

FOI Disclosures January 2020

Index

This month we have responded to questions relating to the following topics:

- [IOPC's oldest investigation](#)
- [Investigation relating to missing person in in freezer case](#)
- [Progress of investigation into former PCC Jason Ablewhite](#)
- [Former police officers employed by IOPC](#)
- [Police officers investigated for gross misconduct or misconduct](#)
- [Assessment of non recording appeals by Assessment Analysts](#)
- [Access to porn website by IOPC staff](#)
- [Announcement of result of assessment of referral from GLA regarding Boris Johnson](#)
- [Referral relating to former Cambridgeshire PCC Jason Ablewhite](#)
- [What constitutes 'serious misconduct'](#)
- [Status of referral from GLA regarding Boris Johnson](#)
- [IOPC response to subject access requests](#)
- [Recruitment contracts and agency workers](#)
- [First contact regarding Operation Embley](#)

If you require a full copy of any of the embedded attachments, please contact Requestinfo@policeconduct.gov.uk quoting the reference number from the relevant response.

| <u>Ref</u> 1008038 Back to top | <u>IOPC's oldest investigation</u> |
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| <u>Request</u> | <p><i>. The start date of the longest/oldest investigation being led by the IOPC? By "start date", I refer to the date that the IOPC (or its predecessors such as the IPCC) commenced its investigation.</i></p> <p><i>- The current status of this investigation such as investigation ongoing, referred to CPS etc</i></p> <p><i>- The allegations / offences being considered in relation to the matter</i></p> <p><i>- The number of police officers/police staff who are considered "suspects" in this investigation</i></p> |
| <u>Response</u> | An investigation is a phase in the life of an IOPC case. The investigation phase is considered to be complete when the final report has been approved by the assigned decision maker. Action, including criminal and conduct |

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| | <p>proceedings, may take place following the completion of the investigation. Therefore, in answer to your request, we have considered only the oldest live investigation on which the final report has yet to be approved.</p> <p>Our three longest running active investigation cases were opened on 15 January 2015. These cases form part of Operation Linden, our investigation of South Yorkshire Police's response to non-recent allegations of child sexual abuse in Rotherham.</p> <p>The IOPC has published updates about Operation Linden on its web site. These include information about the progress of the investigation, the matters under investigation and the numbers of persons served with misconduct notices under the police complaints regulations.</p> <p>As this information is available to you on our web site, we are not obliged to supply it to separately you in response to your request. This is the effect of the exemption under section 21 of the FOIA, which applies to information which is reasonably accessible to the person making the request.</p> <p>These cases fall under our Directorate of Major Investigations (DMI) which was created to lead the large-scale, complex investigations that would ordinarily take significant capacity from within our regional operations teams.</p> |
| <p><u>Ref</u> <u>1008100</u> Back to top</p> | <p><u>Investigation relating to missing person in in freezer case</u></p> |
| <p><u>Request</u></p> | <p>You asked a number of questions in relation to a specific case involving the body of a missing person being found in a freezer.</p> <ol style="list-style-type: none"> 1. <i>What is the name of the IOPC investigation into the inquiry?</i> 2. <i>How many MPS officers are under scrutiny for the investigation by the IOPC</i> 3. <i>Has any Met Police officer been served with any Notice of Misconduct Investigation as a result of the IOPC investigation?</i> 4. <i>Was there any public complaint about the bodies of the two women being found in the freezer?</i> 5. <i>If there was a public complaint about the bodies of the two women being found in the freezer, when was that complaint made?</i> 6. <i>Did the Met police refer themselves to the IOPC after the two women's bodies were found in the freezer to address Misconduct by any Met Police officers or civilian staff?</i> 7. <i>In what other missing persons cases has the Met Police made a referral to the IOPC or the IPCC after somebody was killed or found dead?</i> |
| <p><u>Response</u></p> | <ol style="list-style-type: none"> 1) The IOPC is not investigating this matter. The case was referred to the IOPC as it met the mandatory referral criteria however we decided to return the case to the force to conduct their own local investigation. 2) This information is not held by the IOPC. |

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| | <p>3) This information is not held. The IOPC is not investigating this matter, you may wish to direct your enquiries to the Metropolitan Police Service (MPS) directly.</p> <p>4) The referral received by the IOPC was made because it met the mandatory criteria and was not based on a public complaint. The MPS are the appropriate authority in this case and as such are responsible for recording public complaints. You may wish to redirect your request to the MPS to establish if any public complaints have been made in relation to this case.</p> <p>5) This information is not held by the IOPC.</p> <p>6) The matter was referred in line with legal requirements. Further information regarding the referral process can be found on our website and at chapter 8 of our Statutory Guidance</p> <p>7) The attached table and explanatory information sets out the number of referrals made by the MPS where both 'missing person' and 'death' were recorded as case factors. Please refer to the information provided in the 'caveats' section as this gives context to the numbers given.</p> <p style="text-align: center;"> 1008100 Information for disclosure (question 7).pdf</p> <p>You may find of interest our latest edition of 'Learning the Lessons', a magazine to help improve police policy and practice, which is available on our website and focusses on missing people.</p> |
| <p><u>Ref</u> <u>1008114</u> Back to top</p> | <p><u>Progress of investigation into former PCC Jason Ablewhite</u></p> |
| <p><u>Request</u></p> | <p><i>What is/was the total manpower of the IOPC as at 30/11/2019 and</i></p> <p><i>What progress on investigation of allegation/s made against Jason Ablewhite, our recently resigned PCC</i></p> |
| <p><u>Response</u></p> | <p>We can confirm that we had 1016 staff on the payroll at 30 November 2019.</p> <p>In terms of the IOPC independent investigation into allegations made against Jason Ablewhite, this is in its early stages and enquiries and evidence gathering are ongoing. It is not possible to provide further details at this stage. It is likely that information about our findings and conclusions will be released at the appropriate time in line with our Publication Policy.</p> |
| <p><u>Ref</u> <u>1008094</u> Back to top</p> | <p><u>Former police officers employed by IOPC</u></p> |
| <p><u>Request</u></p> | <p>1) <i>The number and percentage of IOPC staff who are or have previously been employed by any police force?</i></p> <p>2) <i>Whether any funding or financial support is provided to the IOPC by any police force?</i></p> |

