

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2017

Public Authority: Chief Constable of Staffordshire Police

Address: Police Headquarters

PO Box 3167

Stafford

ST16 9JZ

Decision (including any steps ordered)

1. The complainant made a three part request about an assessment (the "Assessment") which was undertaken in connection with two criminal investigations by Staffordshire Police ("SP"). In respect of part (1) of the request, SP disclosed some information but withheld the remainder citing the exemptions at sections 40(2)(personal information) and 31(1)(a), (b) and (g) (law enforcement) of the FOIA. In respect of parts (2) and (3), SP failed to provide a response.
2. The Commissioner's decision is that SP was entitled to rely on the exemptions cited in part (1) of the request; however, she finds that SP should have cited section 40(1) in respect of some of that information.
3. In failing to respond to any part of the request within the statutory time limit SP breached section 10(1) (time for compliance) of the FOIA. Additionally, in failing to state whether or not it holds information in respect of parts (2) and (3), it breached section 1(1).
4. In respect of parts (2) and (3) of the request the Commissioner requires SP to either provide the requested information or issue a valid refusal notice as set out in section 17 of the FOIA.
5. SP must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

6. Although they were not available at the time of the request, the following information is now available on SP's website¹
 - 2013 Armstrong Review into cases relating to the Sensitive Policing Unit (the "Assessment")
 - 2006/7 Management Review of the Sensitive Policing Unit (the "Review")
7. These are redacted versions of the Reviews, the former being the Assessment which is the subject of this request.
8. During the Commissioner's investigation, SP disclosed two names within the Assessment which had previously been withheld. These disclosures are now available within the version on its website.

Request and response

9. On 6 December 2016 the complainant wrote to SP via the "What do they know?" website² and requested the following information:

"Operation Sanctio and Operation Pendeford

On the 29th November 2016, the Express and Star ran a story about concerns raised in connection with the above two criminal investigations.

<http://www.expressandstar.com/news/crime/2016/11/29/kevin-nunes-investigation-whistleblowers-call-over-murder-and-raid/>

In the article Deputy Chief Constable Nick Baker is quoted regarding an independent assessment of the concerns carried out by a senior investigator from a neighbouring force. Following that assessment it would appear that no further action was taken by Staffordshire Police.

The way in which individual police officers behave themselves and the manner in which police forces conduct major investigations is of

¹ <https://www.staffordshire.police.uk/MiscReports>

² https://www.whatdotheyknow.com/request/operation_sanctio_and_operation#incoming-949738

great interest to the public. It is very important that any concerns regarding wrongdoing are thoroughly investigated in a professional and transparent way. Dealing with any such concerns in an open manner can only reinforce public confidence in the police.

The report that details the findings of the 'independent assessment' of the concerns raised about possible wrongdoing is therefore very important in enabling to the public to reach an informed decision about how Staffordshire Police dealt with the issue.

Under the FIO Act [sic] I would like to request:-

- 1. A copy of the report complied following 'Independent Assessment [sic].*
- 2. Copies of any minutes appended to the report at (1) above.*
- 3. Any letters, emails or other correspondence in which the 'independent Assessment' referred to at (1) above is mentioned or commented on".*

10. SP responded on 6 February 2017. It disclosed some information but refused to provide the remainder. It cited the following exemptions as its basis for doing so:

- Section 31(1)(g) Law enforcement
- Section 38(1)(a)(b) Health and safety
- Section 40(2) Personal information

11. On 8 February 2017 the complainant sought an internal review of the response. Whilst he only made reference to the withheld information in respect of part (1) of his request the Commissioner notes that, in respect of parts (2) and (3), SP had previously advised him:

"I am still trying to establish if any information is held and if it can be retrieved within the time and cost limit. I will respond to these two questions as soon as possible".

12. Following an internal review SP wrote to the complainant on 9 March 2017. It revised its position by removing reliance on section 38(1)(a) and (b) but maintained reliance on the remaining exemptions. It made no further reference to parts (2) and (3) of the request.

13. During the Commissioner's investigation SP clarified that it was citing section 31(1)(a) and (b) as well as 31(1)(g) by virtue of 31(2)(b).

