

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2020

Public Authority: Chief Constable of Greater Manchester Police

Address: Openshaw Complex
Lawton Street
Openshaw
Manchester
M11 2NS

Decision (including any steps ordered)

1. The complainant requested information relating to the introduction of a new computer system. Greater Manchester Police ('GMP') initially refused the request on cost grounds, citing section 12(1) of the FOIA. During the course of the Commissioner's investigation, GMP withdrew its reliance on section 12(1) and disclosed some of the previously withheld information to the complainant. It withheld the remainder citing section 31 (law enforcement), section 31(3) (the 'neither confirm nor deny' provision for law enforcement), section 38 (health and safety), section 40(2) (personal information) and section 43(2) (commercial interests).
2. The complainant has disputed the application of the exemptions, and also believed that GMP held further information which it had not disclosed in relation to part 4 of his request.
3. It became apparent after a forensic review of the withheld information in order to prepare this notice, that GMP had marked some of the withheld information as being exempt under section 14(1) (vexatious request), section 36 (prejudice to the effective conduct of public affairs), section 41 (information provided in confidence) and section 44 (prohibitions on disclosure). However, GMP had neither cited these exemptions formally, nor had it provided any arguments to support them. The Commissioner's decision is that GMP failed to demonstrate that these exemptions are engaged.

4. Some information was neither marked by GMP as being exempt nor as suitable for disclosure so the Commissioner has also ordered its disclosure.
5. In relation to section 31(1)(a) and (b), GMP did not provide any submissions so the Commissioner finds it has failed to demonstrate that this exemption is engaged.
6. The Commissioner has also determined that section 31(3) is not engaged for the reasons set out in this notice.
7. The Commissioner finds that section 38 is not engaged for the reasons set out in this notice. She also finds that section 40(2) is partly engaged and GMP was entitled to withhold names it had identified as falling under section 40(2).
8. The Commissioner has determined that section 43(2) is engaged and, where cited, GMP was entitled to rely on it.
9. The Commissioner has concluded, on the balance of probabilities, that GMP does not hold any further information beyond that already disclosed to the complainant in the course of responding to part 4 of this request.
10. The Commissioner requires GMP to take the following steps to ensure compliance with the legislation; the steps should be read in conjunction with the non-confidential Annex attached to this notice:

RAID (Risks / Action / Issues / Dependencies) log

- i. Disclose all the entries in the RAID log already identified by GMP as being suitable for disclosure (see Annex).
- ii. Disclose the entries in the RAID log withheld under sections 14(1), 31(1), 36, 38, 41 and 44 as specified in the Annex to this notice.
- iii. Disclose the six entries within the RAID log which were neither identified by GMP as being exempt nor suitable for release as set out in the Annex.
- iv. Disclose the information identified by GMP as suitable for disclosure (namely the four tabs in their entirety) as set out in the Annex.
- v. Confirm or deny whether the information is held in respect of the entries in the RAID log withheld under section 31(3) of the FOIA and either disclose this or withhold it citing another FOI exemption.
- vi. Disclose the entries in the log withheld under section 40(2) (minus the names) as set out in the Annex.

Two iOPS strategy reports

- vii. Disclose the information initially withheld under section 43(2) but subsequently identified by GMP during the investigation as being suitable for disclosure (see Annex).
 - viii. Disclose the job titles in the iOPS Testing Strategy Report initially withheld by GMP under section 40(2), but subsequently identified by GMP as being suitable for disclosure (see Annex).
11. GMP 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

12. From her own research, the Commissioner is aware that in July 2019 GMP introduced a new computer system called the Integrated Operational Policing System (iOPS), originally scheduled to go live in March 2018. It is clear from her online searches that there have been significant problems with the performance of iOPS resulting in serious backlogs of work and a loss of staff confidence in the system¹. This matter has also attracted media attention. The systems project was undertaken in conjunction with a third party, Capita².
13. GMP told the Commissioner that the iOPS project was:

“part of the Information Systems Transformation Programme, known to be the largest in the public sector to date, and consisted of large multidisciplinary teams across multiple organisations engaged in integrating numerous disparate core police applications and as such the RAID log consists of a detailed and granular account of specific system components and processes”.

¹ <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/greater-manchester-police-integrated-operational-policing-system.pdf#:~:text=In%20July%202019%2>

² <https://www.capita.com/>

14. From the correspondence submitted, the Commissioner understands that the complainant initially made a request to GMP on 15 November 2019 asking for a greater amount of iOPS related information. This was refused on cost grounds (section 12(1) of the FOIA), and the complainant was advised how he might refine his request in accordance with section 16 of the FOIA with a view to bringing it below the cost limit.
15. The complainant refined his request on 30 December 2019, (choosing four parts of his original request) and it is this request which is under consideration here.
16. This notice is necessarily very detailed given the chronology of the request, partial disclosure during the investigation after GMP revised its position from section 12(1) to the various exemptions cited and GMP's 'piecemeal' and, ultimately, incomplete submissions to the Commissioner.

Request and response

17. On 30 December 2019, the complainant wrote to GMP and requested information in the following terms (for ease of reference the Commissioner has numbered the parts of the request):

"In relation to iOps;

1. *I would like to see the test strategy documentation which was signed off for this project. Included within this I would like to see how your S1/P1 severity 1 priority 1 defects have been categorised and why, and how you have moved into UAT [User Acceptance Testing] from the previous testing phases which should be pre- determined by agreed Entry and Exit criteria within the test strategy.*
2. *I would like to see the TCR (Test Completion Report)*
3. *I would like to see the project RAIDS log (Risks/Actions/Issues/Dependencies)*
4. *I would like to see the minutes of the final 'Go Live' decision for the project and who signed this off and basically why given the system was clearly not fit for purpose."*

18. GMP responded on 6 January 2020 and refused to provide the requested information citing section 12(1) – cost of compliance. It explained:

“Greater Manchester Police (GMP) does not hold the information that you have requested in an easily retrievable format. To provide the data requested would again involve a manual search through a very large number of files to identify the relevant information based on a process of elimination.

At a very conservative estimate to locate, retrieve and review each file it would take approximately a full working week of 36.25 hours to complete and ascertain the data required.

Therefore to comply with the whole of your request the process would take over 18 hours' work which exceeds the appropriate limit of £450.00, the amount to which we are legally required to respond.”

Scope of the case

Initial complaint

19. The complainant initially contacted the Commissioner on 6 January 2020 to complain about the way his request for information had been handled and asked the Commissioner to consider GMP's application of section 12(1) to his request.

Internal review

20. The Commissioner noticed that the complainant had not exhausted GMP's internal review process; she wrote to him on 22 January 2020 asking him to request an internal review. GMP acknowledged receipt of the complainant's review request on 23 January 2020.
21. The complainant wrote to GMP on 2 March 2020 reminding it of the need to provide its internal review; at the same time he asked the Commissioner to investigate why GMP had failed to reply.
22. On 11 March 2020, GMP wrote to the Commissioner outlining its reasons for not having conducted an internal review (which included a lack of resource and *“numerous competing priorities”*, together with some confidential concerns). It said it would not be able to carry out an internal review until another officer was available and asked for the Commissioner's view.
23. The Commissioner explained that: *“Internal reviews are not a statutory requirement under the FOIA. We always advise public authorities to conduct them where possible. There may, of course, be circumstances where it is neither prudent nor a proportionate use*

of resources to carry out a review" and said that GMP could, in the circumstances of this case, elect not to conduct an internal review provided it explained this to the complainant and advised him to complain to the Commissioner.

24. GMP wrote to the complainant on 3 April 2020 advising that it would not be carrying out an internal review. The complainant complained to the Commissioner about this that same day.
25. Having advised both parties that she had accepted the case without the internal review having been exhausted, the Commissioner wrote to GMP on 1 June 2020 to investigate its reliance on section 12(1). In light of the prevailing impact of Covid-19 at that time on some public authorities, and the resultant redeployment of resources, the Commissioner sought to understand GMP's capacity to respond. This approach was not unique to this case; it was applied to any public authority whose ability to respond to FOIA related investigations at that time was not known.
26. GMP did not reply until 3 July 2020 (after the Commissioner contacted it for the then overdue investigation response). It said it would not be in a position to respond for three months due to the effects of the pandemic, GMP systems upgrades and projects on its resources. The Commissioner considered this time period excessive and spoke to GMP. It was subsequently agreed that she would call GMP a month later for an update on progress and issue an Information Notice at that point requiring it to provide its investigation response, if necessary.

Revised response to request

27. On 12 August 2020, GMP issued a revised response to the complainant. It said it no longer wished to rely on section 12(1) and had now identified some information it wished to disclose to the complainant with the remainder being withheld in accordance with the various FOIA exemptions as detailed below.
28. For part 1 of the request (namely the test strategy documentation), GMP identified two documents in scope. It disclosed a document entitled GMP IS Transformation Programme Test Strategy (v 1.2) in full. The other document, entitled GMP iOPS Test Strategy, is a 52 page report which GMP withheld in its entirety citing section 43(2) (commercial interests) of the FOIA.
29. For part 2 of the request (the Test Completion Report) GMP said it did not hold any information of that name but considered that the 'GMP iOPS Test Strategy' referred to under part 1 above also fell in

scope of part 2 of the request (withheld in its entirety under section 43(2)). In addition, GMP considered that the 'iOPS Testing Exit Strategy Report' fell in scope. This is a 108 page report which GMP withheld in its entirety under section 43(2).

30. Part 3 of the request for the RAID log (Risks, Actions, Issues, Dependencies) consists of a spreadsheet with various tabs. GMP had earmarked some of the tabs for disclosure to the complainant, together with some of the entries within the log, but initially had not reviewed part of the spreadsheet to determine whether any of the recorded information could be disclosed. As a result, the Commissioner asked GMP to revisit the log and complete its assessment of the remaining information in scope; she did this as part of her further investigation into the newly cited exemptions referred to in paragraph 31 below.
31. GMP considered that parts of the RAID log were exempt from disclosure. It cited the following exemptions to withhold this information:
 - Section 31 – law enforcement
 - Section 31(3) – 'neither confirm nor deny' provision in law enforcement
 - Section 38 – health and safety
 - Section 40(2) – personal information
 - Section 43(2) – commercial interests
32. For part 4 of the request (namely the minutes of the 'Go Live' Meeting), GMP disclosed the minutes in full with some names removed under section 40(2). The complainant responded as follows:

"Having reviewed just the 'Go Live' meeting minutes it is very clear that the full content has not been disclosed. Any meeting has an associated attendees list and role title to be certain as a collective group the recognised and accountable staff are being included in any such major decisions

The minutes attached provide none of this stock material content / clarity and are remarkable in their vagueness of content. There are no discussions for example around the current circumstances controlling the defect management test cycle and the priorities of those outstanding tests or discussions concerning post go live support arrangements and provisioning of floor walkers

All of these details and so so much more should be part and parcel of any go live debates so I simply do not believe these are the complete and accurate meeting contents”.

33. The complainant did not challenge the personal data redactions within the 'Go Live' minutes so the Commissioner has not considered this aspect any further.
34. In relation to the revised response as a whole, the complainant has challenged the extent of the information provided in response to his request and that withheld by GMP.

Revised investigation into newly cited exemptions

35. As GMP had cited new exemptions, the Commissioner needed to investigate its reliance on them and also to ask about the information held in relation to the 'Go Live' minutes. She therefore wrote to GMP again on 18 August 2020, and asked it to respond by 16 September 2020. Since it became apparent at that point that parts of the withheld RAID log had not been 'marked up' with the exemptions GMP wished to rely on, the Commissioner also asked GMP to provide its fully assessed consideration of this document, which it subsequently did.
36. Having received GMP's investigation response (on 28 September 2020) and assessment of the withheld information which it said it had completed, the Commissioner began an initial review of all the case correspondence. At this stage, she had some further queries about GMP's response and asked it to provide further clarification. She also identified parts of the two Testing Strategy reports withheld in their entirety under section 43(2) that she initially considered not to be exempt and asked GMP to revisit these documents.
37. On 19 October 2020, GMP provided the requested clarification. It advised it had been in contact with Capita in relation to the two reports (withheld under section 43(2)) and that Capita had agreed to the disclosure of parts of those reports minus the names, as identified in the Annex attached to this notice. It cited section 40(2) in respect of the names and job roles contained within the reports.
38. At the latter stage of the Commissioner's investigation, GMP confirmed that the job titles contained in the Testing Strategy Report could be disclosed. The Commissioner has reflected this in paragraph 10(viii) above and the Annex.

Scope of Commissioner's investigation

39. In late October 2020, the Commissioner decided that issuing a decision notice covering the whole request as it stood would be a more practical approach, rather than disclosing the additional information GMP had identified for release to the complainant. That way, the complainant would receive the Commissioner's decision on his entire request, as opposed to receiving parts of the information 'piecemeal'.
40. Since the complainant has not submitted any further comments about the Programme Test Strategy information already disclosed to him in response to part 1 of his request, the Commissioner has not considered this aspect any further.
41. Having further reviewed the complainant's submissions following receipt of GMP's revised response, the Commissioner noted he had made a specific comment in relation to GMP's reliance on section 40(2) with regard to the RAID log as follows:
- "Initially, personal information is protected by principles of the GDPR and is exempt from disclosure obligations under FOIA by virtue of s.40. owed to the volume of data subjects, it has not been feasible to acquire for the purposes of this request...*
- ... Further to my own request any data content held within the RAID log can however (and for the purposes of my request) be 'scrambled' by simply removing any personal data or changing this personal data to 'something else', removing any legitimate links so my request along with the other content still stands."*
42. Having considered all the entries within the RAID log withheld under section 40(2), the Commissioner is satisfied that this exemption has been applied to named individuals in each instance cited; names of individuals clearly constitute personal data. Given the complainant's view that any personal data can be removed from the RAID log, the Commissioner is in agreement that the names can be redacted from the RAID log prior to disclosure of those entries she finds not to be exempt. She has, therefore, not considered GMP's reliance on section 40(2) to withhold the names contained in the RAID log any further.
43. As set out in the Annex to this notice, the Commissioner has also ordered the disclosure of the additional recorded information identified by GMP, prior to the issuing of this notice, as being suitable for release to the complainant.

44. She has also considered whether any of the remaining withheld information should be disclosed. This has involved determining whether sections 31, 31(3), 38, 40(2) and 43(2) of the FOIA can be relied on in every instance cited.
45. In addition, given the complainant's comments in relation to the 'Go Live' minutes (part 4 of his request), the Commissioner has considered whether, on the balance of probabilities, any further recorded information is held by GMP relevant to this part of the request.

Reasons for decision

Information in scope of the request

46. The Commissioner considers it helpful to summarise here the remaining information in scope of the request (ie that information which has not already been identified for disclosure and/or which is disputed by the complainant):
 - Entries within the RAID log – (withheld under sections 31, 31(3), 38, 40(2) and 43 of the FOIA).
 - GMP iOPS Test Strategy Report - (majority of the report withheld under section 43(2) and section 40(2) in relation to named individuals).
 - iOPS Testing Exit Strategy Report - (majority of the report withheld under section 43(2) and section 40(2) in relation to named individuals).
 - Whether any further information is held in relation to 'Go Live' minutes.
47. Due to the complexities of how the exemptions have been applied, the Commissioner has considered the application of exemptions to each individual part of the request. As the most complex area related to part 3 of the request, she has considered this first. She has then considered parts 1 and 2 together and, finally, part 4.

The RAID Log Analysis (Part 3 of request)

Miscellanea

48. As explained in the Decision section of this notice, when reviewing the RAID log in detail in order to prepare her decision notice, the Commissioner found that a small number of entries had been

marked up by GMP as being withheld under various exemptions without GMP having formally cited them in any of its responses to the complainant or to the Commissioner. It had not provided any submissions in support of its reliance on the following exemptions:

- Section 14(1) – vexatious request
- Section 36 – prejudice to the effective conduct of public affairs
- Section 41 – information provided in confidence
- Section 44 – prohibitions on disclosure

49. Since GMP failed to refer to these exemptions at all in any of its submissions or responses to the complainant, the Commissioner has ordered disclosure of these entries as set out in paragraph 10(ii) and the Annex.

50. Similarly, the Commissioner has located six entries within the RAID log which GMP failed to either identify as being exempt or suitable for disclosure. She has also ordered disclosure of these entries as set out in paragraph 10(iii) and the Annex.

51. The remaining RAID log information in scope has been withheld variously citing sections 31(1), 31(3), 38, 40(2) and 43(2). GMP has relied on more than one exemption for some of the withheld entries within the RAID log. The majority of the information has been withheld under section 40(2).

Section 40(2) – personal information

52. As stated above, actual names in the RAID log have been 'scoped out' of consideration given the complainant's statement that he does not require them.

53. The task here is for the Commissioner to determine whether the remaining information in each of the entries withheld under section 40(2) has been correctly relied upon.

54. 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 one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

55. In this case, the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the Data Protection principles relating to the processing of personal data ('the DP principles'), as

set out in Article 5 of the General Data Protection Regulation ('GDPR').

56. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
57. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

58. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

59. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
60. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
61. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
62. GMP has argued that, even with the names removed from the log, publication would allow for reidentification of the post holders, whose names are associated with systems faults and issues identified and recorded in the RAID log.
63. GMP explained that the:

"RAID log is not currently available in the public domain, and its contents showing risks and issues etc on the iOPS project are not known beyond the project resource. During the iOPS project the RAID log was available to predominantly senior members of staff who were vetted for their respect [sic] posts, and under the strict binding terms of a contract of employment, non-disclosure agreements and various controls and safeguards such as system wide key log and screen capture automated auditing. Access was

granted to groups of users, most of whom would not have known they have access, nor have the knowledge of the location of the log nor of its existence. Furthermore, access served the purposes of ensuring risks and issues logged were adequately addressed for the project by staff of seniority."

64. GMP provided an example and argued that disclosure of those parts of the log withheld under section 40(2), even with the actual names redacted, would allow other individuals involved in the iOPs project who did not have access to the RAID log, to identify the individuals purely on the basis of the description of the fault/issue, stating:

"Unfortunately, identification is not simply by directly obvious identifiers such as names, albeit the RAID log contains names that can be redacted, identification of unnamed individuals is predominantly indirect by reference to job title and or subject matter expertise and responsibility of the task that the RAID log entry relates to."

65. The Commissioner has examined each instance where section 40 has been cited within the log. She considers that the information remaining once the names have been removed does not constitute personal data – the focus is on the issues associated with the system and not the individuals.
66. As the complainant will be aware once he has received the entries GMP has agreed to disclose, and, ultimately from those ordered to be released in this notice, the remaining information in the log relates to identified IT issues. This includes a description of the issue, the causes, the level (high, medium or low), response/migration resolution, dates and comments. The Commissioner does not consider that any of the above constitute personal data.

The Commissioner's conclusion

67. The Commissioner does not agree that the remaining parts of those entries withheld under section 40 constitute 'personal data' given the removal of all the actual staff names. Therefore, she has ordered disclosure of all the entries where section 40(2) alone has been cited.
68. Whilst she finds that section 40(2) is not engaged in respect of any of the entries within the RAID log, the Commissioner must consider those few entries where another exemption (or exemptions) has been cited. She will do so in the course of this notice.

Section 31(1) – law enforcement

69. GMP confirmed that it was relying on section 31(1)(a) and (b) of the FOIA to withhold some of the entries within the RAID log.

70. Section 31(1) of the FOIA states that:

“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.”

71. 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 also that it can only be withheld if the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

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

- the actual harm which the public authority claims would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption (in this case, the prevention or detection of crime and the apprehension or prosecution of offenders);
- 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.

51. The first point for the Commissioner to consider is whether the arguments provided by the GMP relate to the relevant applicable interests, namely the prevention or detection of crime and/or the apprehension or prosecution of offenders in each instance where section 31(1) has been cited.

73. However, GMP has not submitted any specific arguments in relation to section 31(1)(a) or (b); it has only submitted arguments in relation to section 31(3) which will be considered below. It is not for the Commissioner to try to make a case for GMP – the responsibility lies with the public authority.

The Commissioner's conclusion

74. In the absence of any specific section 31(1) rationale having been provided by GMP, the Commissioner has necessarily found that neither section 31(1)(a) nor (b) is engaged.
75. She has, therefore, ordered GMP to disclose this information as set out in paragraph 10(ii) and the Annex.

Section 31(3) – law enforcement 'neither confirm nor deny'

76. The Commissioner notes that some of the entries in the RAID log have been withheld on the basis of section 31(3) alone, the 'neither confirm nor deny' ('NCND') provision within the law enforcement exemption.
77. When a request for information is made under the FOIA, the first duty of a public authority, under section 1(1)(a) of FOIA, is to inform the requester whether it holds information of the description specified in the request. This is known as the duty to confirm or deny.
78. However, the duty does not always apply and a public authority may refuse to confirm or deny whether it holds information through reliance on certain exemptions under FOIA.
79. Section 31(3) of the FOIA excludes a public authority from complying with the duty to confirm or deny in relation to information if to do so would, or would be likely to, prejudice any of the functions in sections 31(1); GMP has relied on sections 31(1)(a) (the prevention or detection of crime) and 31(1)(b) (the apprehension or prosecution of offenders) to 'NCND' whether it holds some of the requested information within the RAID log.
80. As above, when considering a prejudice based exemption such as section 31, the Commissioner will:
- identify the applicable interests within the relevant exemption;
 - examine the nature of the prejudice, the likelihood of it occurring and that the prejudice claimed is real, actual and of substance; and

- examine whether there is a causal link between confirming or denying and any prejudice claimed.

81. In respect of section 31(3) the Commissioner asked GMP to explain why it would NCND that some of the entries exist when, in response to this request, it had confirmed the existence of the RAID log and was prepared to disclose parts of that log.

The Commissioner's conclusion

82. It is unclear to the Commissioner how GMP is applying the NCND provision. It seems to be in relation to what might happen as a result of information being disclosed rather than in respect of confirming or denying whether or not information actually exists. GMP has confirmed that the RAID log does exist so it does not seem plausible to then NCND whether parts of it exist.
83. The Commissioner does not consider that GMP can NCND the existence of some entries within the log given that it has already confirmed its existence. She therefore concludes that GMP cannot rely on section 31(3) to neither confirm or deny the existence of some logs and it must either disclose them or issue a refusal notice citing an appropriate exemption (see paragraph 10(v)) and the Annex).

Section 38 – health and safety

84. Of the remaining withheld entries in the scope of this investigation, the Commissioner has identified three entries where section 38 has been cited. GMP only provided the Commissioner with its submissions for section 38 on 20 October 2020.
85. Sections 38(1)(a) and (b) of the FOIA state that information is exempt if its disclosure would, or would be likely to:
- “(a) endanger the physical or mental health of any individual, or (b) endanger the safety of any individual.”*
86. GMP did not specify which limb of section 38(1) it wished to rely on, but from its submissions which talk about the *“health and safety”* of individuals, the Commissioner has considered both.
87. In section 38 the word ‘endanger’ is used rather than the word ‘prejudice’ which is the term used in other similar exemptions in the FOIA. However, in the Commissioner’s view the term endanger equates to prejudice.

88. Consideration of this exemption involves two stages. Firstly, the exemption must be engaged as a result of endangerment to physical or mental health being at least likely to result. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

The endangerment test

89. In order to engage this exemption, GMP must demonstrate that there is a causal link between the endangerment and disclosure of the information.
90. GMP must also show that disclosure of the withheld information in this case would, or would be likely to, have a detrimental effect on the physical or mental health of any individual. The effect must be more than trivial or insignificant.
91. GMP submitted the following to the Commissioner in support of its reliance on section 38:

"Capita make a compelling case in respect of the impact on the health and safety of individuals identified below;

'... the RAID log contains personally identifiable information for many individuals (include [sic] Capita employees) which could be used to maliciously discredit individuals involved in the project.'

Malicious discredit occurs when the performance of individuals on the project that resulted in an error or disruption to the project is taken from the individuals public life and associated to them in their private life by publication under FOI, where it is likely to adversely impact their health and wellbeing that will further transcend to their family and friends beyond the term of an employment contract for an indefinite time period".

92. GMP provided the Commissioner with two examples of how it considered two entries in the log:

"...do not account for the reasons behind the risks in sufficient detail to enable a fair and balance interpretation of staff performance, its association by publication into the private life of the project staff would constitute an unfair and disproportionate imposition of performance in the individuals public life, as the entry relates to a specific aspect of a larger project.

Because all RAID log entries relate to errors or omissions that required redress, the aforementioned risk applies in all cases where an individual is deemed identifiable."

93. Given that the complainant has confirmed he does not want the names in the RAID log, the Commissioner is not persuaded that section 38 is engaged – she has already determined above that no individual is identifiable from the remaining data. She also considers it very unlikely that, even if any individual could be identified from disclosure of these entries, that errors or omissions from 2018 to 2019 would result in redress that would endanger the health and safety of that individual.

The Commissioner's conclusion

94. Having reviewed the remaining entries in question, the Commissioner does not accept that GMP has demonstrated that endangerment would occur through their disclosure. It therefore, follows, that she has concluded that section 38 is not engaged.
95. GMP must disclose the entries listed at paragraph 10(ii) and the Annex.

Section 43(2) – commercial interests

96. A number of the remaining entries in the RAID log have been withheld under section 43(2) of the FOIA.
97. Section 43(2) of the FOIA states:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

Is section 43(2) engaged?

98. In order for section 43 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 exemption (ie be prejudicial to the commercial activities of any person - an individual, a company, the public authority itself or any other legal entity);
 - 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.

99. The first point for the Commissioner to consider is whether the arguments provided by GMP relate to the relevant applicable interests.

100. The term 'commercial interests' is not defined in the FOIA. However, the Commissioner's guidance on the application of section 43³ of the FOIA explains that a commercial interest relates to a person's ability to participate competitively in a commercial activity, such as the purchase and sale of goods or services. Their underlying aim may be to make a profit, however, it could also be to cover costs or to simply remain solvent.

101. The Commissioner asked GMP to provide full arguments setting out why it considers that the exemption is engaged in relation to a number of entries in the RAID log. GMP contacted the third party, Capita, and provided the following:

"This document taken as a standalone artefact of a complex implementation project without due reference to the wider context of the iOPS programme could be misunderstood, misused or used by others for commercial advantage over Capita. The document contains detailed information about the volume, impact, resolution and mitigation for risks and issues of varying impact that were reported in the context of the entire iOPS programme however by its nature it doesn't carry relevant information that would allow an uninformed reader to understand the contractual nature of the complex and changing relationships/responsibilities between GMP and its various subcontractors throughout the life of the implementation programme and beyond. Without a detailed understanding of the wider context, individual RAID entries could be exploited by others,

³ <https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>

including our direct competitors, to brief against our capabilities, erroneously assign responsibilities to Capita that were not in place contractually, position their own propositions to compete against us or even maliciously discredit Capita during future commercial engagements with customers across the world. It is worth noting that this risk extends past the Capita businesses that contracted with the force for IOPS as any misuse or misinterpretation of our approach in servicing high profile blue light organisations could impact the future business of our parent division, Capita Software and the Capita Group plc itself."

102. In addition, Capita said (underlining as shown by Capita):

"...individual RAID entries could [sic] exploited by others, including our direct competitors, to brief against our capabilities, erroneously assign responsibilities to Capita that were not in place contractually, position their own propositions to compete against us or even maliciously discredit Capita during future commercial engagements with customers across the world. It is worth noting that this risk extends past the Capita businesses that contracted with the force for IOPS as any misuse or misinterpretation of our approach in servicing high profile blue light organisations could impact the future business of our parent division, Capita Software and the Capita Group plc itself".

103. GMP has argued that disclosure of the entries in the RAID log withheld on the basis of section 43(2) would prejudice the commercial interests of its third party IT supplier, Capita. Having viewed the withheld information, the Commissioner accepts that the withheld information is relevant to the applicable interests within the commercial interests exemption and therefore the first part of the test above is met.

104. Despite being asked twice, GMP failed to specify whether it was adopting the higher threshold of prejudice, (ie that disclosure of the testing strategy information 'would' prejudice the commercial interests of each organisation) or the lower threshold of 'would be likely'. The Commissioner has therefore applied the lower threshold.

105. In relation to the second criterion, the Commissioner accepts the concerns detailed above to prejudice commercial interests, resulting from disclosure of the information.

106. Turning to the third criterion, when claiming that disclosure would prejudice the commercial interests of a third party, the Commissioner expects a public authority to obtain arguments from the third party itself which has clearly occurred in this case.

107. The task for the Commissioner here has been to consider each individual entry withheld under section 43(2) to determine whether the above three criteria are met in each case.
108. Due to the volume and variety of entries withheld under section 43(2) and GMP's general submissions in support of its reliance on this exemption (rather than individual entry submissions), the Commissioner has not been able to detail in this notice her analysis of each individual entry. However, she can confirm that she has examined each entry to determine whether section 43(2) is engaged.
109. Having done so, and having considered the arguments made, the Commissioner accepts that prejudice to the commercial interests of Capita (and to a lesser extent GMP in terms of ongoing commercial discussions between the parties) would be more likely than not to result through disclosure of the information in question. She therefore, finds that all the entries withheld under section 43(2) within the RAID log engage this exemption.
110. The Commissioner must now consider the public interest test.

Public interest test

111. Having found that the exemption is engaged, the Commissioner has gone on to consider the public interest factors in favour of disclosing the withheld information and of maintaining the exemption.

Public interest arguments in favour of disclosing the information

112. GMP has told the Commissioner that it recognises the importance of openness and transparency and being able to demonstrate an efficient service to the public.

113. GMP is also aware that the public must have confidence in its decision making processes, such as being informed of the extent of the due diligence and testing undertaken prior to the introduction of new software. It said:

"Publication will demonstrate that the approach taken prior to the introduction of software utilised in serving the public involved a robust testing regime to ensure an effective launch and continuation of public services, the document evidences the care and consideration given to the importance of continuity of public services."

114. The complainant argues there is significant public interest in disclosure of the information given that, in his view, the failure of new IT systems *"cost people's lives"*.

Public interest arguments in favour of maintaining the exemption

115. GMP said that Capita is a large employer and net economic contributor, and that discrediting its commercial interests is likely to have an adverse economic impact.

Balance of the public interest

116. The Commissioner is of the view that this is a large IT transformation project and therefore there would be public interest in the way public funds are being used, especially in a situation that involves rectifying failings within a major IT overhaul.

117. The complainant has not expanded on his view that lives would be lost due to the non-release of the requested information. The Commissioner can 'second guess' that the complainant feels IT failures may result in erroneous decisions being reached that may impact on individuals' lives. Whilst she recognises that issues with IT systems might impact negatively on individual lives (particularly given the types of data GMP is likely to hold), having viewed the requested RAID log, the Commissioner does not agree that their disclosure *per se* would in itself serve the public interest. The errors need to be rectified to reduce the impact on people's lives, which would not be achieved by disclosure. It is also noted that the records evidence those issues which have been identified and recognised as requiring further work and the steps being taken to address them.

118. As regards the public interest in maintaining the exemption, the Commissioner's view is that there is a strong public interest in protecting the commercial interests of companies and ensuring that they are able to compete fairly. Companies should not be disadvantaged as a result of doing business with the public sector.

The Commissioner's conclusion

119. Based on the above, the Commissioner has determined that the public interest in withholding the information outweighs the public interest in disclosure.

120. She therefore does not require GMP to disclose any entries within the RAID log withheld under section 43(2) as detailed in paragraph 8 of this notice.

The Two iOPS strategy reports (Parts 1 and 2 of the request)

Section 43(2) – commercial interests

121. As stated, during the course of the Commissioner's investigation, further information was identified within both Testing Strategy reports which was deemed suitable for disclosure to the complainant. This information is as listed in the Annex as it is yet to be provided to him.
122. The Commissioner has therefore considered GMP's reliance on section 43(2) to the remaining withheld information within the iOPS Test Strategy Report and iOPS Testing Exit Strategy Report.
123. The Commissioner must follow the three criteria detailed in her section 43(2) consideration of the RAID log entries above.
124. The first point for the Commissioner to consider is whether the arguments provided by GMP relate to the relevant applicable interests.
125. The Commissioner asked GMP to provide full arguments setting out why it considers that the exemption is engaged. She explained that its submissions should identify whose commercial interests it believed would, or would be likely to, be prejudiced in the event of disclosure, and details of the nature of the prejudice itself. She also asked it to provide evidence that any arguments relating to a third party's interests were a genuine reflection of concerns known to be held by that third party.
126. GMP has argued that disclosure of the remaining withheld information in the two reports would prejudice the commercial interests of its third party IT supplier, Capita.
127. The Commissioner notes that both reports are clearly marked with a footer on each page which states "Commercial in confidence" and that the iOPS Test Strategy Report includes the following statement:
- "The information contained in this document is the property of Capita Business Services Limited. The contents of the document must not be reproduced or disclosed wholly or in part or used for purposes other than that for which the document is supplied without the prior written permission of Capita Business Services Limited."*
128. In respect of the iOPS Test Strategy Report, Capita has asserted:

“software testing is a discipline with numerous approaches that present unique advantages and disadvantages, the approach and execution are determined by numerous factors such as time and resource availability and costs. The Test Strategy document does not reflect these influencing factors and when read against the output of the software can be deemed as an ineffective test strategy ultimately discrediting Capita's commercial interests causing reputational damage that will impact its credibility as a service provider. Adverse economic impact in the region occurs when owed to the adverse impact on Capita's commercial interests a contract for work is awarded to another provider and the other provider recruits resources from elsewhere, e.g. overseas”.

129. Capita also argued that:

“This document taken as a standalone artefact of a complex implementation project without due reference to the wider context of the iOPS programme could be misunderstood, misused or used by others for commercial advantage over Capita. The Capita solution delivered to the IOPS programme is considered unique within the commercial market in which these solutions are sold and this document contains commercial and operationally sensitive information about our testing approach alongside detailed architectural information which would seriously compromise Capita commercially if it was released. It is worth noting that this risk extends past the Capita businesses that contracted with the force for IOPS as any misuse or misinterpretation of Capita approach in servicing high profile blue light organisations could impact the future business of our parent division, Capita Software and the Capita Group plc itself.”

130. Capita made the following assertions in relation to iOPS Test Strategy Exit Report:

“This document taken as a standalone artefact of a complex implementation project without due reference to the wider context of the iOPS programme could be misunderstood, misused or used by others for commercial advantage over Capita. The document itself contains detailed information about the volume, impact, resolution and mitigation for defects of varying severity that were reported in the context of the UAT testing programme as well as Capita's commercial position for items that were deemed to be “working as designed” and not defects. The release of a document containing such detailed information could be exploited by others, including our direct competitors, to brief against our capabilities, position their own propositions to

compete against us or even maliciously discredit Capita during future commercial engagements with customers across the world. It is worth noting that this risk extends past the Capita businesses that contracted with the force for IOPS as any misuse or misinterpretation of our approach in servicing high profile blue light organisations could impact the future business of our parent division, Capita Software and the Capita Group plc itself."

131. In addition, Capita stated:

"1. Releasing these documents now may risk prejudicing the ongoing commercial discussions/proceedings between the parties.

2. There are likely operational and/or information security risks associated with releasing these documents as they reference names of senior individuals involved in the signing off and decision making process for both the strategy and the UAT report for all involved parties, as well as contain references to datacentres and system architectures, etc. Would GMP want this information circulating in the public domain?"

132. The Commissioner accepts that the prejudice envisaged would be to both Capita and GMP. Therefore, the Commissioner is satisfied that the first criterion is met.

133. Despite being asked twice, GMP failed to specify whether it was adopting the higher threshold of prejudice, (ie that disclosure of the testing strategy information 'would' prejudice the commercial interests of each organisation) or the lower threshold of 'would be likely'. The Commissioner has therefore applied the lower threshold.

134. In relation to the second criterion, the Commissioner accepts the concerns to prejudice commercial interests, resulting from disclosure of the information.

135. Turning to the third criterion, when claiming that disclosure would prejudice the commercial interests of a third party, the Commissioner expects a public authority to obtain arguments from the third party itself which has clearly occurred in this case.

136. Having viewed the withheld information and considered the arguments made, the Commissioner accepts that prejudice to the commercial interests of Capita (and to a lesser extent GMP in terms of ongoing commercial discussions between the parties) would be more likely than not to result through disclosure of the information in question. She therefore finds that section 43(2) of the FOIA is engaged.

Public interest test

137. Having found that the exemption is engaged, the Commissioner has gone on to consider the public interest factors in favour of disclosing the withheld information and of maintaining the exemption.

Public interest arguments in favour of disclosing the information

138. GMP has told the Commissioner that it recognises the importance of openness and transparency and being able to demonstrate an efficient service to the public.

139. GMP is also aware that the public must have confidence in its decision making processes, such as being informed of the extent of the due diligence and testing undertaken prior to the introduction of new software. It said:

"Publication will demonstrate that the approach taken prior to the introduction of software utilised in serving the public involved a robust testing regime to ensure and effective launch and continuation of public services, the document evidences the care and consideration given to the importance of continuity of public services."

140. The complainant did not make any specific public interest arguments in relation to the disclosure of the two Testing Strategy Reports.

Public interest arguments in favour of maintaining the exemption

141. GMP said that Capita is a large employer and net economic contributor, and that discrediting its commercial interests is likely to have an adverse economic impact.

Balance of the public interest

142. The Commissioner is of the view that this is a large IT transformation project and therefore there would be public interest in the way public funds are being used, especially in a situation that involves rectifying failings within a major IT overhaul.

143. As regards the public interest in maintaining the exemption the Commissioner's view is that there is a strong public interest in protecting the commercial interests of companies and ensuring that they are able to compete fairly. Companies should not be disadvantaged as a result of doing business with the public sector.

The Commissioner's conclusion

144. Based on the above, the Commissioner has determined that the public interest in withholding the information outweighs the public interest in disclosure.
145. She therefore does not require GMP to disclose any remaining information withheld in either report under section 43(2) as per paragraph 8 of this notice.

Section 40(2) – personal information

146. Although the complainant had advised he did not require the names contained in the RAID log, he would not have been aware that there were any section 40(2) redactions within the two Testing Strategy reports because GMP only cited section 43(2) in its revised response.
147. It was only during the later stages of her investigation, when reviewing the withheld reports in detail, that the Commissioner identified that some of the information within the reports, which did not fall under the section 43(2) exemption, did fall under section 40(2).
148. The Commissioner noted earlier in this notice that GMP had agreed to the disclosure of the job titles/roles within the iOPS Testing Strategy Report, but not the names; there are also names in the Testing Exit Strategy Report.
149. The Commissioner will therefore consider whether the names within the reports can be withheld under section 40(2) of the FOIA.
150. In making her decision, the Commissioner has followed the same process as set out in her section 40(2) considerations for the RAID log above. It is clear that the names in both reports constitute personal data in that their release would identify living individuals.
151. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
152. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

153. Article 5(1)(a) of the GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

154. 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 lawful, fair and transparent.

155. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

156. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that *“processing shall be lawful only if and to the extent that at least one of the”* lawful bases for processing listed in the Article applies. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f), which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”⁴.

157. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:

⁴ Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

158. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

159. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
160. The complainant has not submitted any arguments in favour of disclosure of the names in the report. The Commissioner is mindful that he was not aware of the existence of any names in the report *per se* given that GMP only cited section 43(2) in its revised response to him. However, based on the complainant's view that names could be redacted from the RAID log, together with his acceptance of the disclosure of the 'Go Live' minutes with named redacted, and given that GMP will be disclosing the job titles where included, the Commissioner does not consider that the complainant is likely to present any legitimate interests in this case. The seniority of at least some of the parties will be apparent by the release of job titles, which goes some way to meet any wider legitimate interest.
161. However, as the complainant has not definitively stated that he does not require the names in the two reports, the Commissioner has gone on to consider the next step in the process.

Is disclosure necessary?

162. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

163. GMP has said:

"We would be happy for the job titles/roles of the Capita individuals named to be disclosed to indicate to the reader the role and seniority of those involved however Capita would seek to avoid the disclosure of individuals names as it adds no intrinsic value to the applicants understanding of the contents of the documents concerned, the wider context of the programme and more importantly we do not have their individual express permission to disclose their information.

You are correct in that the individuals concerned are not in public facing roles and were simply acting as employees of Capita in the execution of their roles within the iOPS programme. As individuals, we believe they have a right of protection against any misleading, incorrect or inaccurate inferences that the applicant and any other reader of the disclosed documents might choose to make as to their professional capabilities. Many of the individuals would have personal accounts on business social media sites such as LinkedIn and direct disclosure of their names and roles would allow them to be clearly identified outside the context of the programme."

164. In this case, having considered the foregoing, the Commissioner cannot see any necessity in disclosing the names of non-public facing individuals particularly when GMP has agreed that it will disclose the associated job titles (although held only in respect of the iOPS Testing Strategy Report) to the complainant.

The Commissioner's conclusion

165. As the Commissioner has decided in this case that disclosure is not necessary to meet any potential legitimate interest in disclosure, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).

166. The Commissioner has therefore decided that GMP was entitled to withhold the names of the individuals identified in the two Testing Strategy reports under section 40(2), by way of section 40(3A)(a).

'Go Live' Minutes (Part 4 of request)

Section 1 – general access to information

167. Finally, the Commissioner has considered the complainant's assertion that GMP must hold more information in relation to the 'Go Live' minutes it disclosed to him.

168. Section 1 of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and, if so, to have that information communicated to them.

169. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

170. The Commissioner is mindful that when she receives a complaint alleging that a public authority has stated incorrectly that it does not hold the requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether information is held.

171. The Commissioner will consider the complainant's evidence and arguments (as set out in paragraph 32), namely that he did not accept that the version of the minutes provided constituted the "*full content*" held. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

172. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, GMP holds any further recorded information within the scope of part 4 of the request. Accordingly, she asked GMP to explain what enquiries it had made in order to reach the view that it did not hold any further information beyond that already released to the complainant.

173. GMP told the Commissioner that:

"Minutes are recorded on a centralised system, a search involves scrolling to identify the meeting and clicking on the listed entry, which loads the record for the respective meeting. System controls do not allow a different record to be loaded, on click functions load the record that is selected.

The minutes were recorded by the Programme Management Officer onto the CLIO system and were not recorded by anyone else in the meeting. It is uncharacteristic for senior management to record minutes of meetings or for minutes to be held elsewhere."

174. GMP also said:

"In relation to the assertion that the disclosed 'Go Live' minutes do not represent "the complete and accurate meeting contents", the document was disclosed as received without personal data, the 'Go Live' meeting took place at 23:30 on 08/092020 and chaired by the Senior Responsible Owner ACC [name redacted], where leads for the various essential business areas were asked to confirm if there were any issues that would prevent go live in the early hours of the 9th. No lead raised any issues that would prevent go live and the final decision was made to go live. That meeting was recorded onto the audit system. The meeting was not a ceremonial event as may be assumed by [the complainant] and this is reflected in the minutes of the meeting."

175. GMP said that minutes would be held electronically and that its:

"Retention and disposal policy and procedure require the completion of a record disposal form prior to the disposal of a final record. If the minutes were disposed of the Go Live minutes disclosed would not have existed."

176. It clarified that destruction of the information would not be in accordance with its record retention policy and so it had no reason to believe that any further relevant information had been deleted or destroyed.

177. In response to whether there is a business purpose for which the requested minutes should be held, GMP stated:

"The information is held in accordance with a statutory requirement (Companies Act 2006 s.238) and demonstrates how decisions are made, to serve our commitment to accountability and transparency."

178. In relation to whether there is a statutory requirement for GMP to retain the requested information (ie the minutes), GMP said:

"National Archives Internal Audit Records (Page 6) and Companies Act 2006, Section 248 Compels GMP to retain the information for 6 Years and covers All senior management & senior partnership meetings Agendas, minutes, conferences."

179. In addition, GMP submitted the following details:

"Everyone was round a table during what was the final go/no go meeting. SRO went round the room asking if anyone had any reason go live could not proceed"

No one did

The minutes of the meeting were added to the CLIO records system at some point after the meeting...

'I can see from full CLIO update created at 23:57 hours (this appears to be the time you finished writing and press send, rather than the time the entry was opened, if that makes sense), that go/no go decision was made at 2340 hrs. This suggests that the CLIO entry was made shortly afterwards'."

180. The Commissioner has reviewed the minutes provided to the complainant.

The Commissioner's conclusion

181. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.

182. Based on the explanation provided by GMP and the disclosure already made to the complainant, the Commissioner is satisfied, on

the balance of probabilities, that no further recorded information within the scope of the request is held.

183. The Commissioner is therefore satisfied that, on the civil standard of the balance of probabilities, that GMP does not hold any further requested information beyond the minutes already provided to the complainant.

Other matters

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

Delays with investigation/withheld information

185. Notwithstanding GMP's explanation about the impact of Covid-19 and other competing demands on its resources, the Commissioner is concerned about the time taken to respond fully to her investigation in this case. In particular, she considers that the delay has been exacerbated by GMP's failure to properly consider all the withheld information in scope from the outset in line with its revised response, which was provided during the Commissioner's investigation.

186. The Commissioner would remind GMP of the need to properly review all the withheld information prior to considering any future FOIA responses, and to 'mark-up' all parts of the information held with the exemptions it wishes to rely on prior to responding. This exercise should be completed in order for a public authority to determine exactly what information it considers to be exempt and any that is not.

187. She would also remind GMP of the need to formally cite all the exemptions it wishes to rely on to withhold any or all of the information in scope of future requests. In this case, four exemptions annotated in the withheld information were not referred to at all in any of its written responses.

188. Additionally, GMP should ensure that it reviews all the recorded information in scope. In this case, a number of entries within the RAID log were neither marked up as being exempt nor as being suitable for disclosure. Whilst this may be an oversight, GMP should check that it has considered all the information it intends to withhold.

189. GMP should also provide full arguments for all the exemptions it wishes to rely on. In this case, it did not provide any section 38

arguments until late October 2020 and it failed to submit any arguments in support of its reliance on sections 31(1)(a) and (b).

Right of appeal

190. 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@justice.gov.uk

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

191. 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.

192. 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**

Non-confidential Annex – information to be disclosed by GMP

193. As explained in this notice, GMP had already earmarked some additional information it was willing to disclose in response to the complainant's request of 30 December 2019. The Commissioner decided to review the case as a whole and set down her decision in relation to all the remaining withheld information in this decision notice.
194. During the course of her investigation, the Commissioner has identified further information that she considers is not exempt under the exemptions cited by GMP (as explained earlier in this notice).
195. The list of information for disclosure below therefore includes both that previously identified by GMP as suitable for disclosure and that established by the Commissioner having completed her investigation. It also includes those entries marked with exemptions that GMP failed to cite and five entries where GMP failed to identify whether the information was either exempt or suitable for disclosure. The numbering (ie i to viii) reflects that set out in the 'Steps' the Commissioner has ordered in the 'Decision' part of this notice.
196. GMP should ensure it complies with the full list detailed here in order to comply with the steps detailed in paragraph 10(i) to 10(viii) of this notice. (Please note paragraph 10(v) is not listed below because the Commissioner has not ordered disclosure of the information withheld by virtue of section 31(3); see step in the 'Decision' part of this notice). A small number of the referenced entries may appear under more than one 'disclosure' instruction. This is where multiple exemptions have been applied and the Commissioner has necessarily considered the application of each exemption separately.
197. As set out below, but highlighted here, both the disclosures in the RAID log and the two Testing Strategy Reports should have all names removed in accordance with section 40(2) of the FOIA.
198. As much as possible, and to assist GMP, the Commissioner has tried to reflect the order the entries appear in the RAID log. All the reference numbers below are those used by GMP. The entries are not recorded in numerical order in the log. In some instances the same reference number has been used more than once.
199. Given the issues with the non-chronological order of the spreadsheet, the use of the same references in places for differing issues and the added confusion caused by some entries having not been marked up at all, the Commissioner has endeavoured to capture below each individual entry for disclosure. She would, therefore, ask GMP to ensure that it discloses everything within the RAID log that is not caught either by

section 43(2) or section 40(2), given that she has not found any of the other exemptions to be engaged. This should obviously include all the entries GMP had already identified as being suitable for disclosure.

Information to be disclosed

RAID log

- i. Disclose the entries already GMP had already identified as suitable for disclosure within the RAID log (ie ISTPR002, ISTPR030, ISTPR044, ISTPR005, ISTPR006, ISTPR007, ISTPR062, ISTPR075, ISTPR094, ISTPR017, ISTPR018, ISTPR020, ISTPR101, ISTPR023, ISTPR025, ISTPR026, ISTPR027, ISTPR118, ISTPR119, ISTPR127, ISTPR032, ISTPR034, ISTPR001, ISTPR042, ISTPR009, ISTPR011, ISTPR012, ISTPR054, ISTPR058, ISTPR051, ISTPR064, ISTPR065, ISTPR072, ISTPR074, ISTPR077, ISTPR078, ISTPR085, ISTPR100, ISTPR092, ISTPR105, ISTPR106, ISTPR107, ISTPR111, ISTPR095, ISTPR096, ISTPR097, ISTPR103, ISTPR113, ISTPR120, ISTPR121, ISTPR124, ISTPR128, ISTPR130, ISTPR131 (Organisational support), ISTPR131 (Individual Data Storage Capacity), ISTPR131 (PGLS User Guidance), ISTPR132, ISTPR134, ISTPR135, ISTPR140, ISTPR141, ISTPR142, ISTPR143, ISTPR144, ISTPR145, ISTPR148, ISTPR149, ISTPR150, ISTPR151, ISTPR152, ISTPR153, ISTPR154, ISTP1004, ISTP1010, ISTP1011, ISTP1012, ISTP1016, ISTP1018, ISTP1019, ISTP1020, ISTP1034, ISTP1036, ISTP1040 (Clarity of outcomes etc), ISTP1044, ISTP1057, ISTP1062, ISTP1072, ISTP1074, ISTP1042, ISTP1075, ISTP1027, ISTP1028, ISTP1030, ISTP1032, ISTP1034, ISTP1035, ISTPR140, ISTPR147, ISTP1038, ISTP1040 (Failover tests), ISTP1041, ISTP1042 plus the seven unreferenced 'ok to disclose' entries on the 'Carried over data risks' tab.
- ii. Disclose the entry in the RAID log notice withheld under section 14(1) alone: ISTPI028.
- ii. Disclose the entry in the RAID log withheld under section 36 alone: ISTPR112.
- ii. Disclose the entry in the RAID log withheld under section 41 alone: ISTP061.
- ii. Disclose the entry in the RAID log withheld under section 44 alone: ISTPR138.
- ii. Disclose the entries withheld under section 31(1)(a) and (b) within the RAID log (specifically ISTPR051, ISTPR099, ISTPR043, ISTPR013, ISTPR015, ISTPR016, ISTPR053, ISTPR056, ISTPR057, ISTPR021, ISTPR022, ISTPR028, ISTPR066, ISTPR050, ISTPR052, ISTPR082, ISTPR086, ISTPR109, ISTPR110, ISTPR115, ISTPR126, ISTPR139,

- ISTPR155, ISTP1037, ISTP1041, ISTP1079, ISTP1049, ISTP1064, ISTP1071, ISTP1025, ISTP2026, ISTP1031, ISTP1035 and the only section 31(1) unreferenced entry within the 'Carried over data risks' tab).
- ii. Disclose the three entries in the RAID log withheld under section 38 (ie ISTP1008, ISTP1026 and ISTP1030).
 - iii. Disclose the six entries within the RAID log which were neither identified by GMP as being exempt nor as suitable for release. ISTP1047 and ISTP1058 are marked as 'disclosure not in the public interest' but there is no accompanying exemption. GMP should disclose the following (specifically ISTPR016, ISTPR024, ISTP1042, ISTP1047, ISTP1058 and ISTP071).
 - iv. Disclose the following tabs within the RAID log in their entirety which are labelled:
 - o Summary
 - o Risk Guide
 - o Risk Identification Framework
 - o Stats
 - vi. Disclose the following entries in the RAID log withheld under section 40(2) alone and where combined with other exemptions that the Commissioner has not upheld, (specifically ISTP056, ISTPR008, ISTPR051, ISTPR054, ISTPR059, ISTPR087, ISTPR103, ISTPR117, ISTPR031, ISTPR036, ISTPR129, ISTPR039, ISTPR003, ISTPR045, ISTPR046, ISTPR049, ISTPR010, ISTPR019, ISTPR055, ISTPR056, ISTPR057, ISTPR058, ISTPR037, ISTPR040, ISTPR049, ISTPR071, ISTPR073, ISTPR052, ISTPR053, ISTPR059, ISTPR061, ISTPR063 (Security), ISTPR067, ISTPR069, ISTPR070, ISTPR090, ISTPR091, ISTPR092, ISTPR079, ISTPR080, ISTPR081, ISTPR093, ISTPR108, ISTPR114, ISTPR115, ISTPR116, ISTPR125, ISTPR132, ISTPR133, ISTP1061, ISTP1067, ISTP1001, ISTP1002, ISTP1003, ISTP1005, ISTP1006, ISTP1007, ISTP1008, ISTP1013, ISTP1015, ISTP1077, ISTP1022, ISTP1023, ISTP1078, ISTP1026, ISTP1027, ISTP1029 (Business Processes), ISTP1029 (Interface), ISTP1030, ISTP1031, ISTP1032, ISTP1033, ISTP1039, ISTP1043, ISTP1045, ISTP1048, ISTP1049, ISTP1050, ISTP1051, ISTP1063, ISTP1054, ISTP1056, ISTP1057.1, ISTP1059, ISTP1065, ISTP1066, ISTP1074, ISTP1075, ISTP1076 (IMP), ISTP1063 (Design), ISTP1070, ISTP1076 (Patching), ISTP1072, ISTP1073, ISTP1025, ISTP1025, ISTP1026, ISTP1033, ISTP1033, ISTP1035, ISTP1036, ISTP1149 and ISTPR141).

iOPS Testing Strategy Exit Report

- vii. Disclose the Contents page and Purpose, Executive Summary and Exit Criteria (up to and including the table on page 3) with all names redacted.
- vii. Disclose Sections 1.2 to 1.4 and Section 2 of the report.

GMP iOPS Test Strategy Report

- viii. Disclose pages 1-12 of the report including the job titles with all names redacted under section 40(2).