



Freedom of Information Request Reference N°: FOI 005804-17

I write in connection with your request for information received by Norfolk Constabulary on the 21st July 2017 in which you sought access to the following information:

A full copy of the report commissioned by Norfolk Police into its handling of sexual abuse allegations made by police officers into Hugh Blaise O'Neill, medical adviser for the force between 1991 and 2003. The inquiry concerned allegations made in 1993 and 2002, and was led and compiled by Essex Police Serious Crime Directorate.

To avoid any legal issues in the identification of the victims of sexual assault, could I request a redacted copy of the report with the names of all victims omitted. I would expect no other information to be redacted. "

Response to your Request

The response provided below is correct as of 21st July 2017

Norfolk Constabulary has considered your request for information and our response is below.

A copy of the Operation Stornoway Investigation report is attached in a redacted format.

Information has been redacted as a result of exemptions within the Act.

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at s1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at s1 (1)(b) is to disclose information that has been confirmed as being held.

Section 17 of the Freedom of Information Act 2000 required that Norfolk Constabulary, when refusing to provide such information (because the information is exempt) is to provide you the applicant with a notice ban which:

- (a) States that fact**
- (b) Specifies the exemption(s) in question and**
- (c) States (if that would not otherwise be apparent) why the exemption(s) applies.**

The information is exempt from disclosure by virtue of the following exemptions;

- Section 40(2)** – **Personal Data**
- Section 44(1)** – **Prohibitions on Disclosure**
- Section 31(g)** – **Law Enforcement, by virtue of Section 31(2)(a)(b)**
- Section 38(1)(a)** – **Health and Safety**

Section 40 and 44 are both absolute and class based exemption and there is no requirement to consider the public interest.

One of the main differences between the Data Protection Act and the Freedom of Information Act is that any information released under FOI is released into the public domain, not just to the individual requesting the information. As such, any release that identifies an individual through releasing their personal data, even third party personal data, is exempted unless there is a strong public interest in its release. The public interest is not what interests the public but what benefits the community as a whole.

Personal data is defined under the Data Protection Act 1998 as data that is biographical in nature, has the applicant as its focus and/or affects the data subject's privacy in his or her personal, professional or business life.

It is important to strike a balance between personal information that relates to an individual in their private life, or that which relates to them, in their professional capacity. Any account provided by the victims will undoubtedly be redacted under the Section 40 and 44 exemptions, as although they would have been in their role at the time of the offences occurring, the offences none-the-less were committed against them as individuals as they were not actively carrying out their duties as a police officer at the time.

There are also significant entries relating to witness accounts, which include police officers who were investigating at the time of the initial allegations. A similar argument as above would be relevant to these individuals. The expectations they would have on the information they provided to the Constabulary at the time and during the course of the recent investigation, would be one of anonymity and reassurance that their information would not be further processed without their explicit consent. Disclosure under FOI would therefore breach the first data protection principle as it would not be fair to provide the information requested.

With respect to those investigated for potential misconduct and the defendant himself, it is clear that throughout the investigation process they were acting and providing evidence in their professional capacity as Force Medical Expert (FME) and police officers. However, consideration does still need to be given to the principles contained within the Data Protection Act.

When considering the application of the Section 40 exemption, there are effectively two steps we must follow: first whether the information constitutes personal data and second, whether disclosure of that personal data would be in breach of the data protection principles.

The evaluation of the information to establish whether the data is professional or otherwise is complex and there is a requirement to be absolutely certain that the information is inherently linked to their professional capacity. Each piece of information has been reviewed to ensure all information that pertains to an individual and the disclosure of that information would breach any of the principles within the Data Protection Act, has been redacted.

Considering the first data protection principle, fair and lawful processing, at least one of the conditions in schedule 2 must be met and, for sensitive personal data, at least one of the conditions in schedule 3.

With respect specifically to the information concerning the defendant, it could be argued that there is substantial information in the public domain regarding the multiple sexual offences he has been convicted of and can therefore have no real expectation of non-disclosure. One could reasonably argue that disclosure would be fair and therefore schedule two conditions are satisfied. However consideration also has to be given to the schedule 3 conditions. The only likely conditions are that at parts 1 and 5 relating to consent or that the individual has made steps to make the information publicly available.

There is no evidence of this being the case and therefore disclosure of sensitive personal data would be in breach of the first data protection principle and Section 40(2) will be engaged to that information.

A similar argument is to be made with regards to the police officers to whom the misconduct aspect of the investigation was based. It has been publically concluded that 2 (now) retired police officers were investigated for criminal and misconduct offences in connection with the 1993 allegations. An additional 2 (now) retired police officers, one serving officer and one police staff member, were investigated for misconduct matters.

In the cases of the serving employees, there was no case to answer. With regards to the four now retired officers, although no criminal charges were brought, it has been acknowledged there could have been a case to answer, however as they have retired, no further action can be taken. Had any of these individuals been found culpable of misconduct, it could be argued that they would hold a reasonable expectation that the information may be disclosed.

The two serving employees would undoubtedly hold an expectation that their information would be redacted. It wouldn't be necessarily fair in this instance to disclose their information and there is certainly no compliance with the Schedule 3 conditions. Information that pertains to these two individuals will therefore be removed.

With respect the four now retired officers, their expectation of disclosure will be slightly different in as much as there 'could' have been a case to answer. However no formal action has been taken against the officers and this statement therefore cannot be absolutely confirmed. Additionally, the officers have not been offered any opportunity to challenge the conclusions drawn as a result of the review. That said, as investigating officers, they would hold some expectation of disclosure. There is clearly a legitimate public interest in the information being disclosed which, aside from the financial element, is to understand whether there were any failings in the 1993 and 2002/3 investigations and what lessons will be learnt as a result. However the schedule 3 conditions are not met and it is complex to balance the potential effect a disclosure will have on individuals to that of the legitimate public interest. The legitimate interest is not what interests the public, but that which will be of benefit to the public being aware of.

In a decision notice dated 29 December 2008 (EA/2008/0038), the Information Tribunal concluded: *"there is a recognised expectation that the internal disciplinary matters of an individual will be private ... a high expectation of privacy between employee and his employer in respect disciplinary matters."*

Although it can be argued that there is a legitimate public interest in the provision of information concerning those investigated for misconduct, this should nonetheless, not take priority over personal privacy. Whilst there is a public interest in the disclosure of the information, the Constabulary has considered:

- The individual's likely expectation on disclosure,
- The individuals lack of consent in its release, and
- The possible negative consequences to the individuals of releasing this information.

The latter point being further considered under the Section 38 exemption below. The report concerns an investigation into possible failings of the Norfolk Constabulary to effectively investigate sexual allegations. However based on the above considerations, I consider that the provision of the redacted report would sufficiently identify the failings, without the requirement to provide personal information.

Therefore I conclude that Section 40(2) is applicable to all information pertaining to the third party.

With respect Section 44, the victims of this case are victims of offences that fall under the Sexual Offences Act. By law, all victims of sexual offences are automatically guaranteed anonymity for life, from the moment they make a complaint that they are the victim of a sex crime. This anonymity was once given only to victims of rape however; the Sexual Offences Act 1992 extends to victims of most other sexual offences. Therefore, it is the duty of the Constabulary to ensure this anonymity is not breached by a perceived risk of identification and Section 44 is engaged alongside the Section 40 exemption.

Sections 31 and 38 are qualified and prejudice based exemptions and there is a requirement to consider the harm in the information being disclosed, and conduct a public interest test. The public interest with respect Section 31 is specifically regarding those identified redactions, which relate to different pieces of information to that redacted for Section 40 and 44 reasons.

Harm

Where a disclosure is made that will provide information and evidence as to the way in which the Constabulary conducts its investigation, there is a clear risk that harm may be caused by disclosing the capabilities and strengths/weaknesses of the Constabulary with regards Law Enforcement.

The information to which the request refers relates to sexual offences committed many years ago. It is not a matter of routine for such information to be so publicly disclosed and the Constabulary requires compassion and sensitivity when dealing with such matters to ensure the victims are absolutely protected from any disclosure under FOI.

The report will consist of information that victims in particular may find extremely distressing. The victims have already had to provide a statement to the police and it would cause further distress if they were required to be continually reminded of the specific nature of the assaults upon them.

Provision of information in a redacted format will still allow for individuals who are aware of the circumstances of the case, to decipher an individual's involvement with the investigations. Careful consideration is required in order to ensure that no one person is vulnerable to repercussions which could impact on the health and safety of those individuals concerned. This could also lead to witnesses being less inclined to provide information to the Constabulary in the future and thus compromising the Law Enforcement function of the Constabulary.

The Constabulary is aware that individuals have been approached as a result of presumptions being drawn that they have been involved in the investigation process. This will undoubtedly result in adverse impact on individuals personal lives.

Provision of information that could have an effect on the victims could also lead to a lack of trust in the Constabulary in the way it handles personal information, resulting in people less likely to come to the police should they be the victim of an offence.

Factors Favouring Disclosure – Section 31

The investigation relates specifically to whether or not police officers effectively managed the allegations of sexual abuse, at the time of the initial reports. The provision of the report will ensure Norfolk Constabulary are maintaining openness and transparency, more relevantly when considering the serious nature of the allegations. The recent investigation concluding in the offender pleading guilty to 13 offences against police officers and sentenced to a further 3 years imprisonment.

There has been public disclosure via official Constabulary releases of the report's findings and confirmation that there could have been a case to answer, in respect four now retired police officers, had they still have been serving.

The public is aware that the investigation has been carried out, non-disclosure could lead to inaccurate observations being made that could harm the police service, especially if the public are not absolutely satisfied that the police force has taken every step to ensure such occurrences will not take place in the future. Provision of the report would reassure the public that an independent, full and robust investigation into the circumstances has taken place. This would instil public confidence back into the police service by identifying failings and subsequent lessons learnt.

Assurances that lessons have been learnt from any failings will also reassure the public that the Constabulary does take matters such as this seriously, especially given the severity of the offences in question. Ensuring victims are reassured that they can come to the police knowing that their complaint will be dealt with sensitivity and professionalism.

Factors favouring non-disclosure – Section 31

This is an exceptional case, which has received a great deal of media attention as a result of proactive Constabulary media releases. Such releases are controlled and ensure compassion is maintained towards the victims and their families. Sexual offences are highly sensitive areas of policing and notwithstanding the fact the offender was the Constabulary FME, there is still a duty of the force to ensure the victims are protected from any disclosures made under FOI. Any information disclosed that could cause undue harm or distress could have wider implications for future policing operations, potentially resulting in a lack of confidence in victims approaching the Constabulary in the future, for any offence. This would be particularly true if victims felt their information would not be sufficiently protected by the Constabulary.

Although the criminal investigation has been finalised, there is scope for individuals to consider whether they wish to take any formal action against the Constabulary, in the event they consider the investigation was not handled in an appropriate manner. This would therefore add weight to the consideration of the Exemption.

The Chief Constable made a referral to the IPCC in 2014 concerning Norfolk Constabulary's handling of the allegations in 1993 and 2002/3. It can therefore be argued that the public interest has been met by the knowledge that the investigation has been reviewed independently and appropriate findings have been reported back to Norfolk, who will put appropriate measures in place to ensure such occurrences do not take place in the future.

Historical sexual allegations are a highly emotive subject and we must take into consideration the impact any disclosure would have on the victims. It has already been confirmed their personal information will be redacted; however the provision of information in itself will be identifiable to the victims. This may have a distressing effect on them and this needs to be carefully and sensitively balanced to ensure they are not adversely affected by this disclosure.

Factors Favouring Disclosure – Section 38

The information will provide reassurances that the investigation was handled with sensitivity and consideration to the victims. This in turn will ensure the Constabulary is accountable for its actions and promotes confidence in victims coming forward to the police in the future.

Factors favouring non-disclosure – Section 38

Information contained within the report includes individuals recollections of what occurred historically. There will be detailed recounts of what occurred, which at the time would have had an impact on those involved. To allow for public awareness of all details of the actual crimes that were committed, could endanger the mental health of those involved, should their accounts be relived within the media.

Although we could argue that the personal data has been removed, for the victims, the details would be known to them. It would not be justified that a disclosure of such information would be fair in all of the circumstances given how such could affect their mental health.

Provision of information that could identify those concerned in the investigation process could lead to inaccurate assumptions being made of their specific involvement, resulting in unsolicited attention and negative consequences. The Constabulary has already been made aware of approaches being made to individuals believed to have been involved in the investigation, causing undue stress.

It must be reinforced here that none of the officers concerned have either had charges brought against them, or been investigated for misconduct. Although four officers are now retired, they have had no opportunities to challenge the outcome of the report's findings; consequently it would be unfair to confirm their identity.

The Constabulary will only confirm the identity of any individual in exceptional circumstances, or where they have been charged with an offence. Provision of this information would undoubtedly identify them, leading to unwarranted and unfair attention, a situation which we have already concluded, would breach DPA in the event their details are disclosed.

Balancing Test

It is recognised that this is a unique case and the Constabulary has provided information via official media reports regarding the investigation. In general terms, such in-depth information as provided within the redacted report, would not ordinarily be provided as there is a great deal of decision making detail, that would otherwise be protected by the Section 31 exemption. However, given the exceptionality of this investigation, the Constabulary has provided information over and above standard expectations, in an attempt to ensure the review is correctly understood and to offer reassurances that lessons have been learnt to ensure such occurrences do not happen again.

Information exempt under Section 31(1)(g) is done so to ensure public authorities can effectively conduct internal investigations without prejudice or compromise. It can undoubtedly be argued the public has a right to know whether the Constabulary appropriately managed the allegations at the time and whether as a result, there are any concerns of misconduct. However, there is still a requirement to balance this argument with the effects of disclosure and whether investigations could resultantly be undermined by the disclosure.

There is no question of the public interest surrounding the publication of this report and the reassurances it will provide knowing that the investigation was thorough. However, the public interest will be answered by the provision of the report in its redacted format, which in turn will ensure the Constabulary are accountable for past actions.

Additionally, the Constabulary has a duty to ensure the victims in particular are not adversely affected in any way by such a disclosure, especially when considering the report consists of transcribed statements, which in part confirm the manner in which the defendant carried out the crimes. We cannot be certain of the affect this will have however, there is a strong argument that such a disclosure could be extremely traumatic for those involved and consideration is therefore required to protect their wellbeing.

The provision of a report in its redacted form would satisfy the public interest without breaching Data Protection Principles, compromising law enforcement or causing adverse effects on the health of those concerned.

I therefore conclude that the balance of the public interest lies in disclosure of the report in a redacted format. The exemptions at Section 31 and 38 are therefore applied to those sections annotated with the appropriate exemption mark.

This response will be published on the Constabularies web-site under the Freedom of Information pages:-

<https://www.norfolk.police.uk/about-us/our-data/disclosure-log>

Should you have any further queries concerning this request, please contact Clair Pac, FOI Decision Maker, quoting the reference number shown above.

A full copy of the Freedom of Information Act (2000) can be viewed on the 'Office of Public Sector Information' web-site;
<http://www.opsi.gov.uk/>

Norfolk and Suffolk Constabularies are not responsible for the content, or the reliability, of the website referenced. The Constabulary cannot guarantee that this link will work all of the time, and we have no control over the availability of the linked pages.

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Your Right to Request a Review of Decisions Made Under the Terms of the
Freedom of Information Act (2000).

If you are unhappy with how your request has been handled, or if you think the decision is incorrect, you have the right to ask Norfolk Constabulary to review their decision.

Ask Norfolk Constabulary to look at the decision again.

If you are dissatisfied with the decision made by Norfolk Constabulary under the Freedom of Information Act (2000), regarding access to information, you must notify Norfolk Constabulary that you are requesting a review within 20 days of the date of its response to your Freedom of Information request. Requests for a review should be made in writing and addressed to:

*Freedom of Information Decision Maker
Information Management Department
Norfolk Constabulary
Operations and Communications Centre
Jubilee House
Falconers Chase
Wymondham
Norfolk NR18 0WW
OR
Email: freedomofinformation@norfolk.pnn.police.uk*

In all possible circumstances Norfolk Constabulary will aim to respond to your request for us to look at our decision again within 20 working days of receipt of your request for an internal review.

The Information Commissioner.

After lodging a request for a review with Norfolk Constabulary, if you are still dissatisfied with the decision, you can apply to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at www.ico.org.uk or contact them at the address shown below:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Telephone: 01625 545 700