

Further to your request for information under the Freedom of Information (FOI) Act 2000, revised on 15 October 2016, please find enclosed documents relating to the following:

Relevant letters, meeting notes, briefing notes or reports from 01/04/2014 to 11/08/2016 where Mark Burns-Williamson, Fraser Sampson or his delegate has corresponded with or met with officers from the IPCC.

Some information has been withheld from this disclosure because we believe exemptions apply.

S17 of the FOI Act requires us to state which exemptions apply and the reasons why we believe the exemptions apply.

We consider that exemptions apply as follows:

S40(2) – Personal Information

S40(2) states that information is exempt information if its disclosure would breach any of the principles of the Data Protection Act (DPA) 1998.

Disclosure of the information would breach the first principle of the Data Protection Act, which states that information must be processed fairly and lawfully.

In assessing fairness the following factors have been taken into account:

- Sensitive personal information. The information held is sensitive personal information within the scope of the Data Protection Act 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 (see below).
- Consequences of disclosure. Disclosure of sensitive personal information would be likely to cause harm and distress to the data subjects. Disclosure 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 where disclosure is likely to lead to renewed public comment.
- Reasonable expectations of the data subjects. Individuals would have a reasonable expectation that this office did not disclose their sensitive personal information. This is particularly the case where officers or staff have now left the police service and are no longer in public facing roles.
- Seniority and public facing roles. Whilst senior police officers and officers who are in public facing roles will have a greater expectation that their personal information will be disclosed, members of the public would have a high expectation that their personal information would not be disclosed.
- General policy:
 - Some information is routinely published by the Office of the Police and Crime Commissioner (and the IPCC) in relation to complaints and conduct matters.
 - Information is also disclosed via media statements.

- There is also a general expectation that public sector bodies will operate in a transparent manner so as to promote accountability and public understanding. .

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. These are as follows:

Schedule 3 conditions: explicit consent (condition 1) and information already being made public by the data subject (condition 5)

Schedule 2 conditions: 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).

It has been concluded that neither a Schedule 3 nor a Schedule 2 condition can be met in this case. Consent has not been given to disclosure and the information has not already been made public by the data subjects. Although there is a legitimate interest in the PCC carrying out his duty under the Police Reform and Social Responsibility Act 2011 to hold the Chief Constable to account for the efficiency and effectiveness of the police force, disclosure of this information is not necessary to meet this interest as a significant amount of information is already placed in the public domain, by both the PCC and by the IPCC and can be accessed via both body's websites. Furthermore, the consequences of disclosure are significant for the individuals concerned as the information held is sensitive personal information. As the request is for information from April 2014, some of the information held is now dated which means that disclosure is likely to lead to fresh media interest some years after the matter was 'live'. Disclosure of sensitive personal information would be likely to cause harm and distress to the data subjects and would cause unwarranted interference with their rights, freedoms and legitimate interests.

It has been concluded that disclosure of the sensitive personal information requested would be unfair and would be in breach of the Data Protection Act 1998.

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

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

S31(1)(g) states that information is exempt if its disclosure would or would be likely to prejudice the purpose of ascertaining whether any person is responsible for any conduct which is improper (2b).

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.

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

Test of Prejudice

A three stage test has been applied as follows:

- Identifying the applicable interests. There is a wide-ranging interest in police forces and other enforcement bodies being able to conduct investigations without hindrance or obstruction (sometimes on behalf of the PCC). There is also a specific interest 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.

- Identifying the nature of the prejudice. The prejudice is in harming law enforcement investigations and judicial processes, specifically harm to ongoing or future investigations and to the criminal review process.
- Identifying the likelihood of prejudice. Prejudice is likely to occur in relation to the information held as it is sufficiently detailed to reveal police tactics and the nature of allegations in specific, live, investigations.

Public Interest Test

Arguments in favour of disclosure:

- Accountability – of the PCC and the IPCC for their duties to hold the Chief Constable to account and to ensure that the police force is efficient and effective.
- Transparency - to demonstrate that police officers are held to account appropriately for their conduct and to demonstrate that the governance structures are in place to do this robustly.

Arguments against disclosure:

- Harming on-going investigations and judicial processes, specifically by revealing the nature of sensitive matters which are being investigated before the investigation is concluded.
- Harming confidence in the police service by revealing sensitive information in advance of the conclusion of an investigation.

On balance, it has been determined that the weight of arguments against disclosure is greater than that of the arguments in favour of disclosure.

If hope you are satisfied with the way this request has been dealt with. I am attaching our FOI appeal policy should you wish to appeal this response.