

Further to your request under the Freedom of Information Act for the investigation report produced by Lancashire Constabulary I can confirm that the Office of the Police and Crime Commissioner (OPCC) does hold an investigation report in relation to the conduct of former Chief Constable Gilmore.

I am afraid, however, that I cannot disclose this report to you because I believe that exemptions apply. Section 17 of the Freedom of Information Act requires us to state which exemptions apply and the reasons why we believe they apply.

The OPCC has been bound to consider the following exemptions under Part II the Act, which we understand as an experienced journalist you are familiar with:

- Section 31 (Law enforcement), in particular subsection (1)(g) which refers to the exercise by any public authority of its functions for any of the purposes specified in subsection (2). Section 31(2) refers to (a) the purpose of ascertaining whether any person has failed to comply with the law, (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper, and (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise. Each of those subsections warranted consideration in this case. The Commissioner has statutory functions in relation to the police misconduct regime, under the Police Reform Act 2002 and the Police (Conduct) Regulations 2012 (the PCR). The investigation report considers whether Mr Gilmore misconducted himself by reference to the Standards of Professional Behaviour for police officers in schedule 2 of the PCR. In this connection I note that there have not been any proceedings against Mr Gilmore and the allegations have not been tested at a hearing and have not been proved.
- Section 40 (Personal information), in particular subsection (2) because the investigation report contains personal data relating to Mr Gilmore and personal data relating to other persons who were witnesses or otherwise are identified. We appreciate that section 40 is an absolute exemption, however it requires consideration of whether disclosure of the information requested would contravene the Data Protection Act 1998, which in turn requires consideration of fairness in all the circumstances, which may include the public interest in the subject matter of the investigation report.

Civil proceedings have recently been issued against the Commissioner, in which the misconduct investigation and the question of publication of the investigation report are in issue.

This engages the exemption in the FOI Act at section 31(1)(c) "the administration of justice". I have considered whether disclosure of the information requested would be likely to prejudice the administration of justice and I have concluded that in the present circumstances, it would. This relates to civil proceedings intimated and issued against the Commissioner in relation to the investigation conducted by the Commissioner with the assistance of Lancashire Police into the conduct of Mr Gilmore.

I am alive to the public interest in an investigation into the conduct of a former Chief Constable while he is in office. However there is a strong public interest in allowing civil proceedings to take their course.

To disclose the information you have requested would impact on the ability of the parties and the court to consider the issues as they stand, in circumstances where those issues include the investigation and the question of publication of the investigation report. To disclose the information now may prevent persons with an interest in the information from exercising their rights, may undermine the jurisdiction of the court or may pre-judge the outcome of proceedings or any application made within the proceedings.

I have therefore determined that the information sought will be withheld. It follows from the reasons for that decision that once the civil proceedings have been resolved, the risk of prejudice to the administration of justice may have changed and it may be that a different decision would be taken.

REVIEW RIGHTS

If you consider that your request for information is not been properly handled or if you are otherwise dissatisfied with the outcome of your request, you may seek an internal review within the OPCC of the issue or the decision. I am attaching a copy of our appeal procedure.

A request for an internal review should be submitted in writing to the Interim Chief Executive, OPCC for West Yorkshire, Ploughland House, 62 George Street, Wakefield, WF 1 1DL.

If you remain dissatisfied with the outcome of any internal review, you may complain to the Information Commissioner for a decision on whether your request for information is been dealt with in accordance with the FOI Act. The Information Commissioner can be contacted at the Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.