

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 15th March 2006

Public Authority: The Independent Police Complaints Commission

**Address: 90 High Holborn,
London,
WC1V 6BH**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1(1).

In view of the fact that the requested information has now been disclosed to the Complainant the Commissioner does not require any remedial steps to be taken by the Public Authority in relation to the Complainant's request.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Independent Police Complaints Commission (the "IPCC") has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

2.1 The Complainant has advised that on 27th January 2005 the following information was requested from the IPCC in accordance with section 1 of the Act.

“Copies of the correspondence between a Member of Parliament and the IPCC and Hull City Council and the IPCC regarding the IPCC’s investigation into allegations surrounding the previous Humberside Police investigation into Colin Inglis”.

2.2 On 25th February 2006 the IPCC responded to the Complainant’s request for information by asserting that the information he had requested was exempt under Section 31(1)(a) and also under Section 31(1)(g) of the Act as its disclosure would be likely to prejudice the prevention or detection of crime and the exercise by any public authority of its functions for the purposes of ascertaining whether any person is responsible for any conduct which is improper and whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

2.3 On 1st March 2005 the Complainant asked the IPCC to carry out an internal review of its refusal decision. On 3rd March 2005 the IPCC wrote to the Complainant to advise that, following the review, the IPCC would continue to refuse to disclose the requested information.

2.4 On 10th March 2005 the Complainant referred the matter to the Commissioner for a decision as to whether the IPCC had complied with its obligations under Part 1 of the Act in that the IPCC had incorrectly applied the exemption in Section 31 (1) (a) and (b) and Section 31 (1) (g) to withhold the information on the basis that its disclosure would prejudice the prevention or detection of crime, the apprehension or prosecution of offenders and the exercise by any public authority of its functions for the purposes specified in Section 31 (2) (a) and (b) of the Act.

3. Relevant Statutory Obligations under the Act

3.1 **Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

4. Review of the case

4.1 When the IPCC made its initial refusal of the Complainant's request on 25th February 2005 it asserted that the information he had requested was exempt under Section 31 (1) (a) and also under Section 31 (1) (g) of the Act as its disclosure would be likely to prejudice the prevention or detection of crime and the exercise by any public authority of its functions for the purposes of ascertaining whether any person is responsible for any conduct which is improper and whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

4.2 The Complainant asked the IPCC to review its decision on the basis that:

(a) The IPCC was not conducting a criminal investigation but was considering whether a police authority had properly investigated a complaint; and

(b) It would be in the public interest for the requested information to be disclosed in that the public should know why an individual continued in high public office while he was the subject of a police inquiry into matters of serious public concern; and

(c) The disclosure of the requested information would be in the public interest in that such disclosure is necessary to ensure public confidence in the actions of the IPCC, the Hull City Council and the identified Cabinet Minister.

4.3 On 3rd March 2005 the IPCC informed the Complainant that it now accepted that disclosure of the information would not prejudice the independent investigation being conducted by the IPCC and, to that extent; the IPCC therefore accepted point (a) of the Complainant's request for internal review.

4.4 However, the IPCC also informed the Complainant that disclosure of the requested information would be likely to prejudice a criminal investigation being conducted by the police. The IPCC asserted that the information was exempt under Section 31 (1) (a) and (b) and also under Section 31 (1) (g) of the Act as its disclosure would be likely to prejudice the prevention or detection of crime, the apprehension or prosecution of offenders and the exercise by any public authority of its functions for the purposes of ascertaining whether any person has failed to comply with the law and whether any person is responsible for any conduct which is improper.

4.5 The IPCC informed the Complainant that in reaching this decision it had consulted the police and was satisfied that "there was a real and

substantial risk to the police investigation if the correspondence was disclosed at this juncture”.

- 4.6 In response to a request by the Commissioner the IPCC provided copies of the requested information, records of its consultations with the police and evidence in support of its decision that prejudice would be likely to result from disclosure of the requested information.
- 4.7 The IPCC identified eight letters which were covered by the Complainant’s request. However, the evidence provided by the IPCC in response to the Commissioner’s investigation related to only some of the requested information, in particular to three letters all dated 20th January 2005 from the IPCC to Hull City Council, the Humberside Police Authority and the Labour Party NE respectively. The IPCC asserted that these three letters contained “an error” in that some of the wording was “misleading” and that disclosure of this misleading information would be likely to cause prejudice to the police’s purposes. The IPCC provided no evidence in support of the argument that the disclosure of the other five letters covered by the request would cause prejudice.
- 4.8 The Commissioner considered the information provided by the IPCC. The Commissioner advised the IPCC that the exemption contained in section 31 is a prejudice based exemption – that is to say, it can only be applied where a public authority can show that the disclosure of the information in question would **be likely to prejudice** any of the defined purposes or functions set out in section 31. Guidance issued by the Commissioner makes clear that, when considering the phrase ‘likely to prejudice’, one must look for a degree of probability where there is a significant and weighty chance of prejudice and the degree of risk must be such that there ‘may very well’ be prejudice even if the risk falls short of being more probable than not.¹
- 4.9 The Commissioner asked the IPCC to explain why it felt the disclosure of the requested information would be likely to prejudice the functions or purposes in section 31 which it had identified as relevant to the matter. The IPCC argued that, if the requested information contained in the three specified letters were to be disclosed, the ‘error’ and the ‘misleading wording’ contained therein (and referred to at 4.7 above) would be disclosed and the only way to correct the public’s understanding of the matters in question would be to disclose further information (which should not normally be in the public domain) in order to clarify the issue.
- 4.10 In relation to the information contained in the eight letters referred to in 4.7 above, the Commissioner is of the view that there was no likelihood of prejudice from the disclosure of this information. In relation to the

¹ Freedom of Information Act Awareness Guidance No. 20

three letters in respect of which the IPCC had particular concerns the Commissioner is of the view that the IPCC could have disclosed them by giving some explanation or putting the information into context rather than withholding it. Guidance issued by the Commissioner advises that “if an authority fears that information disclosed may be misleading, the solution is to give some explanation or to put the information in proper context rather than to withhold it”.²

- 4.11 The IPCC now accepts that there are no exemptions which can be applied to any of the information requested by the Complainant and has provided him with all the information he requested.

5. The Commissioner’s Decision

- 5.1 The Commissioner’s decision in this matter is that the IPCC has not dealt with the Complainant’s request in accordance with the following requirements of Part I of the Act:

Section 1(1) – in that it failed to communicate to the Complainant such of the information specified in his request as did not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the Public Authority to refuse access.

6. Action Required

- 6.1 In view of these matters and as the requested information has now been disclosed to the Complainant the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by the IPCC in relation to the Complainant’s request for information.

7. Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the “Tribunal”). Information about the appeals process can be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 6000 877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

² Freedom of Information Awareness Guidance No. 3

Reference: FS50066868

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 15th day of March 2006

Signed:

Richard Thomas
Information Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF