

Our reference: 1007459



Mr Denis Fallon
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23 April 2019

Dear Mr Fallon

Thank you for your information request of the 22 February 2019. We have considered your request under the Freedom of Information Act 2000 (FOIA) and this letter sets out our response.

In relation to an IOPC independent investigation into a fatal road traffic accident involving West Midlands Police, you requested the following information:

“FOI Q1. Please disclose a copy of the referral made to the IOPC by West Midlands Police, regarding the collision incident of 22nd January 2019, so the details of the stages of the pursuit can be understood.

FOI Q2. Please disclose a copy of the IOPC report completed by Regional Director Derrick Campbell and advise to who the report was circulated after being completed or, if not yet completed, who is due to be copied in on the report and when is it due for completion.”

We explained in our letter of 22 March 2019 that the IOPC holds information relevant to your request; however we considered that some of the material falls within the class of information covered by a qualified exemption at section 30 of the FOIA. We considered that we needed more time in which to balance the public interest in respect of this material and to provide a full response.

We have now concluded our considerations and have decided and this letter sets out our final response.

In relation to question one of your request, we have provided a redacted copy of the referral form. Information that constitutes personal data has been redacted from the referral by virtue of an exemption provided at section 40(2) of the FOIA. We have also redacted information that falls within the scope of an exemption provided at section 30(1)(a)(i) of the FOIA relating to investigations and proceedings. We consider the public interest in maintaining this exemption outweighs the legitimate interest in disclosure of this particular information at this time.

Our specific reasons for withholding the information are set out below.

Section 30– Investigations and proceedings conducted by public authorities

Section 30(1)(a)(i) exempts material *“held by a public authority for the purposes of any investigation which the public authority has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence”*.

The IOPC is carrying out its own investigation into this case in line with its functions under the Police Reform Act 2002. These include considering whether the investigation report indicates that a criminal offence may have been committed, and referring the report to the CPS when it does. As the IOPC is required to make these decisions, the information we hold about this investigation falls within the class of information covered by section 30.

Section 30 is a ‘qualified’ exemption subject to a public interest test, meaning we must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Our arguments regarding the public interest test are as follows:

The public interest in release:

We accept that there is a legitimate public interest in publishing information about an investigation into the conduct of police officers, as this serves to inspire public confidence around the police complaints process. In turn this would serve the public interest in openness and in accountability for decision making and the use of public funds.

This particular case has attracted a lot of media attention and the release of the detailed evidence contained in the investigation report would leave the public better informed about the nature and context of this investigation, providing reassurance in demonstrating that a serious matter was thoroughly and fairly investigated.

The public interest in refusal of the information:

This investigation is still ongoing. On completion of the entire investigation, a decision will be made about what information will be released to the public regarding our findings and conclusions. We consider that it would not be in the public interest to disclose information that is pertinent to the investigation before the matter is concluded, as this could cause prejudice to the ongoing investigation and to effective law enforcement.

Furthermore, there is a risk that premature release of information will have the effect of misleading and misinforming the public about the conduct of the individuals involved. Release of this information at this time could impact on the privacy of those individuals resulting in unwarranted harm or distress.

There is considerable public interest in ensuring that investigations are conducted effectively. This requires the avoidance of prejudice to law enforcement, protection of witnesses and a need to maintain the independence of the judicial and prosecution processes by preserving the criminal court as the sole forum for determining guilt.

Maintaining this exemption preserves the safe space that can be critical to the investigation and prosecution process.

In addition, the protection of individuals who co-operate with the police ensures that people are not deterred from making statements or reports by the fear that they may be publicised. Accordingly, confidentiality in these circumstances serves to promote effective investigation. In general these factors mean that preserving confidentiality should normally be maintained in respect of the investigation process and the evidence it produces.

It is also significant that the release of this particular information in isolation may not enable the public to form a fair or balanced view about the significance of the matters being discussed. There is a risk that the release of this material could be misleading to the public without additional details to give true context.

Taking all of these factors into account, we have decided that the public interest in maintaining this exemption, in respect of the specific information falling within the scope of section 30, outweighs the interest in disclosure.

Section 40 – Personal information

Section 40(2) applies to personal data about someone other than the requester when disclosure would breach any of the data protection principles contained in Article 5 of the General Data Protection Regulations (GDPR). In this case we need to ensure that any personal data is processed lawfully, fairly and in a transparent manner in relation to the individuals concerned.

The referral contains personal data of police officers and members of the public. Some of this data is 'special category data' as defined under Article 9 of the GDPR.

In our view none of the conditions under articles 6 or 9 of the GDPR could be applied that would allow release of this personal data meaning there is no lawful basis that would support disclosure.

In assessing the fairness of disclosing personal information under the FOIA it is necessary to recognise that this is effectively an unlimited disclosure to the world at large, without conditions, which could lead to unwarranted intrusion resulting in damage or distress. In addition, there is no presumption under the GDPR that openness and transparency should take priority over personal privacy.

We have concluded that any legitimate interest in disclosure at this time could not justify the invasion of privacy and potential distress that would be likely to result making it inherently unfair. The fact that the IOPC investigation is still ongoing was a factor within this conclusion.

As disclosure would be both unlawful and unfair, this would breach the data protection principles meaning that the exemption at section 40(2) of the FOIA applies to the personal data we have redacted.

In response to question two of your request, this information is not held. A final report will be written at the conclusion of our investigation but at this point does not exist. We are unable to confirm the date the report will be completed at this time. A publication decision will be made in relation to the report once it is written and all associated proceedings have concluded, in line with our [publication policy](#).

If you have any questions about this request please contact us. Please remember to quote reference number 1007459 in any future correspondence about this matter.

If you are not satisfied with this response you may request an internal review by an independent internal reviewer, who has had no involvement in dealing with your request. If you wish to complain about any aspect of this decision, please contact:

Reviewing Officer
Independent Office for Police Conduct
PO Box 473
Sale M33 0BW

All emails requesting a review should be sent **directly** to: dpo1@policeconduct.gov.uk
Should you remain dissatisfied after this internal review, you will have a right of complaint to the Information Commissioner; however, we should point out that under section 50(2)(a) of the Freedom of Information Act, you are normally obliged to exhaust the IOPC's own internal complaint mechanism before complaining to the Information Commissioner.

Yours sincerely



PP
Derrick Campbell
Regional Director
Independent Office for Police Conduct