Scope of the case

14. The complainant contacted the Commissioner on 20 March 2017 to complain about the way his request for information had been handled. He asked the Commissioner to consider the following:

"I would like to ICO to looking [sic] the failures of Staffordshire Police to provide the information within the timescales set under the Act, the failure to properly carry out internal reviews [sic], the failure to provide the information requested in requests 2 and 3, and the exemptions cited in redacting the report that was supplied".

15. The Commissioner will consider the exemptions applied in respect of part (1) of the request and the lack of a response to parts (2) and (3).
16. As mentioned in paragraph 4 above, two names were disclosed during the Commissioner's investigation. These disclosures were made within the document published on SP's website rather than to the complainant personally. However, as the information is now in the public domain the Commissioner has removed these names from the scope of her investigation.
17. The Commissioner's comments regarding internal reviews, and other matters raised by SP in relation to section 77 of the FOIA, will be considered in "Other matters" at the end of this notice.

Reasons for decision

Section 1 – general right of access

Section 10 – time for compliance

18. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.

19. Section 10 of FOIA states that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".

Part (1) of the request

20. SP should have either issued a full refusal notice or disclosed the requested information - including the names which are now on its

website - within 20 working days. In failing to do so it breached section 10 of the FOIA.

Parts (2) and (3) of the request

21. SP acknowledged these parts of the request and advised that further time was needed to consider whether any information was held, and, if so, whether or not it could be retrieved within the appropriate limit. No further response was provided.
22. In failing to provide a response SP breached sections 1(1) and 10. It is now required to respond to these parts of the request.

Section 40 – personal information

23. The FOIA exists to place official information into the public domain. Once access to information is granted to one person under the FOIA, it is then considered 'public' information which can be communicated to any individual should a request be received. As an exemption, section 40 therefore operates to protect the rights of individuals in respect of their personal data.
24. SP has cited this exemption in respect of various parties named in the Assessment. However, having read the Assessment in full, the Commissioner has used her discretion and has addressed this exemption from her own view point.

Personal data of the requester

25. From the content of the newspaper article referred to in the request, the Assessment itself, and also the complainant's own submissions, it is clear to the Commissioner that the Assessment was undertaken as a result of various matters raised personally by the complainant, who was previously a police officer who worked within the Sensitive Policing Unit. Whilst the Assessment necessarily refers to other parties, it only exists because of matters the complainant has personally raised and these concerns are considered as a direct result of his actions and comments.
26. Having considered the wording of the request in this case, the Commissioner is satisfied that the complainant is, or would be, the data subject of much of the requested information. This is because the Assessment is structured in such a way that it is designed to address his concerns and he is referred to throughout its content. The Assessment is based around a chronology of concerns which the complainant has personally submitted. There are also whole sections of the Assessment which are written based on extracts from statements he personally made and the subsequent analysis of his evidence. Therefore, in the Commissioner's view, much of the information he has requested is, by

its own definition, about or connected to him personally; both the Assessment and the complainant are intrinsically linked.

27. The Commissioner notes that the complainant has advised:

"In respect of my name being redacted even though I make it clear I consent, Staffordshire Police claim that they are not permitted to do so. I find that position hard to understand given the the [sic] Court of Appeal named me repeatedly in court documents which were published on the internet and repeated in the national press".

28. However, she does not consider that such 'naming' is disclosure under the terms of the FOIA. Any previous disclosure was connected to legal proceedings which means it was for different purposes which were unrelated to the FOIA regime.

29. The newspaper article included in the wording of the request refers to comments made by the Deputy Chief Constable of SP and the Assessment's existence is therefore not in question. However, as it is clearly an approach by the complainant for his own personal data (as well as that of other parties insofar as he raises questions over their conduct) under the terms of the FOIA, then the Commissioner will consider this point in the first instance.

30. Section 40(1) of FOIA states that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".

31. The Data Protection Act 1998 (DPA) defines personal data as:

*"...data which relate to a living individual who can be identified
a) from those data, or
b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*

32. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

33. The content of the Assessment is largely based on matters raised by the complainant himself and includes many detailed extracts of statements he personally submitted to SP. It follows that, in relation to some of the

information, the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption. The Assessment also contains many instances of redactions which relate to the complainant's own name.

34. In the Commissioner's view, where applied in respect of the complainant's name, SP should have cited section 40(1) rather than 40(2). Furthermore, she considers that the following sections of the Assessment are also his personal data as they are based on information provided by, or about, the complainant:
- The chronology of concerns (pages 5-10)
 - Two sections which are entitled "*Extracts from ...*" (pages 10-21)
 - Two sections which are entitled "*Analysis of ...*" (pages 22-26 and 34-35)
35. The Commissioner is of this opinion because these parts of the Assessment all relate directly to the complainant in the first instance so all fall under the exemption at section 40(1). They are fully based on submissions made by the complainant personally. Even where there is reference to third parties, the complainant has personally provided this information to SP and it has been included in the Assessment as part of the necessary determinations about his concerns. The complainant's request should therefore have been approached differently to one made by a member of the general public, as it clearly relates to the complainant personally.
36. The Commissioner has therefore concluded that section 40(1) should have been applied to these parts of the Assessment. Section 40(1) is an absolute exemption. If the complainant wishes to access this information this should be done under the subject access provisions of the DPA. (The complainant should note that this access regime does also contain exemptions so he may not receive full disclosure of this information.)

Personal data of third parties

37. The remaining information, which the Commissioner does not consider relates directly to the complainant, includes the names of the following:
- A senior officer who was 'copied in' to the Assessment
 - A Chief Crown Prosecutor
 - SP officers of various ranks
 - Two witnesses
 - CPS caseworkers
 - A legal advisor

(It should also be noted that the following analysis would also be relevant to these parties throughout the Assessment, ie had the request

been made by someone other than the complainant where section 40(1) would not have been engaged.)

38. The Commissioner does not consider that the name of the officer who was copied into the Assessment falls within the scope of the request; it is incidental. The request only seeks the Assessment and this is purely an annotation which has been written onto it afterwards. She has not therefore considered this name any further and it is properly withheld.

39. Initially, in respect of the redactions made, the complainant has argued:

"I feel that attempting to conceal through redaction the two most senior officers involved in the cases under review are unnecessary and pointless given that both have been clearly identified in the press ... The same applies to other junior officers that have been named in the press ... to try to hide their involvement by blanking their names in the redacted report is pointless".

40. In the Commissioner's view, the fact that parties may be named in the press at some time, or be named as part of a court case, does not mean that further processing of their personal data is appropriate in the future.

41. The complainant has further argued that:

"Redacting the names of an officer who appears multiple times is very confusing for the reader. If the redaction of the name of an officer is justified, can I ask that a reference be used so that the report remains readable, i.e. like in the court of appeal judgement where officers are on occasions referred to by a letter of the alphabet."

42. The complainant clearly has an in-depth personal knowledge of the Assessment as it centres on issues he personally raised and he was also personally employed within the Sensitive Policing Unit. Therefore, in the Commissioner's view, his personal knowledge of the officers involved means it is highly likely that he would already be able to 'second-guess' what is said about each individual. Although disclosure under FOIA is meant to be person blind and is disclosure to the world and not just to the complainant, the Commissioner must take his personal position into consideration as it concerns the reidentification of third parties.

43. Therefore, whilst the Commissioner accepts that the addition of some sort of 'lettering system' to designate each individual within the Assessment may be useful for the public at large in aiding with its comprehension of the Assessment, this would obviously make it considerably more simple for the complainant to personally identify the parties based on his own knowledge. She does not therefore find that a 'lettering system' would be appropriate on this occasion because of the

complainant's close involvement with the case as this would assist with his personal reidentification of the parties.

44. In respect of the remaining names within the body of the Assessment, the first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the DPA. If it is not personal data, then section 40 cannot apply. As set out in paragraphs 31 and 32, above, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
45. The parties are all named so, in the Commissioner's view, it is clear that the withheld information 'relates' to living persons and it is therefore their 'personal data'.
46. Having accepted that the remaining information constitutes the personal data of a living individual/s other than the applicant, the Commissioner must go on to consider whether its disclosure would breach one of the data protection principles; the first data protection principle is the most relevant.

Would disclosure contravene the first data protection principle?

47. The first data protection principle states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in schedule 2 is met.
48. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.
49. The Commissioner has first considered whether disclosure would be fair.
50. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
51. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible data controller, will not disclose certain information about them and that it will respect their confidentiality. For example, she considers that

information relating to court cases, police investigations and disciplinary or personnel matters will carry a strong general expectation of privacy for those parties concerned. Therefore, in the Commissioner's opinion, any staff whose conduct was under consideration, those who were working in the Sensitive Policing Unit, named witnesses, the CPS caseworkers, and the legal advisor would all have a reasonable expectation that their names would not be disclosed and the consequences of any such disclosure could be damaging or distressing to them. The Chief Crown Prosecutor is a senior role and the Commissioner notes that his personal details are readily available in the public domain. However, it is also noted that the Chief Crown Prosecutor is only named in connection with the legal advisor. Therefore, because of this very limited connection with the Assessment, the Commissioner accepts that he/she would have no expectation of being named.

52. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. She will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions.
53. With respect to the consequences of disclosure in this case, the sensitivities around the subject matter and the media interest, the Commissioner accepts that any member of SP staff who was identified, whether or not this was as a result of their conduct being under investigation, could potentially be sought out by the media, and their friends and family could also be approached. She also considers that the other parties named would have no expectation that their names would be disclosed in connection with the Assessment and, as such, she accepts that disclosure could cause damage and distress to these parties.
54. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
55. In considering these 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
56. The Commissioner acknowledges that the matter under consideration in this case raises issues in relation to accountability and transparency. She also notes the complainant's views that:

"I feel that 'public facing' senior officers should be named regardless of whether they have retired or not. The unnecessary blacking out of names makes the document almost unreadable and

denies the public an understanding of important issues within a public body”.

57. However, SP has now disclosed the majority of the requested information, retaining only a small amount under this exemption (and under section 31, as considered below), and she therefore considers that any issues of accountability have largely been met. She does not agree that the redaction of these names “*denies the public an understanding of important issues*”, as most of the information has been disclosed. The Assessment found no breach of standard of professional behaviour by any officer, no evidence of criminal conduct by any officer and no evidence of material impropriety. The naming of the associated parties is therefore intrusive as their actions have been fully investigated with no questionable conduct being found and the Commissioner can see no legitimate interest in providing their names in these circumstances. Furthermore, SP advised the Commissioner that:

“There have already been reports in the press about Operation Pendeford and Sanctio and a report in the local newspaper Express and Star on 29/11/16 drew zero shares/Facebook/Twitter responses. There have also been no requests to the media department for further information which would suggest that there is little public interest in the story. Staffordshire Police have been as open and transparent in this matter as they can be, the assessment was published 06/02/17 on our website with a corresponding statement ... There has been no public interest since this release”.

58. In the Commissioner’s view, SP has therefore provided sufficient information to meet the legitimate interest of the public without infringing the rights of the parties connected to this sensitive matter.
59. In light of the nature of the information and the reasonable expectations of the individuals concerned, the Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the data subjects. She considers these arguments outweigh any legitimate interest in disclosure and has therefore concluded that it would be unfair to disclose the withheld information - in other words, disclosure would breach the first data protection principle. She therefore upholds SP’s application of the exemption at section 40(2) to all parties.
60. As disclosure would not be fair, the Commissioner has not gone on to consider whether disclosure is lawful or whether one of the schedule 2 DPA conditions is met for the majority of the parties; her initial view is that no such condition would be met.

Section 31 – law enforcement

61. The Commissioner is only considering this exemption in respect of the information which she does not consider to fall under section 40. The relevant redactions fall within pages 27 – 34 and 37 – 44 of the Assessment.

62. SP has made a small number of redactions in respect of sections 31(1)(a),(b) and (g) of the FOIA. These state:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

*(a) the prevention or detection of crime,
(b) the apprehension or prosecution of offenders,*

...

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)".

63. In this case, the relevant purpose at subsection (2) is :

"(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper".

64. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed but, before the information can be withheld, the public interest in maintenance of the exemption must outweigh the public interest in disclosure.

65. In order for section 31 to be engaged, the following criteria must be met:

- the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

66. SP has used section 31 to redact a small amount of information about the work of the Sensitive Policing Unit. The redactions are for a series of individual words and short phrases connected to the two police operations named in the request. In engaging it SP advised the complainant:

"Staffordshire Police are charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. Staffordshire Police, in line with law enforcement, has a duty to prevent crime, apprehend and prosecute offenders and carry out the administration of justice. The assessment contains sensitive personal information and the tactics used by the force in relation to the use of protected witnesses".

67. As evidence of the perceived harm in disclosure, SP has further advised the Commissioner:

"To release an unredacted version of the assessment would disclose police tactics of dealing with protected witnesses ... causing a significant risk to future law enforcement capability of the force and place individuals at risk of harm. Staffordshire Police, in line with law enforcement, has a duty to prevent crime, apprehend and prosecute offenders and carry out the administration of justice. By disclosing the requested information it would impact on the force's operational and tactical capabilities and any potential vulnerability".

68. It also provided further grounds which the Commissioner is unable to disclose within this decision notice.
69. The Commissioner is satisfied that SP has argued that the harm envisaged relates to the applicable interests in this exemption.
70. When considering the second bullet point, the Commissioner must be satisfied that the nature of the prejudice is "real, actual or of substance" and not trivial or insignificant. She must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.
71. The Assessment considers the work of SP's Sensitive Policing Unit, and the redacted information mostly comprises information about processes and procedures used when dealing with protected witnesses. The Commissioner accepts that, although on the face of it the redacted information seems relatively trivial, it could nevertheless be useful intelligence to someone looking to build up an informed understanding of how protected witnesses are managed. Such an understanding would undoubtedly be of use to someone looking to undermine protected witness arrangements or to interfere with or intimidate protected witnesses. The Commissioner is therefore satisfied that the prejudice

envisaged in respect of the disclosure of this information is "real, actual or of substance".

72. In relation to the third bullet point, SP has stated that prejudice "would" occur. In considering this point, the Commissioner has had regard to the sensitivity of the information, its context and the comments made in the Assessment. Taking all this into account, she is satisfied that Staffordshire Police has demonstrated that prejudice would occur.
73. Having concluded that sections 31(1)(a) and (b) are engaged the Commissioner has gone on to consider the balance of the public interest.

Public interest arguments in favour of disclosure

74. SP has acknowledged that the two investigations that are mentioned in the Assessment were high profile and details about how they were conducted may be of interest to the public. It added that:

"Disclosure of the information would increase public confidence that Staffordshire Police investigate such matters appropriately and responsibly. The disclosure of the assessment would leave the public better informed about the particular law enforcement tactics deployed by Staffordshire Police in this sensitive, specialist area of policing. To release the assessment would enable the public to decide whether Staffordshire Police are effectively fulfilling their role of protecting the public against serious crime and that they take the allegations made by their staff seriously. To release this information would show openness, transparency and accountability for the expenditure of public funds".

75. It has also accepted that there is public interest in the transparency of investigations and in ensuring that officers carry out their duties correctly and ethically.

Public interest arguments in favour of maintaining the exemption

76. SP has argued that it is charged with enforcing the law, preventing and detecting crime and protecting the community. Prevention of crime is a key role of the police and SP argued that the release of any information that may compromise investigations and law enforcement is not in the interests of the public. It advised that the Assessment contains details about how protected witnesses are dealt with and SP believes that disclosure of this information could undermine law enforcement tactics which would lessen its effectiveness in tackling serious crime.

77. It argued:

"Disclosure of the requested assessment would reveal detail of investigative activity, undermine any future policing operations and

compromise law enforcement, allowing those individuals intent on committing crime the opportunity to plan ahead. This would impact on future operations additionally, the safety of individuals would also be compromised. Evidence gathered from witnesses is essential for successful investigations and therefore any release of information that could lead to identification or harm of an individual, would dissuade people from providing intelligence/evidence. The protection of individuals who co-operate with the police ensures that people are not deterred from making statements or reports through fear that they may at some point be published. The willingness of individuals to assist the police on the basis of assurances of confidentiality is critical to the detection of the serious crimes and this willingness could easily be undermined by the release of information that does no more than create a suspicion as to the identity of a witness or informant, whether well founded or not. There is a clear and compelling public interest in avoiding any disclosure that carries a real risk of endangering the safety and physical or mental health of any individual. In the circumstances of this assessment and due to the sensitivities surrounding it, this risk clearly outweighs the public interest in disclosure”.

78. It further advised the Commissioner that:

“There have already been reports in the press about Operation Pendeford and Sanctio ... There have also been no requests to the media department for further information which would suggest that there is little public interest in the story. Staffordshire Police have been as open and transparent in this matter as they can be, the assessment was published 06/02/17 on our website with a corresponding statement ... There has been no public interest since this release”.

Balance of the public interest

79. The Commissioner considers that appropriate weight must be afforded here to the public interest inherent in the exemption; that is, the public interest in avoiding likely prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders by SP. The Commissioner considers it clear that there is a very substantial public interest in avoiding that outcome and that this is a public interest factor in favour of maintenance of the exemption of considerable weight.
80. The Commissioner accepts that disclosure of the remaining information requested could identify witnesses which may lead to other individuals, in the future, deciding not to assist the police in providing evidence; it may also increase the risk of harm to these specific individuals if they

are identified. She therefore agrees this could affect the SP's future law enforcement capabilities.

81. SP has also provided cogent arguments as to why disclosure of operational information would have an adverse, practical impact on the effectiveness of its law enforcement procedures. Set against this, the Commissioner notes that the complainant's concerns about openness and accountability are served, to a significant degree, by the large amount of information which has now been disclosed. She considers the remaining information which has been withheld under section 31 to be minimal.
82. Having taken the above in to account, the Commissioner is satisfied that, in this case, the public interest in maintaining the exemption outweighs that in disclosure of the requested information.

Other matters

83. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

84. When asking for an internal review the complainant said:

"With the letter of explanation Staffordshire Police cites a number separate exemptions and a general explanation regarding the public interest test. The redaction of the document is done in such a manner that it is impossible to say which exemption is relied upon to justify each particular redaction, it is therefore difficult if not impossible to make a well reasoned argument against any redacted section. I would ask that Staffordshire Police relook at the document and make clear the exemption relied on and relevant grounds for each redaction."

85. In responding to this point SP advised:

"Under FOIA Section 77 – Offence of altering etc. records with intent to prevent disclosure.

To provide a reference would entail altering the document. Under Section 77 this would be classed an offence".

86. Section 77 of the FOIA states that a criminal offence is committed if any person alters, defaces, blocks, erases, destroys or conceals any information with the intention of preventing the applicant from receiving any of the information he is entitled to receive.
87. The Commissioner considers that SP's response to the complainant is misplaced. Clearly any annotation in such circumstances is not attempt

to alter, deface, block, erase, destroy or conceal any information - in much the same way as any redaction that is applied when partial disclosure is made cannot be considered to be 'concealment' (clearly such an action cannot be an offence if the information is properly exempt).

88. The Commissioner considers it best practice, and in line with a public authority's duties under section 16 of the FOIA, to be as helpful as possible when providing a response to a request, and marking up a disclosure to show what has been found to be exempt and the relevant exemption applied would be considered helpful. Such action is **not** an example of a section 77 offence.

Internal review

89. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
90. The complainant asked for an internal review in respect of timeliness in handling his request on 2 February 2017. A response accepting a breach of section 10, was provided on 16 February 2017. The Commissioner finds that this was an acceptable time for responding.
91. The complainant asked for an internal review of his substantive response on 8 February 2017. A response to this was provided on 9 March 2017. This marginally exceeds the recommended 20 working day turnaround. However, the Commissioner realises the sensitivities surrounding this case and she finds that this is therefore acceptable on this occasion.

Right of appeal

92. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

93. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

94. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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