

Dear Sir,

## FOI REQUEST 178

You made a request under the Freedom of Information Act for the following information relating to all outside police force investigations requested by the WYOPCC since 1 December 2012:

- Date requested
- Force (or policing body) appointed to investigate
- Operational name
- Terms of reference
- Budget agreed
- Date finalised
- Final cost

I can provide the attached information relating to 6 outside police force investigations in response to your request as follows:

1. Greater Manchester Police.
2. Cleveland Constabulary.
3. Northumbria Police.
4. Cleveland Constabulary.
5. Lancashire Constabulary.
6. Lancashire Constabulary.

***It is important to note that the conduct investigations relating to documents 2, 3 and 4 found no evidence of misconduct and the investigation relating to document 6 is incomplete.***

I am very sorry for the delay in providing this information to you. This has resulted from consideration of the public interest in this disclosure, including consideration of objections to disclosure.

A further document relating to an investigation undertaken by Lancashire Constabulary has been withheld from this disclosure and further information is provided below.

Some information has been redacted in the attached documents because we believe exemptions apply. Section 17 of the Freedom of Information Act requires us to state which exemptions apply and the reasons why we believe they apply.

We consider that exemptions apply as follows:-

Section 40(2)(b)– Personal Information  
Section 31(1)(g) by virtue of S31(2) – Law Enforcement  
Section 31(1)(c) – Law Enforcement  
Section 43(2) – Commercial Interests

### Section 40(2)(b)– Personal Information

The information contained in the terms of reference is subject to the provisions of the Data Protection Act 1998 (DPA). Within this, the data needs to be processed fairly and lawfully, obtained only for a specified and lawful purpose and compatible with it; adequate, relevant and not excessive

in relation to the purposes for which it is processed; it must be accurate and be processed in accordance with the rights of the data subjects (Schedule 1, Part 1). Personal Information can only be disclosed if it does not breach one of the principles of the DPA. The first principle of the DPA requires information to be processed fairly and lawfully.

Information has been redacted where disclosure will breach principle 1 of the DPA, the duty to process information fairly and lawfully. The following factors have been taken into account in reaching this decision.

The information held is sensitive personal information within the scope of the DPA as it concerns the alleged commission of offences or alleged misconduct. Sensitive personal information may only be disclosed if one of the conditions of Schedule 2 and one of the conditions of Schedule 3 of the DPA are also satisfied.

Disclosure of sensitive personal information would be likely to cause harm and distress to the data subjects and is likely to lead to, or to increase, intrusion into the individual's private and family lives. This is particularly relevant to information which is now dated and where disclosure is likely to lead to renewed public comment.

Whilst the information held relates to individual's professional lives and there would, therefore, be some expectation of disclosure, in circumstances where officers or staff have now left the police service and are no longer in public facing roles this expectation would reasonably be lower.

Some information relates to senior police officers who will have a greater expectation that their personal information will be disclosed but more junior officers and members of the public would have a high expectation that their personal information would not be disclosed.

In considering whether disclosure is likely to breach the DPA we have also taken into account the fact that some information is routinely published by the Office of the Police and Crime Commissioner in relation to complaints and conduct matters relating to the Chief Constable and we have also taken account of information which is already in the public domain either by media reporting or via court records.

Sensitive personal information may only be disclosed if at least one condition in Schedule 3 and at least one condition in Schedule 2 of the Data Protection Act are also met.

Schedule 3 conditions which are relevant to the disclosure of sensitive personal information are: explicit consent (condition 1) and information already being made public by the data subject (condition 5)

Schedule 2 conditions which are relevant to the disclosure of sensitive personal information are: consent (condition 1) and disclosure necessary for the legitimate interests pursued by the Police and Crime Commissioner (PCC) or the third parties to whom disclosure is made except where this leads to unwarranted prejudice to the rights, freedoms or legitimate interests of the data subject (condition 6).

In considering disclosure of sensitive personal information we have taken account of any objections to disclosure and the legitimate public interest relating to the role and actions of the PCC as the person responsible for holding the Chief Constable to account for providing an efficient and effective police service as well as the legitimate public interest in the use of public funds and the effectiveness of the police complaints and conduct processes. We have concluded that, where-ever possible, it is in the public interest to publish information about investigations into police complaints and conduct.

**The Police and Crime Commissioner is mindful, however, that the investigation related to document 6 in this disclosure, investigation by Lancashire Constabulary into anonymous allegations made against the ex-Chief Constable Mark Gilmore, that the investigation is incomplete and, furthermore, that Mr Gilmore refutes the allegations made in the strongest terms.**

This exemption is absolute and does not require a public interest test.

#### S31(1)(g) by virtue of S31(2) – Law Enforcement

This exemption applies to the disclosure of information relating to document 1 of this disclosure, Greater Manchester Police's investigation.

The information is held by the PCC in connection with his responsibilities under the Police Reform and Social Responsibility Act 2011 which requires the PCC to ensure that the police force is efficient and effective and to hold the Chief Constable to account for the exercise of his functions, including dealing with all conduct or complaint matters regarding the Chief Constable.

Specifically, the information is held for the purpose of ascertaining whether any person has failed to comply with the law and whether any person is responsible for conduct which is improper.

This exemption requires a prejudice test and a public interest test.

#### **Test of Prejudice**

The three stage test has been applied as follows:

- Identifying the applicable interests. The applicable interest is in the PCC undertaking his duty to ascertain whether any person has failed to comply with the law and whether any person is responsible for conduct which is improper. In this case the PCC engaged Greater Manchester Police to undertake an investigation into this case on his behalf.
- Identifying the nature of the prejudice. The prejudice is in harming law enforcement investigations and judicial processes, specifically harm to further investigations and to the criminal review process. This refers not only to the investigation identified within the terms of reference but also to other, subsequent, investigations or processes which have arisen as a result of Operation Lamp and which may rely on the information contained within the documents held by the OPCC.
- Identifying the likelihood of prejudice. Prejudice is likely to occur on the basis that investigations and judicial processes are ongoing in this matter and the information held is directly relevant to these.

#### **Public Interest Test**

Factors favouring disclosure:

- Promoting public understanding of this high-profile case and the length of time that the investigation has taken.
- Promoting transparency and accountability; of West Yorkshire Police and of the PCC.
- Promoting transparency in the PCC holding the Chief Constable to account and ensuring that the police are effective.

Factors against disclosure:

- Harm to the judicial process, which is ongoing (as identified in the prejudice test), by revealing details of suspects and evidence in advance of the conclusion of the investigation.
- Harm to public confidence in the criminal justice system by revealing sensitive information in advance of the conclusion of the judicial process.

### **Balancing**

On balance the factors against disclosure are weighted greater than those in favour in all circumstances of this case. Some information is being disclosed which identifies the general parameters of the investigation, however, information which is specific to allegations or to evidence has been redacted so as to prevent prejudice to law enforcement.

### Section 31(1)(c) – Law Enforcement

Information is exempt if its disclosure would prejudice the administration of justice.

Terms of reference relating to Lancashire Constabulary's investigation of conduct matters arising from an investigation by the Police Service of Northern Ireland (PSNI) into the awarding of vehicle contracts has been withheld from this disclosure.

Civil proceedings have been intimated and issued against the PCC in relation to this investigation in which the misconduct investigation and publication of the subsequent report are in issue which means that S31 is engaged.

This exemption requires a prejudice test. Disclosure of the terms of reference (which are replicated in the investigation report which is being contended as part of the action against the PCC) would prejudice the administration of justice as the case is ongoing and relates, in part, to publication of the report. Disclosure of part of the report, at this stage, will prejudice the administration of justice and restrict the remedies available to the court.

This exemption also requires a public interest test which has been conducted as follows:

Factors in favour of disclosure:

- Promoting public understanding of this case.
- Promoting transparency in the PCC holding the Chief Constable to account and ensuring that the police are effective.
- Promoting public understanding of, and confidence in, the way that conduct matters are dealt with in the police service.

Factors against disclosure:

- Prejudice to the administration of justice by impacting on the ability of the parties and the court to consider the issues at claim and from exercising their rights.

- Prejudice to the administration of justice by undermining the jurisdiction of the court or by pre-judging the outcome of proceedings or any application made within the proceedings.

### **Balancing**

On balance it is found that the arguments against disclosure are weighted more heavily than those in favour of disclosure given the very strong public interest in allowing civil proceedings to take their course.

### Section 43(2) – Commercial Interests

Information is exempt information if its disclosure would, or would be likely to, prejudice commercial interests of any person (including the public authority holding it).

Documents 5 and 6 refer to a commercial interest and this has been redacted on the basis of the following public interest test:

Factors in favour of disclosure:

- Transparency and accountability in the way the police manage commercial interests or relationships.
- Transparency and accountability in the way that the police operate procurement processes generally.

Factors against disclosure:

- Reputational damage to the commercial interests of a third party, particularly given the competitive market in which the party operates.

### **Balancing**

On balance the factor against disclosure is weighted greater than those in favour of disclosure given that the redacted information relates only to the third party name; all other information relating to this exchange is being provided and the factors in favour of disclosure, therefore, are being fulfilled.

I trust that you are satisfied with this disclosure, however, should you wish to request a review of this response please write to the OPCC as detailed on the attached appeals procedure.

Yours faithfully

Julie Reid  
Business Support Manager  
Officer of the Police and Crime Commissioner for West Yorkshire