

**NOT PROTECTIVELY MARKED****Making Information Available****1. GENERAL PRINCIPLES**

- 1.1 Openness is one of the IPCC's core values and disclosure of information is one of the ways we ensure transparency in our work.
- 1.2 We will endeavour to provide as much information as possible, provided there is no restriction or constraint on our doing so.
- 1.3 In practice this means that we will not withhold information purely because there is no positive legal obligation to provide it. However, it may be necessary to focus our resources on prioritising those requests where we are under a legal obligation to provide disclosure.
- 1.4 We also have to comply with the law concerning the handling of certain categories of information; for example, material which constitutes personal or sensitive personal data under the Data Protection Act 1998. This can sometimes prevent us from disclosing information although there are exceptions where the party requesting the information can establish a legitimate reason for receiving it.
- 1.5 The main bases upon which the IPCC can and will make information available are set out below.

**2 Disclosure under the Police Reform Act 2002**

- 2.1 The Police Reform Act 2002 (PRA) imposes a duty on us in all managed and independent investigations to keep complainants and other interested persons informed of:
  - the progress of the investigation
  - any provisional findings of the investigation
  - whether an investigation report has been submitted
  - the action (if any) that is taken in respect of the matters dealt with in any such report
  - the outcome of any such action.
- 2.2 Our Statutory Guidance also states that making the final investigation report available to the complainant or interested person is the most transparent way of showing what the investigation has found.

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- 2.3 We will be as open as reasonably practicable in discharging our duties to provide information during the course of, and following the completion of a PRA investigation. The PRA recognises, however, that in some circumstances there should be exceptions to the duty to keep complainants and interested persons informed. These are set out in Regulation 12 of the Police (Complaints and Misconduct) Regulations 2004. The provision is known as “the harm test” and in summary states that it may be necessary to withhold information on the following grounds:
- to prevent premature or inappropriate disclosure of information relevant to, or that may be used in, actual or prospective criminal proceedings;
  - in the interests of national security;
  - to prevent or detect crime or apprehend or prosecute offenders;
  - where the disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure e.g. where disclosure would have an adverse effect on the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;
  - or where it is otherwise necessary to withhold information in the public interest.
- 2.4 Information can only be withheld under these grounds if we are satisfied that *there is a real risk* that disclosure would have a significant adverse effect.

**3 Disclosure to other public bodies**

- 3.1 We have other duties of disclosure in respect of managed and independent investigations.
- 3.2 Disclosure to the appropriate authority: The PRA provides that the appropriate authority must be provided with information at certain stages of the investigation. The appropriate authority may also have a legitimate interest in knowing how the investigation is developing. We may have to consider whether any of the grounds referred to in “the harm test” suggest that we should withhold information from the appropriate authority during the course of an investigation. For example, it may be necessary to withhold information in order to preserve the independence of the investigation.
- 3.3 Disclosure to an Inquest: We will need to communicate with the coroner during the course of an investigation into a fatality, providing copy evidence or interim reports where necessary. At the conclusion of the investigation, we will make as full disclosure as possible to the coroner to enable the coroner to provide interested persons to the

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Inquest with the information necessary for them effectively to participate in the process.

- 3.4 Disclosure to the CPS: Information may be disclosed to the CPS during the course of an investigation into a potential criminal offence. At the conclusion of every managed or independent investigation, we will consider whether the report indicates that a criminal offences may have been committed and if so whether it is appropriate in the circumstances to submit the report to the Director of Public Prosecutions. If a decision is taken to initiate criminal proceedings as a result of matters dealt with in an independent investigation, we will comply with the Criminal Procedure and Investigations Act 1996 and the Code of Practice issued under that Act.
- 3.5 Other public bodies with a legitimate interest in disclosure: It is recognised that other bodies will sometimes have a legitimate interest in some of the matters we investigate e.g. the Criminal Cases Review Commission or regulatory bodies such as the General Medical Council. During the course of an investigation those bodies may be treated as interested persons and may receive information subject to the harm test as referred to above.

**4. Disclosure for the purposes of civil proceedings**

- 4.1 If we are asked to provide information (that we would not otherwise disclose) for use in relation to civil proceedings and there is no court order relating to disclosure, we will apply the same test that a court would apply i.e.
- the documents sought must be shown to be likely to support or adversely affect the case of one or other party;
  - the disclosure must be necessary in order to dispose fairly of the claim or to save costs; and
  - a discretion not to disclose if for example disclosure would infringe 3<sup>rd</sup> parties rights (e.g. privacy / confidentiality or where disclosure would impact on the prevention or detection of crime, or even national security), but subject to a careful balancing exercise and with the option of reserving the disclosure application to the court to determine.

**5. Disclosure under the Freedom of Information Act 2000 (FOIA)**

- 5.1 The IPCC is a “public authority” for the purposes of the FOIA and as such is under a duty to confirm or deny the existence of information and to communicate that information.
- 5.2 The general right to receive information under FOIA is qualified by a number of exemptions. Some of the exemptions are absolute and some are qualified in that we must consider whether the public interest in

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maintaining the exemption outweighs the public interest in disclosing the information.

5.3 Some of the most relevant exemptions for our information will be those conferred on information held for the purposes of an investigation conducted by a public authority (section 30), personal information (section 40), information provided in confidence (section 41) and information which attracts legal professional privilege (section 42).

5.4 There is no obligation to provide information if the time estimated to locate and retrieve it exceeds the appropriate costs limit set out in Regulations made under FOIA. The appropriate costs limit for the IPCC will be reached after 18 hours.

**6. The right of access to personal data under the Data Protection Act 1998 (DPA).**

6.1 Where a person requests disclosure of information relating to themselves their request will be handled in accordance with section 7 of the DPA. Once again the right to information is qualified by certain exemptions in the DPA e.g. where the disclosure of information held for the purpose of crime prevention or detection would be likely to prejudice any such purpose (section 29).

Version 2 (8 June 2012).