

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 November 2017

Public Authority: Independent Police Complaints Commission
Address 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant requested information relating to an Independent Police Complaints Commission (IPCC) managed investigation known as Operation Kalmia.
2. The IPCC disclosed some information within the scope of the request but withheld the remainder citing the exemptions at sections 30, 38 and 40 of the FOIA (investigations and proceedings, health and safety and personal information respectively).
3. Having considered its application of sections 30(2), 40(2) and 40(5), the Commissioner's decision is that the IPCC was entitled to either rely on those sections to withhold the requested information or neither confirm nor deny holding relevant information.
4. However, she finds that the IPCC breached sections 1 (general right of access) and 10 (time for compliance) of the FOIA by failing to disclose the information it provided within the statutory timescale.
5. The Commissioner requires no steps to be taken as a result of this decision.

Background

6. The request in this case relates to an IPCC managed investigation also known as 'Operation Kalmia'. That investigation looked at *"how a protected witness was handled and how disclosure issues were dealt with prior to the trial of five men which concluded in 2008 for the murder of Kevin Nunes six years earlier"*¹.

Request and response

7. On 31 March 2016, the complainant wrote to the IPCC via the whatdotheyknow website and requested information regarding a named operation in the following terms²:

"1. The date that the IPCC's management of the investigation started.

2. (a) The formal remit of the IPCC's investigation

(b) Details of any other cases which were report to the IPCC in the course of Operation Kalma, but did not form part of the formal remit.

(c) Details of the authority or other body that the additional matters were referred to.

3. The date that any decision not to continue with any Criminal Proceedings was taken.

4. The date that the IPCC's initial recommendations were issued to the relevant Police Authorities.

5. The date that the IPCC concluded Operation Kalmia.

6. The total cost of Operation Kalmia.

¹ <https://www.ipcc.gov.uk/investigations/disclosure-and-protected-witness-staffordshire-police>

² https://www.whatdotheyknow.com/request/operation_kalmia_2#incoming-837341

7. *The number of former or still serving officers that were investigated as suspects as part of Operation Kalmia.*
8. *The number of civilians suspects that were investigated as part of Operation Kalmia.*
9. *A breakdown of the number of officers under investigation by the following categories.*
 - (a) *Retired at the time the IPCC investigation commenced.*
 - (b) *Still serving at the time the IPCC investigation commenced but retired prior to the date Criminal Proceedings were ruled out (i.e. Point 3 above)*
 - (c) *Still serving at the time the IPCC investigation commenced but retired between the date Criminal Proceedings were ruled out (i.e. Point 3 above) and the date of the IPCC initial recommendations (i.e. Point 4 above)*
 - (d) *Still serving at the date of the IPCC initial recommendations (i.e. Point 4 above) but retired prior to any disciplinary action being taken.*
10. (a) *Number of officers that the IPCC's initial report recommended action against.*
 - b) *The number of officers that IPCC's initial report did not recommend action against*
 - (c) *Number of officers that were disciplined in as per with the IPCC's recommendations.*
11. *The number of police officers suspects that were arrested as part of Operation Kalmia.*
12. *The number civilian suspects that were arrested as part of Operation Kalmia.*
13. *The number of private addresses of police suspects (i.e. homes or offices used by any suspect) that were searched as part of Operation Kalmia.*
14. *The number of private addresses of Civilian suspects (i.e. homes or offices used by any suspect) that were searched as part of Operation Kalmia.*
15. *A copy of the senior investigating officers report to the IPCC.*
16. *A copy of the IPCC's report.*

- 17. A copy of the report referred to as the "Costello Report" which in part led to the IPCC managed investigation".*
8. The IPCC responded on 27 May 2016. In its response, the IPCC provided some information but apologised that it was not yet in a position to respond to parts 2(a), 2(b) and 17 of the request. It also refused to provide some information citing the exemptions at sections 30(1) (investigations and proceedings), 38(1) (health and safety) and 40(2) (personal information) of the FOIA. Further, it refused to confirm or deny holding some information citing the exemptions at sections 23(5) (national security) and 30(3) (investigations and proceedings) of the FOIA.
 9. The IPCC responded to the outstanding parts of the request on 28 June 2016. It provided some further information and also cited the exemptions at sections 30(1), 38(1), 40(2), 23(5) and 30(3) of the FOIA.
 10. Following an internal review the IPCC wrote to the complainant on 9 December 2016. It stated that:

".. we should publish the reports, subject to redaction to ensure that we meet our obligations not to improperly disclose information that is exempt under one or more of Sections 23, 30, 38 and 40.

