

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 April 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 has requested a copy of the Costello Report and any other related reports and specified correspondence. Staffordshire Police disclosed a copy of the Costello Report, with redactions in respect of information which it said was exempt from disclosure under section 30 (investigations and proceedings conducted by public authorities), 31 (law enforcement) and 40 (personal information) of the FOIA.
2. The Commissioner's decision is that Staffordshire Police was entitled to rely on sections 30, 31 and 40 to withhold most of the information. However, she found that it incorrectly cited section 31 to make one redaction.
3. The Commissioner requires Staffordshire Police to take the following steps to ensure compliance with the legislation:
 - Disclose to the complainant the recommendation made in paragraph 13.1 of the Report, previously withheld under section 31.
4. Staffordshire Police 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

5. The Costello Report (the 'Report') was a management review of Staffordshire Police's Sensitive Policing Unit, in response to allegations of "*corruption, falsification and dishonesty*" made against it by one of its own officers. The Unit was responsible for witness protection and the management of certain covert human intelligence sources. Concerns had been voiced by an officer in the Unit about the handling of a witness in the Kevin Nunes' murder trial.
6. The 73 page Report was completed in February 2007, several months before the start of the murder trial which saw five people convicted of Mr Nunes' murder. Much of the Report concentrated on the Unit's handling of the aforementioned witness. The Report was not disclosed to the defence in the murder trial. The Court of Appeal later quashed the five convictions, and was highly critical of this omission:

*"The Report was not disclosed and there is no doubt that it should have been (if necessary in a redacted form). If it had been disclosed the defence would have been made aware that Inspector [name redacted] was in a position to give evidence which would have seriously undermined both the credibility of [witness's name, redacted] and the integrity and honesty of [the witness's] handlers both generally and in respect their handling of [the witness]. Without the Report the defence were in no position to attack the integrity and honesty of the system put in place to handle [the witness]. Counsel for the appellants worked on the entirely false basis that the record keeping in respect of [the witness] was accurate. With the Report the defence could have shown that the Sensitive Policing Unit was a dysfunctional organisation fractured by in-fighting, containing officers whose honesty and integrity were open to question and whose documentation in respect of [the witness] could not be trusted."*¹

7. The complainant, who is an ex police officer, has said he has previously had sight of the unredacted Report during the Independent Police Complaints Commission (the 'IPCC') Managed Investigation into the Sensitive Policing Unit; this disclosure was therefore outside the remit of the FOIA.
8. The Commissioner has also issued a decision notice in a similar case *FS50641480* which will shortly be published on her website. This complainant requested a copy of the Costello Report from Staffordshire Police. This request was considered by Staffordshire Police alongside the

¹ <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/joof-and-others-v-the-crown-judgment.pdf>

request under consideration in this notice; Staffordshire Police made exactly the same redactions to the Report prior to disclosure in *FS50641480*.

Request and response

9. On 11 March 2016 the complainant wrote to Staffordshire Police and requested information in the following terms:

“Request 1:

I am requesting a copy of the document referred to as the Costello Report in the case of Joof and others - vs - the Crown heard at the Court of Appeal in March 2012. It was a management review compiled by Superintendent Joe Costello into the Sensitive Policing Unit in Staffordshire in 2006/07.

Request 2:

I am also requesting copies of any other reports submitted to the Criminal Case Review Commission as part of its review of the case.

Request 3:

I am also requesting copies of all correspondence between the IPCC and Staffordshire Police in respect of recommendations to discipline officers of any rank, the request includes any response sent to the IPCC following such recommendations being made.”

10. The complainant initially submitted his request to the Staffordshire Police and Crime Commissioner who said it did not hold the requested information. With consent, it transferred the complainant's request to Staffordshire Police where it was received on 17 March 2016.
11. On 21 April 2016 Staffordshire Police advised the complainant that the time for compliance would need to be extended to allow further consideration of public interest arguments (under section 17(2) of FOIA) in relation to the exemptions it was considering.
12. In the absence of any further response, the complainant requested an internal review on 10 May 2016. Staffordshire Police wrote to him on 12 May 2016 advising that it was now minded to disclose a redacted copy of the Report, but that because the document was subject to a Document Handling Agreement with the IPCC, it required the IPCC's permission for the disclosure, which it said it was attempting to obtain.
13. After liaising with the complainant, Staffordshire Police responded to parts 2 and 3 of the request on 20 June 2016. It said it did not hold the information requested in part 2, and cited section 40(2), personal information, in relation to part 3. It also advised it was still seeking

permission from the IPCC to disclose the information in part 1 of the request.

14. Subsequently, on 11 July 2016, Staffordshire Police responded to part 1 of the request. It stated that the Report was exempt from disclosure, under sections 31 and 40 of the FOIA. For section 31, it stated that the public interest in maintaining the exemption outweighed that in disclosing the information. It made no mention of the outcome of its attempts to obtain the IPCC's consent to the partial disclosure of the Report.
15. The complainant requested an internal review on 12 July 2016. Staffordshire Police did not provide the outcome of its internal review until 27 September 2016. It maintained that sections 31(1)(g) and 40(2) apply.

Scope of the case

16. The complainant contacted the Commissioner on 16 September 2016 to complain about the way his request for information had been handled.
17. In relation to part 1 of his request, the complainant is concerned that it had taken Staffordshire Police four months to reach a final conclusion that it would refuse his request and he challenged the basis of that refusal.
18. He confirmed that he was satisfied with Staffordshire Police's responses to parts 2 and 3 of the request but was concerned about the delay in providing those responses. The Commissioner has therefore only considered the delay in providing the responses to parts 2 and 3.
19. During the course of the Commissioner's investigation, Staffordshire Police revised its position a further time. It disclosed a copy of the report to the complainant, with some information redacted in respect of section 31 and section 40 and also cited section 30(2)(b), investigations and proceedings conducted by public authorities. The complainant then challenged the application of those exemptions.
20. The complainant highlighted that none of the redactions had been marked up in the partially disclosed Report to show which exemption(s) Staffordshire Police was relying on. He was particularly concerned whether sections 30 and 31 of FOIA had been used simultaneously for any of the redacted information, given that they are mutually exclusive. The Commissioner can confirm that Staffordshire Police has marked up all the redactions in the version of the Report she has seen, and that sections 30 and 31 have not been used simultaneously. In reaching her

decision, the Commissioner has also viewed an unredacted version of the Report.

21. The Commissioner has considered in this decision notice whether Staffordshire Police was entitled to rely on sections 30, 31 and 40 to withhold information in the Report (ie part 1 of the request). She has considered the issue of the time taken both to respond to the request and to conduct an internal review in the 'Other matters' section of this notice.

Reasons for decision

Section 30 – investigations and proceedings

22. Section 30(2) of the FOIA states:

"Information held by a public authority is exempt information if-

(a) it was obtained or recorded by the authority for the purposes of its functions relating to-

(i) investigations falling within subsection (1)(a) or (b),

(ii) criminal proceedings which the authority has power to conduct,

(iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or

(iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and

(b) it relates to the obtaining of information from confidential sources."

23. Section 30 is subject to the public interest test. This means that, for the information to be withheld, the public interest in maintenance of the exemption must outweigh the public interest in disclosure.
24. For information to be exempt under section 30(2) it must relate to the public authority's investigations or proceedings *and* it must relate to confidential sources.
25. The information does not have to be obtained or recorded as part of a particular investigation or specific proceedings. It only has to be obtained or recorded by the public authority for the purposes of its functions relating to those investigations or proceedings. The

Commissioner's guidance² notes that information obtained from confidential sources will relate to its duty to investigate criminal offences (which falls within the definition at section 30(1)(a)(i)), even though it may not be held for a particular investigation.

26. A confidential source is a person who provides information on the basis that they will not be identified as the source of that information. Confidential sources are an important means of gathering intelligence about criminals and other offenders and section 30(2) exists to protect the relationship between the police and these sources, to ensure they continue to provide information to the authorities. The exemption covers both the actual information obtained from confidential sources, and also any procedures, including administrative processes, relating to confidential sources. For example, it will cover protocols for handling such sources, reports on their use and records of payments made to, or appointments made with, confidential sources.
27. Staffordshire Police has used section 30(2) to redact information which could render a confidential source capable of being identified. Information about procedures employed by Staffordshire Police for dealing with confidential sources, and details of individual interactions with them, has also been redacted.
28. Having looked at the information, the Commissioner is satisfied that it relates to Staffordshire Police's duty to investigate criminal offences and that it relates to the obtaining of information from confidential sources. She is therefore satisfied that section 30(2) is engaged.

The public interest test

29. The Commissioner has gone on to consider whether the public interest favours disclosing the information or maintaining the exemption.

Public interest arguments in favour of disclosure

30. The complainant has pointed to the fact that parts of the Report are already in the public domain, by virtue of the Court of Appeal judgement referred to in paragraph 6, above. He considered that the release of the Report was in the public interest in order to allow public scrutiny of the concerns that existed about the murder investigation before it came to trial.
31. As a former police officer working in covert policing departments, the complainant stated that he has:

² <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

"... extensive knowledge of working with, and managing confidential sources. I fully embrace the principle that the use of confidential sources needs to be protected to ensure their individual safety and to prevent the exposure of sensitive techniques. With that in mind and having read the report in its un-redacted form I am confident that the report does not reveal any tradecraft secrets or other additional details useful to criminals. The use of confidential sources and protected witness [sic] by police is well known, there have been a number televisions [sic] dramas and documentaries which include the use of sources and protected witnesses, the report does not reveal anything which is not already clearly in the public domain".

32. The complainant believes that the *"motivation in first refusing to release the report and then heavily redacting it is not about protecting confidential sources or witnesses but to hide embarrassing facts about police misconduct and the cover up that followed, some of those involved are still in senior positions in Staffordshire Police"*. In support of his view, he quoted the following from the Court of Appeal Judgement:

"It is to be hoped that the appropriate measures will be taken against those responsible for what appears to us to be a serious perversion of the course of justice, if those measures have not already been taken. It is to be hoped that lessons will be learnt from this shocking episode."

33. The complainant also argued that withholding the information currently redacted does more to undermine the public's confidence in the police than publishing the report will stating: *"rather than continuing to hide the embarrassing facts Staffordshire Police would be better to demonstrate that it has recognised its mistakes and is facing up to them"*.
34. Staffordshire Police acknowledged that the public interest in openness and accountability would be served by disclosing the information, particularly with regard to assisting the public to understand how information relating to confidential sources is used and how the intelligence received assists in day to day investigations and operations, the prevention and detection of crime, the apprehension and prosecution of offenders and the administration of justice.
35. In addition, Staffordshire Police said there has been limited public interest with only the following media reports³ resulting in limited

³ <http://www.expressandstar.com/news/crime/2017/01/17/kevin-nunes-investigation-detective-abused-overtime-during-botched-murder-case/> (ctd below)

comments and 'shares' and that it has received no other comments/contact by members of the public.

36. Staffordshire Police reiterated it had been minded to release a redacted copy of the report in response to the complainant's request in March 2016, but due to the difficulties in obtaining permission from the IPCC referred to above, it could not do so. It highlighted that the Court of Appeal judgement (point 22) stated that the Report should have been disclosed "*(if necessary in a redacted form)*" so there was an appreciation of the sensitivity of the Report by the appeal court.
37. Staffordshire Police said the IPCC carried out a full investigation into the situation and published its findings⁴.
38. It also said it has been "*as open and transparent in this matter*" as it could be and that it had published the Report on its website with a corresponding statement⁵.

Public interest arguments in favour of maintaining the exemption

39. Staffordshire Police stated that confidential sources are often the most valuable sources of information and enable the police and other agencies to secure evidence and subsequent prosecutions. Any disclosure that may reduce the flow of information from confidential sources would have a detrimental impact on its ability to obtain reliable and accurate intelligence. The disclosure of information that may compromise investigation and law enforcement capabilities is therefore not in the public interest. It said it has not released existing tactics into the public domain and that obsolete processes in the Report have been disclosed.
40. Furthermore, it said that it is accountable for how it spends public money. If the flow of information from confidential sources was reduced, it would become dependent on more costly and time consuming methods of collecting intelligence.

<http://www.stokesentinel.co.uk/staffordshire-detectives-drank-booze-on-duty-and-claimed-excessive-expenses/story-30065646-detail/story.html>

<http://www.bbc.co.uk/news/uk-england-38635842>

⁴ <http://www.ipcc.gov.uk/news/ipcc-concludes-managed-investigation-staffordshire-police>

⁵ <https://www.staffordshire.police.uk/MiscReports>

41. Finally, it voiced concern for the welfare of the confidential sources referred to in the Report, saying that it was not in the public interest to disclose information where to do so may place individuals' safety at risk.

Conclusion

42. The Commissioner recognises that the need to safeguard the supply of information from confidential sources is an important factor when considering the public interest test in relation to section 30(2). Any reduction in the flow of intelligence from confidential sources, as a result of individuals being deterred from cooperating with the police, would be likely to have a detrimental impact on law enforcement capabilities. She considers there to be 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.
43. Set against this, the Commissioner notes that the complainant's concerns about openness and accountability are served, to a significant degree, by the amount of information which in fact has been disclosed in response to the request. It is the conduct of certain officers which is the focus of the Report, and not that of their confidential sources. It is possible to read and understand the Report's concerns and recommendations without needing to see the information that has been redacted under section 30(2). The Commissioner is satisfied that the redactions, although spanning several sentences in some cases, do not interfere with the Report's intelligibility.
44. The Commissioner also acknowledges the public interest in avoiding disclosures of information which may endanger the welfare of individuals.
45. Having taken the above in to account, the Commissioner is satisfied that in this case, the public interest in safeguarding the relationship between Staffordshire Police and its confidential sources outweighs that in disclosing information which would add little to the public's overall understanding of the Report's central concerns. The Commissioner is satisfied that Staffordshire Police was therefore entitled to rely on section 30(2) to withhold the information covered by this exemption.

Section 31 – law enforcement

46. Staffordshire Police 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)".

47. The relevant purpose at subsection (2) is :

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

48. 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.

49. 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.

50. Staffordshire Police has used section 31 to redact a small amount of information about the work of the Sensitive Policing Unit. The redactions are in respect of information about its day to day procedures for managing and handling protected witnesses, and also for information about arrangements for the protected witnesses in the Kevin Nunes' murder case. The redactions are for a series of individual words and short phrases, and for one particular recommendation. The Commissioner has considered each type of information, separately.

Redaction of individual words and short phrases

51. The Commissioner has firstly considered the citing of 31(1)(a) and (b) to redact individual words and short phrases which pertain to Staffordshire Police's protected witness procedures. The relevant applicable interests

here are the prevention or detection of crime and the apprehension or prosecution of offenders.

52. In engaging this exemption to redact individual words and short phrases, Staffordshire Police said that disclosing the redacted information:

"... would reveal details 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".

53. It added:

"...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..."

54. The Commissioner accepts that Staffordshire Police has argued that the harm envisaged relates to the applicable interests in this exemption.
55. 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.
56. The Report considers the work of Staffordshire Police's Sensitive Policing Unit, and its handling of a particular protected witness. 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*".
57. In relation to the third bullet point, Staffordshire Police 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 Report about the dangers to their safety that protected witnesses face. Taking all this into account, she is satisfied that Staffordshire Police has demonstrated that prejudice would occur.

The public interest test

58. Having concluded that sections 31(1)(a) and (b) are engaged in respect of the redaction of individual words and short phrases, the Commissioner has gone on to consider the balance of the public interest.

Public interest arguments in favour of disclosure

59. The complainant's arguments are as set out in paragraphs 30 to 33 above.
60. Staffordshire Police acknowledged that the public interest in openness and accountability would be served by disclosing the information, particularly with regard to assisting the public to understand the law enforcement and public protection tactics it employs.

Public interest arguments in favour of maintaining the exemption

61. Staffordshire Police said that there is a serious and pressing public interest in protecting the integrity of the law enforcement tactics discussed in the Report, in that disclosure of this type of information could undermine the effectiveness of Staffordshire Police in tackling serious crime. It explained that witnesses and informants provide vital assistance to the police, and that evidence gathered from such sources is essential to successful investigations. Staffordshire Police works hard to cultivate relationships based on trust and an expectation of confidentiality. Consequently, the disclosure of information about its protected witness procedures would undermine public confidence in its ability to protect witnesses and informants. This would be likely to have a deterrent effect on the number of people willing to cooperate with it in future, thus reducing the flow of information.
62. Staffordshire Police also considered that individuals may be placed at personal risk by disclosure of information about the protected witness procedure:

"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 report and due to the sensitivities surrounding it, this risk clearly outweighs the public interest in disclosure."

Conclusion

63. 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. 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.
64. Staffordshire Police has 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, as discussed in paragraph 43 above, the Commissioner notes that the complainant's concerns about openness and accountability are served, to a significant degree, by the amount of information which has already been disclosed.
65. As in respect of section 30(2), the Commissioner also acknowledges the public interest in avoiding disclosures of information which may endanger the welfare of individuals.
66. 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 disclosing the requested information.
67. As she has found that sections 31(1)(a) and (b) are engaged and that the public interest favours maintaining the exemption, the Commissioner has not gone on to consider the applicability of section 31(1)(g).

