

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** **13 November 2018**

**Public Authority:** **Chief Constable of Gloucestershire Constabulary**

**Address:** **County Police Headquarters**

**No. 1 Waterwells**

**Waterwells Drive**

**Quedgeley**

**Gloucester**

**DGL2 2AN**

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to complaints about police officers. Gloucestershire Constabulary provided information in relation to some parts of the request, stated that no information was held in relation to another part of the request and refused parts 11 to 15 of the request on the basis that section 30(1)(a)(i) and (b) (investigations and proceedings) of the FOIA apply.
2. The Commissioner's decision is that Gloucestershire Constabulary was entitled to rely on section 30(1)(a)(i) of the FOIA in respect of parts 11 – 15 of the request. However, she found a breach of section 10(1) (time for compliance) of the FOIA as Gloucestershire Constabulary did not respond to the request within the statutory timescale for compliance.
3. The Commissioner does not require Gloucestershire Constabulary to take any steps.

## Request and response

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4. On 7 August 2017, the complainant wrote to Gloucestershire Constabulary and requested information in the following terms:
- "1. Are telephone complaints against police subject to a written complaint outcome.
  - 2. Are telephone complaints against police subject of complaint recording decisions.
  - 3. Are telephone complaints against police subject of a complaints appeal procedure.
  - 4. Are complaints against police requiring mandatory referral submitted to the IPCC.
  - 5. How long is recorded material retained from BWC, CCTV, car recording systems
  - 6. What is the name of the officer or personnel in charge of the Anti-Corruption Unit
  - 7. Why has (public) telephone contact with the Anti-Corruption Unit been terminated.
  - 8. Has Gloucestershire Constabulary conducted any investigation to identify how and why formed [name redacted] was allowed or able to commit criminal offences for twenty years whilst serving as a police officer within Gloucestershire Constabulary
  - 9. Why was [name redacted] allowed to continue as a service police officer for a further two years when Gloucestershire Constabulary were advised of the offences in 2012.
  - 10. What measures have been implemented in order to ensure protection of the public from police personnel who commit/are complicit with criminality and corruption.
  - 11. Are the police personnel present at the DIC [death in custody] of Mark Kentish still acting or serving in the operational capacity, i e. having direct contact or involvement with the public.
  - 12. How many police officers were present at the scene when/where the DIC occurred.
  - 13. What are the identification numbers of the officers present, when the DIC occurred.

*14. Is the criminal investigation by Gloucestershire Constabulary ongoing or complete.*

*15. Has any person(s) been subject to prosecution regarding the death of Mark Kentish."*

5. Gloucestershire Constabulary responded to the complainant on 18 September 2017 and provided information in relation to questions 1 to 6; it stated that no information was held in relation to question 7, explaining that the contact had not been terminated with the Anti-Corruption Unit. In response to questions 8 and 9 it would neither confirm nor deny holding the information, citing section 40(5) of the FOIA (personal information). It disclosed information in relation to question 10 and claimed that information was exempt from disclosure in regards to questions 11 to 15, as sections 30(1)(a) and (b) of the FOIA (investigations and proceedings) applied.
6. The complainant requested an internal review on 7 August 2017 in which she specifically challenged Gloucestershire Constabulary's response to her questions 7 to 15. Gloucestershire Constabulary provided its internal review decision on 11 December 2017 it stated that it will only concentrate on the areas the complainant specifically challenged in the request for internal review. In the internal review Gloucestershire Constabulary upheld its decision in response to question 7 of the request, provided information in relation to questions 8 and 9 of the request and upheld its original decision in regards to questions 11 to 13.

## **Scope of the case**

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7. The complainant contacted the Commissioner on the 16 February 2018 to complain about the way Gloucestershire Constabulary handled her request for information, later clarifying that she was dissatisfied with Gloucestershire Constabulary's response to questions 7 to 15 of her request for information.
8. The complainant explained to the Commissioner that she is dissatisfied with Gloucestershire Constabulary's response to question 7, 8 and 9 of her request.
9. It is the Commissioner's understanding that the complainant wished to be provided with further explanations and supporting information in relation to these questions. It is the Commissioner's view that Gloucestershire Constabulary's response addressed the questions as worded by the complainant and the Commissioner is therefore satisfied

that Gloucestershire Constabulary responded to these questions as the complainant worded them in her request dated 7 August 2017.

10. The complainant has explained that she is also dissatisfied with Gloucestershire Constabulary's response to question 10 of her request for information. The complainant explained to the Commissioner that she wanted further information to be provided by Gloucestershire Constabulary in relation to this question, as this was not specified in the original request the Commissioner is satisfied that Gloucestershire Constabulary's response to question 10 addressed the question as worded in the request for information dated 7 August 2017.
11. The analysis below considers the timeliness of Gloucestershire Constabulary's response and its handling of the complainant's questions 11 to 15 of her request for information.

## Reasons for decision

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### **Section 30 – investigations and proceedings conducted by public authorities**

12. The Commissioner has considered the application of section 30 to withhold the information requested at questions 11 – 15.
13. Sections 30(1)(a) and (b) state that:

*"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-*

*(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –*

*(i) whether a person should be charged with an offence, or*

*(ii) whether a person charged with an offence is guilty of it*

*(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct..."*

14. The Commissioner has issued guidance<sup>1</sup> on section 30 which states that section 30(1) can only be claimed by public authorities that have a formal duty to investigate whether someone should be charged with an offence, or the power to conduct such investigations and/or institute criminal proceedings.
15. It also states that section 30 is class based and that information which has been held at any time for the purpose of these investigations and proceedings will be exempt.
16. The Commissioner considers that the phrase "*at any time*" means that information may be exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation.
17. Gloucestershire Constabulary confirmed to the Commissioner that, at the time of receipt of the complainant's request for information dated 7 August 2017, the investigation referred to in the request was ongoing.
18. As the public authority in this case is Gloucestershire Constabulary and as a police force Gloucestershire Constabulary clearly has a duty to investigate offences and allegations of offences, the Commissioner is therefore satisfied that sections 30(1)(a)(i) is correctly engaged, she has now gone on to consider the public interest test, balancing the public interest in disclosure against the public interest in maintaining the exemption.

#### The public interest test

19. As section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
20. In accordance with her guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
21. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the disclosure of the requested

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<sup>1</sup> <https://ico.org.uk/media/1205/investigations-and-proceedings-foi-section-30.pdf>

information could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.

#### Public interest arguments in favour of disclosure

22. Gloucestershire Constabulary acknowledges that disclosing this information could promote public trust in providing transparency and demonstrating accountability into how the Police Service undertakes investigations and to satisfy themselves that an investigation has been thoroughly undertaken.
23. The complainant argues that there is a strong public interest in the disclosure of this information. She believes the public have the right to know the identity of the two officers in the interests of safety and security.

#### Public interest arguments in favour of maintaining the exemption

24. Gloucestershire Constabulary explained to the Commissioner that at the time the request was made the investigation was ongoing and the applicant was provided with a link to the Independent Office of Police Conduct (IOPC) (then the Independent Police Complaints Commission) website which confirmed this. It explained that the investigations conducted by both itself and the IOPC have since been concluded and at the time of the Commissioner's investigation the matter was in the hands of the coroner and an inquest due to be heard, commencing 21 May 2018. Gloucestershire Constabulary said that during the inquest evidence would be given by several parties, including the officers who were at the scene. It said that the matter therefore remained sub judice and it was firmly of the opinion that to release information into the public domain which could be classed as evidence in those proceedings had the potential to undermine the judicial process and prejudice the outcome of those proceedings. It added that the IOPC confirmed that its findings would not be published until completion of the inquest, to avoid potentially prejudicing those proceedings.
25. The Commissioner's guidance on section 30(1) states that the stage an investigation or prosecution has reached will have a bearing on the extent of any harm caused by the disclosure. It also explains that those investigating an offence need private thinking space if they are going to fully explore all aspects of a case without fear that their half formed opinions will be reported in the press or enter the public domain. Such concerns would hinder the efficient running of an investigation if disclosed. This does not mean that officers conducting an investigation would not expect that they may ultimately be required to give evidence

in court. However, the evidence they present in such proceedings represents their fully considered conclusions.

26. Gloucestershire Constabulary argued that whilst there is a public interest in the transparency of policing operations, there is a very strong public interest in safeguarding the integrity of police investigations and operations in this area. It stated that it cannot be in the public interest to disclose information that would prejudice an ongoing or future investigation and thereby hinder the prevention or detection of crime or otherwise prejudice law enforcement. The need for justice to be properly administered outweighs the need for investigation material to be disclosed.
27. Gloucestershire Constabulary explained that all the information gathered had been secured as part of an investigation and that care must be taken not to compromise any strand of the investigation. It explained that it wanted to ensure that no harm is caused to individuals involved or future investigations of this nature. It explained that it is strongly against the public interest to disclose any information that would harm an actual or future investigation as doing so would jeopardise such an investigation from reaching a satisfactory conclusion.
28. Gloucestershire Constabulary added that further action regarding the deceased's death remains open in that it could become the subject of active investigation at any time should new evidence/information come to light. It went on to explain that the investigation would be immediately reviewed in the event of certain findings from the inquest and therefore the need to preserve the integrity of investigations and the judicial process, to ensure that offenders are brought to justice must always outweigh the public interest in disclosure of investigative material. It explained that limited information has been placed into the public domain by Gloucestershire Constabulary in the form of a press release dated 18 July 2016.

#### Balancing of the public interest arguments

29. In reaching a conclusion on the balance of the public interest, the Commissioner has considered what public interest there is in Gloucestershire Constabulary disclosing the requested information. The Commissioner also considered whether disclosure would be likely to harm any investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.
30. Paragraph 53 of the Commissioner's guidance states that when considering the public interest in maintaining the exemption it is necessary to be clear what the exemption is designed to protect. It states that in broad terms, the section 30 exemption exists to ensure

the effective investigation and prosecution of offences and the protection of confidential sources. It recognises the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, this also includes any prejudice to future investigations and proceedings.

31. It is therefore the Commissioner's view that the stage which an investigation has reached will have a bearing on the extent of any harm likely to be caused by the disclosure and as a general rule there will always be a strong public interest in maintaining the section 30 exemption whilst an investigation is ongoing.
32. As mentioned in the Commissioner's guidance at paragraph 60, she recognises that those conducting investigations need private thinking space if they are going to fully explore all aspects of a case without fear that half formed opinions might be reported in the press or enter the public domain. The Commissioner understands that such concerns would hinder the efficient running of an investigation if information was disclosed.
33. The Commissioner therefore accepts that in this case, as the investigation was ongoing at the time Gloucestershire Constabulary received the request and at the time the internal review conducted, there was potential for the disclosure of information into the public domain to prejudice this particular investigation and the potential to have an impact on any future, related investigations.
34. The Commissioner has therefore decided that the public interest in the exemption being maintained in this case outweighs that in the information being disclosed. Gloucestershire Constabulary was therefore correct to apply section 30(1)(a)(i) to the information. As section 30(1)(a) is engaged it has not been necessary for the Commissioner to consider section 30(1)(b) of the FOIA.

## **Section 10 – time for compliance**

35. 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.
36. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant promptly and within 20 working days.
37. From the information provided to the Commissioner in this case it is evident that, having received the request on the 7 August 2017 and

having responded to it on 18 September 2017, Gloucestershire Constabulary breached sections 1(1) and 10(1) of the FOIA by failing to respond to the request within 20 working days.

## **Right of appeal**

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38. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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 .....**

**Deborah Clark**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**