

I refer to previous correspondence in connection with your communication of 21 September 2016 in which you requested certain information from the Office of the Police and Crime Commissioner for West Yorkshire (OPCC) pursuant to the Freedom of Information Act 2000 (FOI Act).

I apologise on behalf of the Commissioner for the delays in responding substantively to your request.

Generally the Commissioner is committed to transparency in the exercise of his functions, holding the West Yorkshire Police to account and maintaining an effective and efficient police force. However, your request has given rise to complex legal considerations, explained below.

#### YOUR REQUEST:

You requested release of the following information to you:

1. A copy of the Operation Barium investigation report.
2. Copies of emails between Lancashire Police and the OPCC whether the subject was either:
  - a) Mark Gilmore
  - b) Operation Barium.

#### DECISION:

I confirm that the OPCC holds an investigation report in relation to the conduct of former Chief Constable Gilmore. I also confirm that the OPCC holds emails between it and Lancashire Police in relation to Mr Gilmore and the investigation.

I had previously indicated to you that the delay in my being able to respond fully to you was caused by the need for detailed consideration of the public interest issues arising in connection with the application of certain exemptions in the FOI Act.

In relation to paragraph 1 of your request (the investigation report), the OPCC was bound to consider the following exemptions under Part II the Act, which we understand as an experienced journalist you are familiar with:

- Section 31 (Law enforcement), in particular subsection (1)(g) which refers to the exercise by any public authority of its functions for any of the purposes specified in subsection (2). Section 31(2) refers to (a) the purpose of ascertaining whether any person has failed to comply with the law, (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper, and (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise. Each of those subsections warranted consideration in this case. The Commissioner has statutory functions in relation to the police misconduct regime, under the Police Reform Act 2002 and the

Police (Conduct) Regulations 2012 (the PCR). The investigation report considers whether Mr Gilmore misconducted himself by reference to the Standards of Professional Behaviour for police officers in schedule 2 of the PCR. In this connection I note that there have not been any proceedings against Mr Gilmore and the allegations have not been tested at a hearing and have not been proved.

- Section 40 (Personal information), in particular subsection (2) because the investigation report contains personal data relating to Mr Gilmore and personal data relating to other persons who were witnesses or otherwise are identified. We appreciate that section 40 is an absolute exemption, however it requires consideration of whether disclosure of the information requested would contravene the Data Protection Act 1998, which in turn requires consideration of fairness in all the circumstances, which may include the public interest in the subject matter of the investigation report.

In relation to paragraph 2 of your request (emails between the OPCC and the Lancashire Police), the OPCC was bound to consider the following exemptions:

- Section 30 (Investigations and proceedings conducted by public authorities), in particular section 30(2) in relation to the misconduct investigation being conducted by the Commissioner with the assistance of Lancashire Police (see the references to functions in connection with section 31(2) of the FOI Act, referred to above). The investigation drew in part on confidential sources, referred to in some of the emails which may fall within your request.
- Section 31 (Law enforcement), for the reasons referred to above in relation to paragraph 1.
- Section 40 (Personal information), for the reasons referred to above in relation to paragraph 1.
- Section 42 (Legal professional privilege), in relation to emails in respect of which a claim to legal professional privilege could be maintained. Legal advice was taken for the purposes of the investigation and is referred to in some of the emails which may fall within your request.

However, consideration of your request has been complicated since November 2016 by the fact that persons with an interest in information in the investigation report and in emails between the OPCC and Lancashire Police have objected to disclosure of the same and have intimated civil proceedings against the Commissioner. Civil proceedings have more recently been issued against the Commissioner, in which the misconduct investigation and the question of publication of the investigation report are in issue.

This engages the exemption in the FOI Act at section 31(1)(c) “the administration of justice”. I have considered whether disclosure of the information requested in paragraphs 1 and 2 of your request would be likely to prejudice the administration of justice and I have concluded that in the present circumstances, it would. This relates to civil proceedings

intimated and issued against the Commissioner in relation to the investigation conducted by the Commissioner with the assistance of Lancashire Police into the conduct of Mr Gilmore.

I am alive to the public interest in an investigation into the conduct of a former Chief Constable while he is in office. However there is a strong public interest in allowing civil proceedings to take their course.

To disclose the information you have requested would impact on the ability of the parties and the court to consider the issues as they stand, in circumstances where those issues include the investigation and the question of publication of the investigation report. To disclose the information now may prevent persons with an interest in the information from exercising their rights, may undermine the jurisdiction of the court or may pre-judge the outcome of proceedings or any application made within the proceedings.

I have therefore determined that the information sought at paragraphs 1 and 2 of your request will be withheld. It follows from the reasons for that decision that once the civil proceedings have been resolved, the risk of prejudice to the administration of justice may have changed and it may be that a different decision would be taken.

#### REVIEW RIGHTS

If you consider that your request for information is not been properly handled or if you are otherwise dissatisfied with the outcome of your request, you may seek an internal review within the OPCC of the issue or the decision. I am attaching a copy of our appeal procedure.

A request for an internal review should be submitted in writing to the Interim Chief Executive, OPCC for West Yorkshire, Ploughland House, 62 George Street, Wakefield, WF 1 1DL.

If you remain dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information is been dealt with in accordance with the FOI Act. The Information Commissioner can be contacted at the Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.