Redaction of recommendation

68. The Commissioner has considered the single largest redaction made under section 31(1) separately from the individual words and phrases that have been redacted. In paragraph 13.1 of the Report, a particular procedural recommendation with regard to the conduct of the Sensitive Policing Unit's officers is set out.
69. Staffordshire Police offered the same arguments for the application of section 31(1)(a), (b) and (g) to the recommendation as have been considered above. However, the Commissioner is not satisfied that this information is of a sufficiently sensitive nature that its disclosure would or would be likely to prejudice the matters these sections are designed to protect. The Commissioner does not agree that the information contained in the recommendation gives anything of value away about Staffordshire Police's protected witness handling procedures or its ability

to investigate misconduct, or that its disclosure could in any way lead to the sort of prejudice envisaged above.

70. The Report makes other recommendations which have not been redacted (except for personal data). This particular recommendation is a common sense measure which broadly sets out the required conduct for officers who find themselves in a particular situation. Furthermore, the factors which caused the Report to make the recommendation in paragraph 13.1 are set out in the preceding paragraph, and have not been redacted (except for personal data). The Commissioner considers that it will be fairly obvious to anyone reading the preceding paragraph, what the nature of the recommendation is.
71. Consequently, she has concluded that Staffordshire Police incorrectly cited section 31(1) to withhold the information in paragraph 13.1 and the exemption is not engaged. Staffordshire Police should now take the step outlined in paragraph 3 of this decision notice in respect of it.

Section 40(2) – personal information

72. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.

Is the requested information personal data?

73. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the Data Protection Act 1998 (DPA). If it is not personal data, then section 40 cannot apply.
74. 'Personal data' is defined in section 1 of the DPA. For information to constitute personal data, it must relate to an individual and that individual must be identifiable from that information, or from that information and other information in the possession of the data controller.
75. 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, has them as its main focus or impacts on them in any way.
76. From the definition above it follows that information that does not relate to and identify an individual, is not personal data.
77. Staffordshire Police applied section 40(2) to redact from the Report the names and pronouns (ie he/his, she/her) of police officers, defendants,

witnesses and other third party individuals. It has also redacted information about the private lives of particular, named individuals.

78. The Commissioner is satisfied that a name is information about a living individual, who can be identified from that information. She considers that a pronoun may be similarly capable of leading an individual to be identified, when viewed in conjunction with other information contained in the Report. She is therefore satisfied that the redacted information constitutes personal data in accordance with section 1 of the DPA.

Is any of the information sensitive personal data?

79. "Sensitive personal data" is a sub-category of personal data, which requires a greater level of care and protection. It is personal information which falls into one of the categories set out in section 2 of the DPA. Staffordshire Police confirmed that it considered some of the requested information to be sensitive personal data as it related to allegations of criminal conduct by certain individuals. The corresponding sub-section of section 2 of the DPA is:

"(g) the commission or alleged commission by [the data subject] of any offence".

80. The Commissioner is satisfied from this that some of the withheld information is sensitive personal data. This is because some of the information in the Report relates to criminal allegations about some of the data subjects.
81. In light of this finding the Commissioner will firstly go on to consider whether disclosure of both the sensitive and non-sensitive personal data would breach any of the data protection principles.

Would the disclosure of this personal data contravene any of the data protection principles?

82. The Commissioner notes in this case that Staffordshire Police said that disclosure would breach the first data protection principle. It has argued that disclosure of the requested information would be unfair.
83. The first principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".

84. In the case of an FOIA request, 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 would meet one of the DPA Schedule 2 conditions and, for sensitive personal data, one of the Schedule 3 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would it be fair to disclose the redacted information?

85. When considering whether disclosure of personal information is fair to the data subject, the Commissioner takes into account the following factors:
- the data subject'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 data subject); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectations

Have the data subjects consented to the disclosure?

86. Staffordshire Police stated it has not disclosed any individuals' names with the exception of Chief Constables Jane Sawyers and Suzette Davenport, who are current, senior police officers in public facing roles and who have been consulted on and consented to the disclosure of their names. It said that other named individuals either do not (or no longer work) for Staffordshire Police or are not in senior public facing roles. They have not been consulted as to whether they are willing to consent to their personal data being disclosed in response to the request.

Have the data subjects actively put some or all of the redacted information into the public domain?

87. Where the data subject has put some or all of the requested information into the public domain, the Commissioner considers that this weakens the argument that disclosure would be unfair to them.
88. In this case the Commissioner has not seen any evidence that the data subjects have actively put some or all of the requested information into

the public domain. She notes that the identities of some individuals will be in the public domain by virtue of media coverage of the Kevin Nunes' murder trial, but does not consider that this constitutes action taken by them to place information about themselves in the public domain.

Nature of the information

89. The requested information, if disclosed, would reveal information about the named individuals in the context of their connection to the Kevin Nunes' murder trial. It would identify members of the Sensitive Policing Unit and other members of the policing team, defendants, witnesses, and their families. The Report contains critical comments about some of the data subjects, and, for some of them, quite sensitive information about their personal lives. Taking all this into account, the Commissioner considers that the data subjects would have a reasonable expectation that this information would not be disclosed for purposes not directly to do with addressing the concerns examined in the Report.

Consequences of disclosure

90. Taking into account the matters examined in the Report, the Commissioner considers that disclosure would be very likely to cause distress to the data subjects, have an adverse impact on them and that in some cases, it may endanger their safety (the Report itself acknowledges that the protected witnesses face threats to their safety).

Balancing rights and freedoms with legitimate interests

91. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sake, along with specific interests.
92. The Commissioner notes the complainant's comments that the nature of the concerns considered in the Report merit public scrutiny.
93. In view of the nature of the concerns that the Report examines and the Court of Appeal's comments about the failure to disclose it to the defence in the Kevin Nunes' murder trial, the Commissioner accepts that there is some legitimate public interest in the disclosure of the requested information.
94. However, the Commissioner considers that this interest is satisfied by the fact that the criticisms of the Sensitive Policing Unit are fully disclosed in the Report. It is possible to gain a clear understanding of the nature of the allegations made against members of the Unit, without knowing their identity. The redactions made in respect of section 40 would not add anything further to that understanding, with the exception of one instance, where the particular details of an allegation

about officers' conduct are summarised; however, the allegation itself has not been redacted from the Report and so these extra details would only serve to identify the individuals named and divulge intrusive allegations about their personal lives. Concerns about the conduct of individual officers should be dealt with by Staffordshire Police through the appropriate disciplinary channels, rather than by disclosure to the public at large; the Commissioner finds there is no legitimate interest in exposing individual data subjects, none of whom are particularly senior officers, in this way.

Conclusion

95. Taking all of the above into account, the Commissioner concludes that it would be unfair to the data subjects to disclose the requested information, and would therefore breach the first data protection principle. She is satisfied that disclosure would not be within their reasonable expectations; that it would be likely to have detrimental consequences for them; and that there are no wider legitimate interests to be served by disclosure which would be capable of outweighing their expectation of, and right to, privacy.
96. Since the Commissioner has determined that disclosure would be unfair, as set out in paragraph 84, above, it is not necessary to go on to consider whether any of the schedule 2 or 3 conditions would permit disclosure.
97. The Commissioner's decision is that Staffordshire Police was entitled to rely on section 40(2) of the FOIA to redact the personal data from the Report.

Procedural issues – section 17(1) breach – late refusal notice

98. Section 1(1) of FOIA states:

(1) 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.

99. Section 10 of FOIA states:

(1) 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.

...

(3) If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

100. Section 17(1) of FOIA states:

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

101. If, as in this case, Staffordshire Police decides that information should be withheld, it has an obligation to provide a requester with a refusal notice within 20 working days of receipt of the request for all parts of the request. Staffordshire Police failed to issue its refusal notice within the statutory timeframe, thereby breaching section 17(1) of FOIA.

Other matters

Section 45 - internal review

102. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one the code of practice established under section 45 of the FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.

103. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.

104. The Commissioner is concerned that in this case, it took 55 working days for an internal review to be completed, and that the basis for the refusal at the end was not what the complainant had been led to expect. The Commissioner understands that the delay was as a result of Staffordshire Police (unsuccessfully) attempting to obtain the IPCC's permission to the partial disclosure of the Report, and she has viewed evidence which supports this explanation. Nevertheless, she would take this opportunity to remind Staffordshire Police of the expected standards in this regard and ask that it aims to complete future reviews within the standard timescale of 20 working days.

Other points raised by the complainant

105. The complainant raised various other points having received the partially redacted Report from Staffordshire Police during the investigation. The Commissioner has raised all these points with the public authority and considered them before reaching her decision in this case. She has included his key points in this notice and will be writing separately to him in relation to the remainder which are not necessarily section 50 matters.

Right of appeal

106. 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

107. 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.

108. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF