

Our Ref: IR 441.2016-17

Your Ref:

Date: 19 October 2016

Neil Wilby:

request-350296-9eeb1fd1@whatdotheyknow.com



Police and Crime
Commissioner
North Yorkshire



Dear Mr Wilby,

FREEDOM OF INFORMATION REQUEST REF NO: Internal Review Request 441.2016-17

I write in connection with your request for an internal review which was received by North Yorkshire Police on 8 September 2016. I note you seek access to the following information:

I am writing to request an internal review of North Yorkshire Police's handling of my FOI request 'Operation Rome documents'. The following grounds are submitted and referenced to the same paragraph numbers in the request and the response:

- 1. Information provided - therefore no complaint*
- 2. The response discloses that there is more than one officer holding the position.*

a. Detective Superintendent

b. Head of Professional Standards

The data controller misdirects himself in relying on a S40 (2) exemption.

(i) There can be no reasonable expectation from the data subjects that, having attained superintending rank in the police service, they would suffer harm or distress by disclosure.

(ii) There is a legitimate public interest in disclosure owing to the wider public interest in the events to which this request relates. Operation Rome has attracted widespread publicity in local, regional and national press, on websites and on social media. It continues to do so.

(iii) Disclosure of the specific information in question here would add substantively to public understanding of how and why this investigation was conducted, or the reasons why it remains the case that no one was convicted after a three year investigation into harassment without allegations. Particularly, as the well grounded suspicion remains that the detective superintendent made the transition from SIO in the criminal investigation to claimant in the civil claim that followed (Operation Hyson).

3. and 4. It is noted that by the response to the request that it is confirmed by the data controller that the policy log and final investigation report exists. The data controller misdirects himself by relying on S31 and S40 exemptions.

(i) Section 31 is a prejudice-based exemption. The actual harm which the data controller alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interest within the relevant exemption:

a. The data controller has failed to demonstrate that any causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. b. Furthermore, the data controller has failed to demonstrate that the resultant prejudice which is alleged is real, actual or of any substance.

(ii) Any personal data exempt under S40 could, reasonably, be excluded by way of redaction. It is the audit trail of decision making and resultant actions that is the principal feature of a properly maintained policy log (or book). A properly constituted investigation report is a narrative summary of the policy log with an executive summary that provides overview and a summary of lessons learned.

(iii) There is a strong public interest argument in favour of openness and transparency by showing the public how an investigation almost entirely lacking in merit, that did not secure a single conviction, was pursued for over three years. Disclosure would also show how public funds are being spent. The data controller, in his response, claims that over £400,000 was spent on Operation Rome.

5. The data controller has misdirected himself by relying on S42 Legal Professional Privilege relating to documents concerning the collection of financial data.

(i) It is argued that such documents - even if they exist - would fall under LPP.

(ii) The claim has now concluded save for the assessment of costs to be awarded to one of the three defendants, Mr Nigel Ward.

(ii) The public interest in this case has been substantial and remains so. Disclosure would go some way to satisfying the public as to whether the civil claim was justified and/or lawful.

(iv) The repeating of information of such doubtful provenance only serves to further undermine the data controller's standing. An article that forensically deconstructs those figures, first published in March 2016, stands unchallenged: <https://neilwilby.com/2016/03/20/409970-reasons-not-to-trust-north-yorkshire-police/> It is submitted in that article - and repeated in this review - that those figures and the manner in which they were collected is an artifice. Disclosure would satisfy the public interest in that argument.

6. 7. 8. and 9. Information provided - therefore no complaint.

I turn now to your comments on vexatious requests and make the following submissions:

a. Using Dransfield as the applicable test there is nothing in this request that could be remotely construed as vexatious.

b. I am an investigative journalist conducting a lengthy and forensic probe into a spectacularly failed criminal investigation (Rome) followed by a hugely expensive and largely failed, publicly funded civil claim (Hyson). It is my inalienable right to continue to ask relevant, opublic interest questions presented in an appropriate manner.

c. In the course of my interaction with the data controller I have been obstructed at almost every turn and generally dealt with by the data controller in a most appallingly negligent and discriminatory manner. To the extent that court proceedings have been issued against the data controller. In which the solicitor dealing with the matter on behalf of the data controller has lied in the Defence filed at court and served on me.

c. In order to ease the burden of the Civil Disclosure Unit I have used other legitimate means to seek answers to pressing public interest matters. For example this open letter to the police commissioner was published on 29th July, 2016. She wrote to me refusing to respond.

<https://neilwilby.com/2016/07/29/open-letter-to-north-yorkshire-police-crime-commissioner-julia-mulligan/>

d. I have sought comment on articles from the data controller and/or his press office but have been rebuffed on every occasion except one.

e. You will, therefore, forgive me if I find your reference to my requests being 'vexatious' offensive. Any attempt to label any other requests in the same way will result in further civil action being instigated against the data controller which will seek a declaration from the court that none of my requests are vexatious and an order restraining you from arbitrarily labelling them as such.

Finally, I point out that the officer who has finalised the present request - Caroline Williams - told a fellow journalist, Mr Mark Gregory (who for many years worked for the BBC), that all requests for information concerning Hyson were subject to 'special treatment' and he was, unlawfully, asked to provide proof of his identity before she would record his request for information.

When assessing whether it is the actions of the data controller that are vexatious, or those of mine, this new information should be put into the balance. In any event, this review requests a detailed explanation as to who made the decision to place requests for Hyson information as special cases and why the data controller sought to act unlawfully in seeking Mr Gregory's identity. It is further noted from the WhatDoThey Know website that a previous request for identity was made to a Ms Angela Snodgrove in March, 2016 concerning a Hyson request.

Please also confirm that the data controller has referred himself to the Police Commissioner over these actions, which constitute a clear breach of not only the Act but the Code of Ethics.

**Addition* 08/09/2016*

Dear Civil Disclosure,

I have now located the response to Mr Mark Gregory's freedom of information request (398.2016.17) referred to in my request for internal review.

<https://northyorkshire.police.uk/access-to-information/foi-disclosure-log/north-yorkshire-police-cps-investigation-charging-decisions-three-gentlemen-398-2016-17/>

Please add this further query to the review:

In the outcome to my request you have stated that the two SIO's for Operation Rome were a Detective Superintendent and the Head of Professional Standards.

In the response to Mr Gregory's request you have stated that the SIO was a Detective Inspector.

You have, therefore, on any reasonable view, provided a false outcome to either Mr Gregory or myself. Or, alternatively, the possibility of both being untrue cannot now be ruled out.

This will go further to the evidence of misfeasance in the county court claim (C1QZ56W6) in which I am claimant and the data controller is defendant. It should also form part of the package that forms the self-referral by the data controller, to the PCC, over Code of Ethics breaches.

**Addition* 29/09/16*

It is noted that every email posted by NYP Civil Disclosure Unit on the WhatDoTheyKnow website carries the strapline 'Committed to the Code of Ethics'

The matter of false outcomes (in the instant request at least one and possibly two) made in plain sight, in an open space should be a matter for the force's Professional Standards Unit to investigate under the Code of Ethics - Neglect of Duty and/or Honesty and Integrity.

Can you please confirm whether the Head of CDU has referred him/herself (or the officer(s) responsible) to PSU over this particular breach of the Code?

For context, I also refer you to this thread on WDTK concerning 299.2016.17:

https://www.whatdotheyknow.com/request/details_of_ps400000_claim#comment-71222

You may notice that I left an annotation on 2nd August, 2016 in an effort to assist Mr Michael Price, the requester.

There is also the unresolved matter of false information provided by NYP CDU in 427.2016.17 which has (so far) been the subject of correspondence away from the WDTK website.

An independent reviewer, particularly from outside NYP CDU, may well conclude that these repeated incidents go beyond the inadvertent.

**Addition* 29/09/16*

Please add this to the internal review:

I do not agree that the conduct issues raised in the previous email falls for disposal under FOIA.

Providing false information in FOIA finalisations is a Standards of Professional Behaviour/ Code of Ethics matter and, as such, should be dealt with by the force's Professional Standards Department, not the Civil Disclosure Unit.

Accordingly, you are requested to de-log 597.2016-17.

**Addition* 30/09/16*

Thank you for de-logging the #FOIA request.

Please confirm under which delegated powers, regulations etc., conduct and ethics matters are being 'dealt with internally (within CDU)' and by whom?

**Addition* 01/10/16*

For emphasis, it is repeated that North Yorkshire Police is misdirecting itself in dealing with ethics breaches and/or misconduct matters via an internal review of a Freedom of Information Act disclosure request. Deliberately so, and not for the first time, in my informed submission.

The applicable legislative framework is:

1. a. Police Act, 1996 S39.5(A) College of Policing Code of Ethics

http://www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf

1. b. College of Policing Authorised Professional Practice (APP) - Information Management

<http://www.app.college.police.uk/app-content/information-management/?s=>

2. Police (Conduct) Regulations 2012

<http://www.legislation.gov.uk/ukxi/2012/2632/contents/made>

3. Police Reform Act 2002 S22 IPCC Statutory Guidance

https://www.ipcc.gov.uk/sites/default/files/Documents/statutoryguidance/2015_statutory_guidance_english.pdf

You are, once again, referred to NYP FOIA finalisation 1269.2015.16 in which misconduct towards and ethical breaches affecting the requester was followed by similar misdirection over resolution of those complaints. It is noted, in a wider context, that Mr Price's request also concerned Operation Rome.

https://www.whatdotheyknow.com/request/details_of_ps400000_claim#comment-71222

Policing is an information-led activity, and information assurance is fundamental as to how police forces manage their many and varied day-to-day challenges. Without robust information processes and governance - so demonstrably lacking in North Yorkshire Police (and the PCC's office) - there is a significant risk of compromise, financial loss, damage to organisational reputation and, consequently, a reduction in confidence from both the public and journalists who hold policing bodies to account.

Decision

Following a review of your request and after careful consideration, I have decided to uphold the original response in part and will explain in more detail below.

In relation to your point 2, the reason for the differing responses is due to the fact that there was actually no Senior Investigating Officer in Operation Rome. The Civil Disclosure Unit had tried to assist you by providing job titles of those who had been deemed to be the lead Officers in the Operation; however this has led to some differing information.

By way of an explanation, a Senior Investigating Officer is defined by the Murder Investigation Manual as the lead investigator in cases of homicide, stranger rape, kidnap or other complex investigations. They will perform the role of Officer in Charge of those investigations as defined by the code of Practice under Part II of the Criminal Procedure and Investigations Act 1996

Operation Rome was not deemed to fit the criteria to necessitate a Senior Investigating Officer.

A Detective Inspector was the Officer in Charge of the investigation with a Detective Superintendent overseeing the investigation.

I therefore accept your request for an internal review on point 2 and confirm that there is no information held.

In relation to your point 3 and 4, I again accept your request for an internal review on the basis that section 31 and 40 are not applicable as in fact no information is held. There is no policy log or final investigation report.

After consideration of your point 5 I uphold the decision taken to exempt the costings document under section 42 of the Freedom of Information Act 2000. The costings document is subject to Legal Professional Privilege and the exemption has been properly applied.

I note your comments concerning vexatious requests; however I uphold the decision to provide you with a vexatious warning on the basis of the comments made within the original FOI

response. Within your comments regarding vexatious requests you have asked questions concerning the request of a Mr Gregory. As this does not relate to your request I take the view that this falls outside of the scope of this Internal Review and do not intend to respond to those particular questions.

I trust your concerns highlighted in addition on 8.9.16 have been adequately addressed by our response to point 2 above. There was no deliberate attempt to mislead yourself or the public. I do apologise for any confusion that was caused.

In relation to your additional comments dated 29.9.16 (1) I take the view that there has been no breach of the Code of Ethics. The reasons for the error have been outlined above. Should you disagree and wish to make a complaint, you can do so by contacting the Professional Standards Department at North Yorkshire Police.

I take your addition 1.10.16 to be a statement and therefore no response is deemed necessary. The Code of Ethics matter has been addressed in this response.

You will recall that your point e in your initial internal review request was to be dealt with by way of a new FOI request 587.2016 – 17, however in light of your comments and the responses given above I take the view that this has been adequately answered and so FOI 587.2016-17 has been closed.

I apologise for the delay in you receiving this response, however you will appreciate that additions were made to this review request as late as 1.10.16. Those additions also required consideration.

If you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

Complaint Rights

Your attention is drawn to the attached sheet which details your right of complaint.

If you have any queries concerning this request, please contact me quoting the reference number above.

Yours sincerely

Ashley Malone
Police Lawyer (Civil Disclosure)

COMPLAINT RIGHTS

The Information Commissioner

After lodging a complaint with the North Yorkshire Police if you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at www.informationcommissioner.gov.uk. Alternatively, phone or write to:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Phone: 01625 545 700