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Ms. Amanda Bennett
request-11307-5b4b00d9@whatdotheyknow.com

Date: 11th September 2009

Tel No.: (DDI) 01622 654429

FOI Ref: 3546-2009

Dear Ms. Bennett,

INFORMATION REQUEST 3546/2009

I write in connection with your request for information received by Kent Police on the 8th May 2009, in which you ask a number of questions concerning the Kent Police investigation into Clifford Ayling. I note that you have asked for a review of the handling of your request and this response will address those issues before moving on to dealing with your questions.

In the early part of this year, the Freedom of Information Team was undergoing staffing difficulties after experienced staff moved on into other roles. Recruiting, vetting and finalising staff into posts in the police service can take some time and it must be acknowledged that there are few if any candidates in the employment market who can be found with prior knowledge of information law. Having sourced candidates with the right potential, it is then necessary to train them while in the role and this requires further expenditure of time and resources. This has resulted in lengthy delays in processing some requests and a number of these, including your own, have been in a backlog awaiting attention.

The Freedom of Information Act has been in force since 2005 and is now becoming a mature piece of legislation, with a substantial body of case law to inform decisions. The numbers of requests received by forces nationally have seen a steady increase and we know from liaison with colleagues in other forces that the quality of the requests we receive, and the quantity of work that must be taken in responding to such requests, has increased significantly during recent years. Certainly it is the case in Kent Police that, as the Force has become more aware and more committed to the purposes of openness and accountability which underlie the legislation, we are increasingly careful to ensure that the information we release is as complete and as accurate as possible.

Please be assured that the delay in responding to your request was caused entirely by the workload within the unit and was not caused by any issues specific to your request.

Kent Police have now replaced staff and increased resources to the unit handling FOI requests, and we are working hard to deal with new business while reducing the backlog of existing requests. We apologise for any inconvenience that this delay has caused. We are currently in contact with the Information Commissioner's office to discuss and resolve these difficulties.

Moving on to your request itself, the Freedom of Information Act 2000 provides the general right of access to recorded information held by public authorities. This does not necessarily extend to the provision of copies of documents, but rather the information contained therein, and it does not require the public authority to make comment, or answer questions, except where recorded information is held that can itself answer those questions.

I note that much of your request seeks comment rather than recorded information. Having first explained these important points, I can now deal with each of your questions in turn.

Is it true that Kent Police; investigated the activities of Clifford Ayling?

Yes. This is a matter of public record. Further information regarding the investigations is documented in a ministerial white paper published on 9th September 2004, which is available at the following link:

<http://www.popan.org.uk/policy/documents/GoveresponsetoAylingReport.pdf>

Kent Police first investigated Ayling in 1991. Then again in 1998, and following his conviction in 2000 more investigations were conducted after other victims came forward.

Did Harriet Harman then represent any of the victims/witnesses that; were processed by Kent police?

Kent Police do not hold this information. However, it is a matter of public knowledge that Sarah Harman represented the victims of Clifford Ayling and this is recorded in the news archive of Harman and Harmon's website.

How did Kent Police become involved in the Ayling case, that is; what event triggered the police's involvement?

This question asks for comment, which is not a form of information Kent Police are required to provide under the Freedom of Information Act 2000. However, this information is documented in the written ministerial report.

What event triggered Harriet Harman's involvement with the; victims/witnesses of Kent police?

This information is not held by Kent Police.

Does anyone who is related to Sarah Harman, solicitor, or Harriet; Harman QC, MP, (both sisters) work for Kent Police, or who has at; any time worked for Kent police?

We must answer that this information is not held, as we do not know who Harriet Harman's relatives are. When new recruits and employees apply to join the Force, they are required to list the names and details of close relatives and associates for security vetting purposes. It is possible that a close relative or associate may have recorded on their application a relationship with either of the above, but to determine this would require the manual examination of every record of every person who has worked for Kent Police in approximately the last fifteen years. Since this organisation employs just under seven thousand staff at any given time, this would be completely impractical and would far exceed the amount, in terms of time and money, that a public authority is required to invest in responding to a single request, i.e. the cost of locating and retrieving the information exceeds the "appropriate level" (currently eighteen hours) as stated in the Freedom of Information (Fees and Appropriate Limit) Regulations 2004.

I cannot see that there exists any way of reducing the scope of your request in order to bring it within the cost limits while providing an authoritative answer to your question.

The information is therefore exempt under Section 12(1) of the Freedom of Information Act and in accordance with section 17(1) of the Act this letter must act as a Refusal Notice for this part of your request.

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

FOIA, Section 12 - Exemption where cost of compliance exceeds appropriate limit

Further to the above, I should point out that such an exercise would also be likely to constitute unfair processing of personal data and be an infringement of all of those employees' rights to privacy, as it is doubtful that there would be any lawful purpose in attempting to determine such a relationship.

Has all contact between Harman & Harman solicitors and Kent Police; in relation to the Clifford Ayling case, been documented?

Have any meetings between Harman & Harman solicitors and Kent Police in relation to the Clifford Ayling case been minuted?

Are copies of such documentation available anywhere in the public; domain, or can members of the public request them? If so, can you please provide them, or a link to them for me, please?

A solicitor representing a client in court proceedings may contact the Kent Police Legal department to request the disclosure of any information that may be relevant to the case under the Civil Proceedings rules. Since Harman and Harman solicitors represented the victims of Clifford Ayling in civil proceedings they did contact Kent Police to obtain any information to support their case and I can confirm that our correspondence recording system shows that there was correspondence between Kent Police and Harman and Harman around the year 2003 which related to each of the victims' claims under Criminal Injuries Compensation.

However, the Kent Police disposal policy, which establishes the timescales for retention of information, ensures that documentation that is held for the purpose of proceedings (rather than for the purposes of criminal investigations) is only held for seven years and is then destroyed.

This information is currently stored at an off site location for archive prior to destruction. To retrieve these records would cost the authority approximately £600, as the records are contained in a number of file boxes. Further each of these boxes would have to be manually examined, which would have a further cost implication in terms of time, potentially twelve hours, in order to retrieve all of the information.

Therefore, as such an exercise would undoubtedly involve an exercise that would extend beyond the cost limitations set by the Fees Regulations this information is also exempt under Section 12(1) of the Freedom of Information Act (as above) and in accordance with section 17(1) of the Act this letter must act as a Refusal Notice for this part of your request.

Notwithstanding this refusal, I should add here that, in regard to that specific correspondence, much of the information that would have been considered or provided would have been originally obtained and held for the purposes of a criminal investigation and with an expectation of confidence, and then the correspondence would relate to litigation and civil proceedings.

This would therefore be subject to a number of exemptions under the Freedom of Information Act 2000, including Section 30, which relates to Investigations and Proceedings.

Added to this must be the consideration that such information would concern highly sensitive data relating to individuals, in this case the victims of sexual offences, and this would clearly engage the exemption at section 40 of the Act (Personal Information). It would be highly unlikely that it would be appropriate for Kent Police to disclose it into the public domain, as it would be unfair to the victims who have undoubtedly been trying to rebuild their lives since the case was brought.

Furthermore, as the contact would be between the legal advisor to the victims and the legal department of Kent Police in respect of litigation, it is likely that a further exemption at section 42 of the Act, Legal Professional Privilege, would also be engaged.

Thank you for your interest in Kent Police. A sheet, which summarised your rights, was enclosed with the acknowledgement sent to you and as suggested therein, should you have any further questions concerning your request, please contact me quoting the reference number shown above.

Yours sincerely,

Nigel Amos
Freedom of Information Adviser

Your right to complain

We take our responsibilities under the Freedom of Information Act seriously but, if you feel your request has not been properly handled or you are otherwise dissatisfied with the outcome of your request, you have the right to complain. We will conduct an internal review to investigate the matter and endeavour to reply within 20 working days. If your appeal concerns the decision to apply an exemption, it would assist the review if you would outline why you believe the exemption does not apply.

You may lodge your complaint by writing to:

Supt. Paul Gladstone
Head of the Information Compliance Unit
Professional Standards Department
Kent Police Headquarters
Sutton Road,
Maidstone Kent
ME15 9BZ

Or by e-mailing

freedomofinformation@kent.pnn.police.uk

If you are still dissatisfied following our internal review, you have the right under section 50 of the Act to complain directly to the Information Commissioner. Before considering your complaint, the Information Commissioner would normally expect you to have exhausted the complaints procedures provided by Kent Police.

The Information Commissioner can be contacted at:

FOI Compliance Team (complaints)
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF