

Dear Sir

FOI REQUEST 232

Further to your request for information of 16 August 2017 under the Freedom of Information Act 2000 I can provide the following:

1. The operational codename of the 'whistleblower investigation' (if different to Operation Barium).

The investigation conducted by Lancashire Constabulary into anonymous allegations made against the former Chief Constable was also codenamed 'Barium'.

2. The terms of reference agreed with Lancashire Police.

Attached. Some information has been redacted from this document and further information is provided below. This document has also been released in relation to your request reference request-350669-dbffc9d@whatdotheyknow.com.

3. The name of the investigating officer appointed by Lancashire Police (if different to ACC Jacques who was head of the Barium investigation).

ACC Jacques was the investigating officer for this investigation.

4. The investigation report (outcome).

The investigation was incomplete and there is no investigation report.

5. The decision letter that accompanied the outcome (report).

See (4) above.

6. Correspondence between the IPCC and the PCC's office concerning the whistleblower allegations.

Attached. Some information has been withheld and some has been redacted from these documents and further information is provided below.

7. Correspondence (including any meeting, briefing notes, report, emails and the like) between the PCC and/or his Deputy and/or the PCC's Chief Executive and any West Yorkshire police officer at the rank of superintendent or above, concerning whistleblower allegations.

Correspondence is attached. Some information has been redacted and further information is provided below.

Some information has been redacted in the attached documents because we believe 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.

We consider the following exemptions apply:

S40(2) – Personal Information

The information contained in this disclosure is subject to the provisions of the Data Protection Act 1998 (DPA). Within this, the data needs to be processed fairly and lawfully, obtained only for a specified and lawful purpose and compatible with it; adequate, relevant and not excessive in relation to the purposes for which it is processed; it must be accurate and be processed in accordance with the rights of the data subjects (Schedule 1, Part 1). Personal Information can only be disclosed if it does not breach one of the principles of the DPA. The first principal of the DPA requires information to be processed fairly and lawfully.

Information has been redacted or withheld where disclosure will breach principle 1 of the DPA, the duty to process information fairly and lawfully. The following factors have been taken into account in reaching this decision.

The information held is sensitive personal information within the scope of the DPA as it concerns the alleged commission of offences or alleged misconduct. Sensitive personal information may only be disclosed if one of the conditions of Schedule 2 and one of the conditions of Schedule 3 of the DPA are also satisfied.

Disclosure of sensitive personal information would be likely to cause harm and distress to the data subjects and is likely to lead to, or to increase, intrusion into the individual's private and family lives.

Whilst the information held relates to individual's professional lives and there would, therefore, be some expectation of disclosure where the individual does not hold a senior public position this expectation would be reasonably lower than that of Chief Officers.

In considering whether disclosure is likely to breach the DPA we have also taken into account the fact that some information is routinely published by the Office of the Police and Crime Commissioner (PCC) in relation to complaints and conduct matters relating to the Chief Constable and we have also taken account of information which is already in the public domain either by media reporting or via court records.

Sensitive personal information may only be disclosed if at least one condition in Schedule 3 and at least one condition in Schedule 2 of the Data Protection Act are also met.

Schedule 3 conditions which are relevant to the disclosure of sensitive personal information are: explicit consent (condition 1) and information already being made public by the data subject (condition 5)

Schedule 2 conditions which are relevant to the disclosure of sensitive personal information are: consent (condition 1) and disclosure necessary for the legitimate interests pursued by the PCC or the third parties to whom disclosure is made except where this leads to unwarranted prejudice to the rights, freedoms or legitimate interests of the data subject (condition 6).

In considering disclosure of sensitive personal information we have taken account of any objections to disclosure and the legitimate public interest relating to the role and actions of the PCC as the person responsible for holding the Chief Constable to account for providing and efficient and

effective police service as well as the legitimate public interest in the use of public funds and the effectiveness of the police complaints and conduct processes.

We have concluded that, where-ever possible, it is in the public interest to publish information about investigations into police complaints and conduct. This is met, to a large extent, by the information which has already been placed in the public domain concerning allegations made against the former Chief Constable and where information has been withheld or redacted it is on the basis that disclosure would breach principle 1 of the DPA as further disclosure is not necessary to meet the legitimate public interest.

The Police and Crime Commissioner is mindful that the investigation Lancashire Constabulary into anonymous allegations made against the ex-Chief Constable Mark Gilmore is incomplete and, furthermore, that Mr Gilmore refutes the allegations made in the strongest terms.

This exemption is absolute and does not require a public interest test.

S30(2)(b) – Investigations and Proceedings Conducted by Public Authorities

Information is exempt if it relates to the obtaining of information from confidential sources. This is qualified exemption subject to a public interest test.

Information provided by confidential sources has not been disclosed on the following basis:

Factors in favour of disclosure:

- Openness and transparency in relation to the conduct investigation into the former Chief Constable.
- Demonstrating the effectiveness of a whistle-blowing system in this particular case.

Factors against disclosure:

- Damaging the confidence of staff and officers in making anonymous reports and disclosures in the future by breaching the confidentiality of the system.
- Information relating to the allegations made has already been put into the public domain.

Balancing

On balance it has been found that the factors against disclosure weigh more heavily than those in favour of disclosure given the importance of confidential reporting systems in reporting misconduct in the police service and in view of the fact that the public interest in this case has been met to a large extent by previous disclosure of the substance of the allegations.

S30(2)(a)(iii) – Investigations and Proceedings Conducted by Public Authorities

Information is exempt information where it was obtained for investigations for any of the purposes specified under S31(2) and... by virtue of powers conferred by or under any enactment.

Information relating to the Lancashire Constabulary investigation into conduct matters arising from anonymous allegations has been withheld or redacted as this was obtained for the purpose of

ascertaining whether the former Chief Constable was responsible for conduct which was improper (S31(2)(b)). Furthermore, information was obtained in relation to the Police and Crime Commissioner's obligations under the Police Reform Act (2002) and the Police Conduct Regulations (2012), specifically to assess the seriousness of conduct under investigation.

This exemption is subject to a public interest test which has been conducted as follows:

Factors in favour of disclosure:

- Openness and transparency in relation to the conduct investigation into the former Chief Constable.
- Promoting public confidence in the investigation of allegations of misconduct in the police service.

Factors against disclosure:

- Identification of the investigation's tactics and evidence which may impair future investigations of internal reports of alleged misconduct.
- Damaging the confidence of police officers and staff to make confidential reports in the future by disclosing information which will enable the roles and likely identity of those making reports in this case to be identified.

Balancing

On balance it has been found that the factors against disclosure weigh more heavily than those in favour of disclosure given the importance of confidential reporting systems in reporting misconduct in the police service, the importance of investigating officers being able to access relevant evidence and in view of the fact that the public interest in this case has been met to a large extent by previous disclosure of the substance of the allegations.

Section 43(2) – Commercial Interests

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

Documents 5 and 6 refer to a commercial interest and this has been redacted on the basis of the following public interest test:

Factors in favour of disclosure:

- Transparency and accountability in the way the police manage commercial interests or relationships.
- Transparency and accountability in the way that the police operate procurement processes generally.

Factors against disclosure:

- Reputational damage to the commercial interests of a third party, particularly given the competitive market in which the company operates.

Balancing

On balance the factor against disclosure is weighted greater than those in favour of disclosure given that the redacted information relates only to the company name; all other information relating to this exchange is being provided and the factors in favour of disclosure, therefore, are being fulfilled.

I trust that you are satisfied with this disclosure, however, should you wish to request a review of this response please write to the OPCC as detailed on the attached appeals procedure.

