIA, and on that basis we answered that we held no information matching this description.

On receipt of your representations that this request had been too narrowly interpreted, Mr Johnston of our FOI team made enquiries of those who were familiar with the case to see if there were any other kinds of document sharing or confidentiality agreement with Staffordshire Police, which we had not considered.

We have established that when you made your request on the 29 June 2016, the IPCC held at least one document sharing or confidentiality agreement made between the IPCC and Staffordshire Police in connection with Operation Kalmia. A copy of that agreement, titled '*Operation Kalmia Document Handling Terms and Conditions*' is included with this letter. This agreement consists of a single page of text and relates to the handling of documents in connection with litigation in which the Chief Constable is or was a party.

I can confirm, that the IPCC now also holds a copy of an agreement titled '*Operation Kalmia document handling agreement*'. You already hold a copy of this document because it was disclosed to you by Staffordshire Police on 27 September 2016 in answer to the request you made to them via the 'What Do They Know' (WDTK) web site. This document was emailed to the IPCC on 28 July 2016 after a conversation with Staffordshire Police in which they were asked to clarify the 'agreement' to which they had referred in their letter to Sarah Green of 27 May 2016, a copy of which you hold. This conversation took place in the context of our searches for the information you had requested. We carried out further searches of our records after receiving the document from Staffordshire and could find no trace of it being previously held by the IPCC.

In our view, the document signed by Mr Baker on 15 December 2014 could not have had the effect of preventing either the IPCC or Staffordshire Police from complying with their FOIA obligations. Even without the prior written agreement of either the IPCC Senior Investigator or Operation Kalmia SIO, the information to which this document refers can be refused under the FOIA only to the extent that it is exempt under Part II of the Act.

While it is clear that Staffordshire were applying the terms of this 'agreement' when they contacted the IPCC on 27 May 2016, Sarah Green's letter of 20 June 2016 responds to Staffordshire's letter as a request for consultation between public authorities under Part IV of the Code of Practice under section 45 of the FOIA.

In your email of 1 September you also raised as a concern the apparent discrepancy between the correspondence that we disclosed to you and what Staffordshire have said about the extent of their contact with the IPCC. I have noted in particular the messages you received from Julie Ferrie on behalf of the Staffordshire Police and Crime Commissioner in June 2016. We have checked our records and can confirm that all of the information we hold in respect of our contact about your request was included in the documents that were disclosed to you in redacted form on 30 August 2016.

Based solely on the messages to you on WDTK, it seems likely that Ms Ferrie was anticipating the IPCC's confirmation or refusal of consent under the 'document handling agreement', when Sarah Green had instead responded to Staffordshire Police as a FOIA consultation on 20 June 2016, and was not proposing to send any further response.

As I informed you on 9 December, the IPCC is now committed to publishing redacted versions of the Operation Kalmia and Management Review (Costello) reports, together with an executive summary. That work is now in progress. I note that in the interim on 16 January 2017 Ms Ferrie published a redacted version of the Costello report on WDTK.

I apologise again on behalf of the IPCC for the delay in identifying and disclosing the documents. It was not for want of trying on Mr Johnston's part, but he did struggle to get timely answers from those who held the information, despite attempts to escalate the matter. I will be raising this with the line managers of those concerned.

I hope that this provides you with the clarification you require.

As you may be aware, you can complain to the Information Commissioner's Office (ICO) about our handling of your request. Contact details are available at www.ico.org.uk.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D.M. Knight', written in a cursive style.

David Knight
Director of Strategy and Impact
Independent Police Complaints Commission