.. I do consider that we should redact the material rather than withhold it in its entirety."
 11. The IPCC advised the complainant that, given the nature of the reports, the redaction process would be *"extensive and time consuming"*.

Scope of the case

12. Following earlier correspondence, the complainant contacted the Commissioner on 22 May 2017. He told the Commissioner that, despite the IPCC having been reminded on a number of occasions that the disclosure remained outstanding, he had been waiting for the redacted reports since December 2016.
13. He told the Commissioner:

"I strongly feel that the time taken by the IPCC is disproportionate to the work required and publication is being deliberately stalled for some reason..."
14. In the circumstances, the Commissioner used her discretion to investigate the case on the basis that the remaining disclosure had not been made.

15. In a telephone call on 15 May 2017, the Commissioner asked the IPCC what progress it had made in providing the complainant with the information it had said it would disclose.
16. The Commissioner wrote to the IPCC on 26 May 2017 directing the IPCC to revisit its handling of the request and setting out the information she required from it in order to commence her investigation.
17. In the absence of a substantive response, the Commissioner issued the IPCC with an Information Notice (IN) in accordance with her powers under section 51 of the FOIA. By way of that Notice the Commissioner required the IPCC to furnish her with further information about its handling of the request for information in this case.
18. In its substantive response, the IPCC confirmed its application of sections 30(2), 38 and 40 of the FOIA to the withheld information.
19. The IPCC provided the complainant with a further response on 4 October 2017 disclosing a redacted copy of the Operation Kalmia report. Further correspondence took place between the IPCC and the complainant, as a result of which the IPCC clarified its response regarding part 17 of the request - the Costello report.
20. Given the length of time the parties had been corresponding and in view of the fact that matters had progressed since she first received his complaint, the Commissioner wrote to the complainant clarifying the scope of her investigation.
21. Regarding the redactions applied, the complainant told the Commissioner:

"To summarise my objections to the redactions is that there is no indication in the document to indicate which exemption applies to each particular redaction... Consequently I cannot judge whether those exemptions are appropriate, and raise reasonable objections if appropriate".
22. He also asked the Commissioner to consider *"the delays in publishing both the Costello Report and Final Report"*.
23. The analysis below considers the IPCC's application of exemptions to parts 16 and 17 of the requested information - the IPCC's report and the Costello report.
24. The Commissioner has also considered the timeliness with which the IPCC handled the request for information.
25. With due consideration to her role as regulator, and the volume of material in scope of the request, the Commissioner makes the following

observations about the approach she adopted in conducting her investigation into the complaint in this case:

- she has taken a proportionate approach, involving sampling of the withheld information;
- she is satisfied that the sampling she has undertaken is representative of the withheld information.

Reasons for decision

The Costello report

26. The IPCC told the complainant on 12 October 2017:

"I am sorry that we have not clarified before now that we are treating your complaint about our refusal of the Costello report as resolved by the disclosure made by Staffordshire Police following the Information Commissioner's Decision notice of 24 April 2017 (FS50646644)".

27. Similarly, it told the Commissioner:

"This is the same report that was considered under the Information Commissioner's decision notice of 24 April 2017.... The IPCC agrees with that decision and is therefore content to apply the same redactions, meaning that we would respond to this request by disclosing the version of the report already published by Staffordshire Police. As this is readily accessible [to the complainant].... it is exempt under section 21 of the FOIA".

28. The decision notice in FS50646644 was issued on 24 April 2017³.

29. Having already considered the application of exemptions to the withheld information contained within the Costello report, the Commissioner is satisfied that she is able to reach the same decision in this case as she did in FS50646644 without the need for further analysis.

Section 21 information accessible to applicant by other means

30. With respect to the redacted Costello report, which is in the public domain as a result of disclosure by Staffordshire Police, the

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013972/fs50646644.pdf>

Commissioner considers that the IPCC was entitled to cite section 21 of the FOIA (information accessible to applicant by other means).

The IPCC managed investigation report

31. With regard to the IPCC's investigation report (the Report), the IPCC told the complainant:

"This particular information consists of the detailed facts and surrounding circumstances as to the handling of a protected witness by officers of Staffordshire Police. The IPCC managed investigation was focussed on the conduct of the officers involved in managing this witness."

32. It told the Commissioner:

"It is the IPCC's position that the exemptions applied by Staffordshire police, and upheld by the Commissioner, in respect of the redactions made in the Management Review [the Costello report] apply equally to the investigation report".

33. Accordingly, the IPCC applied the following exemptions to the withheld information:

- section 30(2)(b) investigations and proceedings
- section 38(1) health and safety
- sections 40(2) and 40(5) personal information.

34. The IPCC considered that sections 30(2)(b) and 38(1) applied equally to the information withheld by virtue of those exemptions.

35. The Commissioner has first considered its application of section 30(2).

Section 30(2) investigations and proceedings

36. Section 30(2) of the FOIA states that:

(2) Information held by a public authority is exempt information if-

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

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

...

and

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

37. With respect to section 30(2)(a)(i), subsections 30(1)(a) and (b) state:

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it”.

38. The phrase ‘at any time’ means that information is exempt under section 30 if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.

39. While section 30(1) provides an exemption from the duty to disclose information that a public authority has held at any time for certain investigations or proceedings, for information to be exempt under section 30(2) it must both relate to the public authority’s investigations or proceedings *and* relate to confidential sources.

40. The Commissioner’s guidance on section 30⁴ notes that information obtained from confidential sources will relate to its duty to investigate criminal offences (which falls within the definition at section 30(1)(a)(i), even though it may not be held for a particular investigation).

41. A confidential source is a person who provides information on the basis that they will not be identified as the source of that information. The Commissioner recognises that confidential sources contribute information which is often vital to the investigations, proceedings and the law enforcement activities of public authorities. Section 30(2) exists to protect the identity of confidential sources, primarily to ensure informants are not deterred from supplying law enforcement agencies with valuable intelligence.

42. With regard to the scope of section 30(2), the Commissioner’s guidance states:

⁴ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

"The exemption will not only cover the actual information obtained from confidential sources but also any procedures, including administrative processes, relating to confidential sources. For example, it would capture protocols for handling such sources, reports on their use, and records of payments made to, or appointments made with, confidential sources".

43. With respect to its use of section 30(2) to redact information, the IPCC told the complainant:

"In this instance the information is held in respect of the IPCC's functions under section 30(1)(a)(i) because Operation Kalmia was an investigation that the IPCC had a duty to conduct with a view to it being ascertained whether a person should be charged with an offence".

44. In its submission to the Commissioner, the IPCC explained that it had used section 30(2) to redact information which could render a confidential source capable of being identified. Other details, for example details of individual interactions and information relating to methods used when dealing with confidential sources, were also redacted.
45. Section 30 of the FOIA is a class-based exemption, which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. In order for the exemption to be applicable, any information must be held for a specific or particular investigation and not for investigations in general. Therefore, the Commissioner has initially considered whether the requested information would fall within the class specified in section 30(1)(a)(i).
46. The public authority in this case is the IPCC. The Commissioner is satisfied that the IPCC has the power to carry out investigations of the sort described in section 30(1)(a). She also accepts that a confidential source is a person who provides information on the basis that they will not be identified as the source of that information.
47. Having considered the withheld information, the Commissioner is satisfied that both limbs of the exemption are properly engaged.
48. Section 30 is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining this exemption outweighs the public interest in disclosing the information.

Public interest in favour of disclosing the information

49. Arguing in favour of disclosure, the complainant told the IPCC:

"Clearly the law should follow the correct judicial processes, after all Operation Kalmia was investigating breaches of those processes. The public have a real interest in ensuring that the Police, Crown Prosecution Service, IPCC and the Police and Crime Commissioners are behaving in accordance with those principles and the release of the report will allow them reach an informed view."

50. He disputed the need to protect witness confidentiality, arguing that certain individuals have already been named and their involvement fully publicised.

51. The IPCC recognised the public interest in openness and accountability. It told the complainant:

"Disclosure of the redacted details would leave the public better informed as to the matters that gave rise to the investigation and may, together with the remainder of the report, assist them in forming a view as to whether the criminal and police disciplinary outcomes of Operation Kalmia are properly supported by evidence..."

More generally, the public interest in openness and accountability would be served by disclosure of this redacted information by assisting the public in their understanding of how information relating to confidential sources is used and how the intelligence received assists in police operations, the prevention and detection of crime the apprehension of offenders and the administration of justice".

Public interest arguments in favour of maintaining the exemption

52. In favour of withholding the requested information, the IPCC argued that information received from confidential sources *"is essential to effective law enforcement"*.

53. It considered that any disclosure that may reduce the flow of information from such sources would not be in the public interest - it would not be in the public interest to compromise the effectiveness of specific investigations. Furthermore, it considered that it would not be in the public interest to place confidential sources at risk of harm by releasing information that could assist in their identification in the public domain.

54. The IPCC also argued that the information that is accessible to the public as a result of this and other disclosures:

"...is sufficient for them to be reassured that the necessary steps have been taken to identify lessons learned and prevent a recurrence of the police failings in respect of this very serious matter".

55. In correspondence with the Commissioner the IPCC reiterated what it had told the complainant, arguing strongly that any disclosure that could restrict the flow of information from confidential sources would have a detrimental impact on the ability of the police to obtain reliable and accurate intelligence or secure evidence in serious criminal cases. It also told her that the fear that the IPCC might breach their anonymity could cause confidential sources to refuse to co-operate in investigations. In its view, this would prejudice the public interest in the IPCC, as the provider or independent scrutiny of police conduct in such matters, being able to carry out its duties effectively.

Balance of the public interest

56. In applying the public interest test, the Commissioner considers it is important to recognise that the purpose of the section 30 exemption is to protect the effective investigation and prosecution of offences and the protection of confidential sources.
57. The Commissioner acknowledges that the complainant clearly has an interest in the subject matter of this request. However, she must consider the wider public interest issues.
58. In that respect, she accepts the public interest in openness and accountability in the context of this request.
59. She recognises the public interest in transparency and accountability in matters relating to the conduct of the officers who were the subject of the investigation, and for the public to be able to reach an informed view as to whether such matters were investigated thoroughly.
60. In that respect she notes that the IPCC has now published the '*Operation Kalmia Summary report*⁵ on its website. That summary report:
- "...provides a summary and overview of the Operation Kalmia investigation and subsequent consideration of whether officers should face disciplinary proceedings by their Appropriate Authorities and the IPCC".*
61. She considers that this goes some considerable way to meet the public interest.

⁵https://www.ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/FINAL%20Operation%20Kalmia%20Summary%20report4October2017_0.pdf

62. While noting the public interest arguments in favour of disclosure, the Commissioner is mindful of the subject matter of the withheld information. The information withheld by virtue of this exemption comprises detailed facts and surrounding circumstances as to the handling of a protected witness by officers of Staffordshire Police.
63. The Commissioner acknowledges that there is a significant public interest in protecting information relating to confidential sources.
64. She must also take into account that appropriate weight must be afforded to the public interest inherent in the exemption.
65. Taking all of the above into account, the Commissioner is satisfied that section 30(2) has been applied appropriately in this case and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
66. In view of the above finding, the Commissioner has not considered the IPCC's application of section 38 to the same information.

Section 40 personal information

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

Is the requested information personal data

68. The first step for the Commissioner to determine is whether the withheld information constitutes personal data as defined by the Data Protection Act 1998 (DPA). If it is not personal data then section 40 cannot apply.
69. The definition of personal data is set out in section 1 of the DPA. Section 1 defines personal data as:

"...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."

70. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them,

has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

71. The IPCC considered that the withheld information identifies and relates to a number of individuals. It also considered that some of the information comprised sensitive personal information under section 2(g) of the DPA in that it related to the commission or alleged commission of an offence.
72. The IPCC applied section 40(2) to redact the names of police officers, witnesses and third parties who are not in senior public facing roles. The IPCC confirmed that it applied its published 'Naming policy' in doing so.
73. It told the Commissioner it had also removed, where appropriate, references to other factors which could lead to the identification of those officers or individuals:

"This includes their specific role, title or function, their gender and date of retirement".

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

Is the information sensitive personal data?

75. Sensitive personal data is personal data which falls into one of the categories set out in section 2 of the DPA. The relevant category in this instance is:

'(g) the commission or alleged commission by him of any offence'.

76. The Commissioner is satisfied from this that some of the withheld information comprises sensitive personal data. This is because the subject matter of the Report relates to criminal allegations regarding some of the data subjects.
77. In light of her finding that the information withheld by virtue of section 40(2) comprises the personal data, including the sensitive personal data, of living individuals other than the applicant, the Commissioner must go on to consider whether disclosure of that information would contravene any of the data protection principles.
78. The Commissioner considers that the first data protection principle is relevant in the circumstances of this case.

Would disclosure contravene the first data protection principle?

79. The first data protection principle states:

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

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

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

80. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and would meet one of the DPA Schedule 2 conditions (and one of the Schedule 3 conditions if relevant). If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would disclosure be fair?

81. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public.

82. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:

- the data subject(s) reasonable expectations of what would happen to their information;
- the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual(s) concerned); and
- the balance between the rights and freedoms of the data subject(s) and the legitimate interests of the public.

Reasonable expectations

83. The IPCC argued that there would be no reasonable expectation on the part of the officers in less senior roles that they would be named.

84. It also argued that, given the highly sensitive nature of some of the information, it would not be within the reasonable expectation of the data subjects that it would be disclosed.

85. The Commissioner considers that, in most cases, the very nature of sensitive personal data means it is more likely that disclosing it will be unfair. The reasonable expectation of the data subject is that such

information would not be disclosed and that the consequences of any disclosure could be damaging or distressing to them.

86. In light of the above, the Commissioner considers that the type of information requested in this case will carry a strong general expectation of privacy for those parties concerned.

Consequences of disclosure

87. As to the consequences of disclosure upon the data subjects, the question – in respect of fairness - is whether disclosure would be likely to result in unwarranted damage or distress to those individuals.
88. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. She will also take into account the fact that disclosure under the FOIA is effectively an unlimited disclosure to the public at large, without conditions.
89. Given the sensitivity of the subject matter, the Commissioner considers that disclosure in this case could lead to an intrusion into the private lives of the individuals concerned and the consequences of any disclosure could cause damage and distress to those parties.
90. The Commissioner considers that disclosure in this case has the potential to cause damage and distress, particularly as she has found that disclosure of the information would not have been within the reasonable expectations of the data subjects.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

The legitimate public interest

91. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to provide the information if there is an overriding legitimate interest in disclosure to the public.
92. In considering these 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
93. The Commissioner would stress that this is a different balancing exercise than the normal public interest test carried out in relation to the exemptions listed under section 2(3) of the FOIA. Given the importance of protecting an individual's personal data the Commissioner's 'default position' is in favour of protecting the privacy of the individual. The public interest in disclosure must outweigh the public interest in

protecting the rights and freedoms of the data subject if disclosure is to be considered fair.

94. Arguing in favour of disclosure, the complainant told the IPCC that the individuals in this matter were '*public officials paid by the tax payer*' to carry out their duties in accordance with the rules and regulations. In his view, it was wrong to use of section 40(2) '*to allow individuals to remain anonymous*'.
95. The Commissioner accepts that legitimate interests include the general public interest in transparency.
96. However, there is no presumption that openness and transparency of the activities of public authorities should take priority over personal privacy.
97. Having taken into account all the circumstances of the case, and having considered the reasonable expectations of the data subject(s), the potential consequences of disclosure, and the public interest factors, the Commissioner has concluded that there is no legitimate public interest in disclosure which would outweigh the detriment which might be caused to the data subjects as a result of disclosure of the requested information. Therefore, disclosure would be unfair and would breach the first data protection principle.
98. As the Commissioner has determined that it would be unfair to disclose the requested personal data, including sensitive personal data, it is not necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 and Schedule 3 of the DPA, are met. As section 40(2) is an absolute exemption, there is no need to consider the public interest in disclosure.
99. The Commissioner is therefore satisfied that the IPCC was entitled to withhold the information under section 40(2) by way of section 40(3)(a)(i).

Section 40(5) personal information

100. Section 40(5) of the FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of the FOIA – confirming or denying whether or not the requested information is held – in relation to information which, if held by the public authority, would be exempt information by virtue of subsection (1).
101. In this case, the IPCC told the complainant that it was under no obligation to confirm or deny whether the report contained information that consisted of his personal information.

102. The Commissioner considers that an applicant wishing to access their own personal data should pursue this right under the DPA. Furthermore, she considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed should be made in accordance with the scheme of that Act.
103. Accordingly she is satisfied that the IPCC was not obliged under the FOIA to confirm or deny whether or not it held any information within the scope of the report that is the personal information of the complainant.

Procedural matters

Section 1 general right of access

Section 10 time for compliance

104. Under section 1(1) of the FOIA, any person making a request for information to a public authority is entitled, subject to other provisions of the FOIA, (a) to be informed in writing by the public authority whether it holds the information requested, and (b) if so, to have that information communicated to him. The section 1(1)(b) duty of the public authority to provide the information requested will not apply where the information is exempt by virtue of any provision of Part II of the FOIA.
105. Section 10(1) of the FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
106. In this case, the IPCC repeatedly told the complainant and the Commissioner that the requested reports would be published. Ultimately, it was not until some months after the Commissioner commenced her investigation that the Kalmia report was finally published in redacted form.
107. The Commissioner finds the IPCC in breach of section 1(1)(b) for failing to provide the disclosable information by the completion of the internal review and in breach of section 10(1) for failing to communicate that information within the statutory timeframe.

Other matters

Timeliness of internal review

108. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are

matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which she has stated that in her view internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.

109. In this case, the internal review that the complainant requested on 12 July 2016 was not completed in accordance with that guidance.

110. Even allowing for the complexity of the work carried out by the IPCC and the size of the completed investigation report, the Commissioner expects public authorities to allocate sufficient resources to FOIA matters to ensure that requests are dealt with in a timely fashion.

111. The Commissioner expects the IPCC to ensure that the internal reviews it handles in the future adhere to the timescales she has set out in her guidance.

Redactions

112. On receipt of the redacted reports, the complainant highlighted that none of the redactions had been marked up to show which exemption(s) the IPCC was relying on and, in the case of names, the name that had been redacted.

113. With respect to the complainant's concerns about the way the redactions had been marked up in the partially disclosed reports, the Commissioner is satisfied from the evidence she has seen that the IPCC compiled a schedule of redactions applied. She is also satisfied that it used a unique identifier when redacting names in the version of the reports she has seen.

114. The Commissioner notes that the FOIA does not lay down any rules about redaction. However, she has produced some guidelines for good practice which can be found on her website. For example, where information is being redacted her guidance advises:

"Give an indication of how much text you have redacted and where from. If possible, indicate which sections you removed using which exemption.

Provide as much meaningful information as possible. For example, when redacting names you may still be able to give an indication of the person's role, or which pieces of correspondence came from the same person".

115. The Commissioner has also had regard to section 16 of the FOIA, which sets out a duty to provide reasonable advice and assistance to those

who have made requests. However, her guidance makes it clear that the duty to provide advice and assistance under section 16 relates to clarifying requests themselves, and not to clarifying material provided in response to requests.

The IPCC's handling of the request

116. The Commissioner has serious concerns about the IPCC's handling of this request and its subsequent engagement with the ICO. She is concerned to note, not only that the complainant had cause to complain about its delayed and piecemeal responses, but also that it was necessary for her to issue the IPCC with an Information Notice.

117. The Code of Practice issued under section 46 of the Act (the 'Code') provides guidance to public authorities as to desirable practice in connection with the keeping, management and destruction of records. In relation to decisions about what records should be kept in order to meet corporate requirements, paragraph 8.1(d) recommends that authorities should take the following into account:

"The need to explain, and if necessary justify, past actions in the event of an audit, public inquiry or other investigation. For example, the Audit Commission will expect to find accurate records of expenditure of public funds. Or, if an applicant complains to the Information Commissioner's Office (ICO) about the handling or outcome of an FOI request, the ICO will expect the authority to provide details of how the request was handled and, if applicable, why it refused to provide the information."

118. The Commissioner notes that, in this instance, rather than provide her with a copy of the requested information as at the time of the request, the IPCC appeared to be treating the requested IPCC report as a 'working copy' with redactions being considered on an ongoing basis.

119. The Commissioner directs the IPCC to the Code and expects that it will have due regard for its recommendations in its future handling of requests.

Right of appeal

120. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

121. 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.

122. 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

**Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**