| | 3) The number / percentage of IOPC staff who were previously employed by the IPCC (old name for the IOPC) | | | | | | | | | | | | | | |
|--|---|-------------|--------------------|----|--------------------|----|----------------|---|------|-----|-----|----|----|----|----|
| <u>Response</u> | <p>1)</p> <table border="1" data-bbox="427 409 1477 504"> <thead> <tr> <th>Total staff</th> <th>Ex-police officer</th> <th>%</th> <th>Ex-police civilian</th> <th>%</th> <th>Ex-police both</th> <th>%</th> </tr> </thead> <tbody> <tr> <td>1019</td> <td>118</td> <td>12%</td> <td>92</td> <td>9%</td> <td>22</td> <td>2%</td> </tr> </tbody> </table> <p>2) The IOPC does not receive funding from any police force. Further information about our finding sources is contained in our annual report which is available on our web site here.</p> <p>3) The IPCC became the IOPC on 8 January 2018. However, the body corporate known as the IPCC continued to exist. This change was set out in section 33 of the Policing and Crime Act 2017, which provides:</p> <p style="padding-left: 40px;">"the body corporate known as the IPCC is to continue to exist and is to be known instead as the IOPC"</p> <p>On 7 January the total number of IPCC employees was 1030. On 8 January the total number was 1042, 1019 of whom were employed by the same body corporate on the previous day. This data includes all contract types.</p> | Total staff | Ex-police officer | % | Ex-police civilian | % | Ex-police both | % | 1019 | 118 | 12% | 92 | 9% | 22 | 2% |
| Total staff | Ex-police officer | % | Ex-police civilian | % | Ex-police both | % | | | | | | | | | |
| 1019 | 118 | 12% | 92 | 9% | 22 | 2% | | | | | | | | | |
| <u>Ref</u> 1008103 Back to top | <u>Police officers investigated for gross misconduct or misconduct</u> | | | | | | | | | | | | | | |
| <u>Request</u> | <ol style="list-style-type: none"> 1. The number of serving police officers investigated for gross misconduct in each of the past five years. 2. The number of serving police officers investigated for misconduct in each of the past five years. 3. In each category above, how many officers were found guilty and how many cleared. 4. The average time for each investigation. 5. How many officers retired before the above investigations concluded. 6. How does the IOPC define 'gross misconduct' and 'misconduct'. | | | | | | | | | | | | | | |
| <u>Response</u> | <p>How we work</p> <p>All complaints are recorded by the police force concerned in the first instance. Forces are required to refer certain incidents such as death or serious injury to the IOPC regardless of whether there has been a complaint. These are known as referrals. A referral can originate from one of three possible sources: a complaint, a death or serious injury (DSI) or a recordable conduct matter (RCM). A complaint can also be voluntarily referred to the IOPC, or the IOPC may 'call in' the complaint.</p> <p>Once a referral is made to the IOPC it is assessed and determined as one of the following;</p> <ul style="list-style-type: none"> • return to force – which could include local resolution by the reporting police force | | | | | | | | | | | | | | |

- local investigation – an investigation carried out by the police force on its own behalf;
- supervised investigation – an investigation carried out by the police force under the IOPC’s supervision;
- managed investigation – an investigation conducted by the police force under the direction and control of the IOPC; or
- independent investigation – an investigation carried out by the IOPC. At the conclusion of an IOPC independent investigation, we can make a finding that an individual under investigation (a ‘subject’) may have a case to answer (CTA) for Misconduct or Gross Misconduct. If the force disagrees with our findings, we can make a formal recommendation or, ultimately, direct them to hold such proceedings. Where proceedings are to take place, the Appropriate Authority are responsible for organising and undertaking any required Misconduct meetings or Gross Misconduct hearings.

Data collection

The IOPC only records the outcomes of investigations which are undertaken by the IOPC. Police forces also undertake investigations and hold additional data. The Home Office holds additional outcomes data.

The data provided in this request has been extracted at a point in time and may not be definitive. In some cases we may not yet hold information because the relevant processes, such as disciplinary proceedings, have not yet taken place.

It is possible for a single investigation to include several officers or police staff. We do not therefore record our investigations as Gross Misconduct and Misconduct but record this information against the subjects involved in the investigation. All figures presented below are based on the year in which the investigation was completed. Proceedings may have taken place in the same or subsequent years.

We have captured data on outcomes on a single system since 1 April 2015. Data prior to this is held in multiple places and would require a manual search which would exceed the cost limit.

To understand the complete picture of outcomes, wider work is being undertaken with the Home Office to agree a consistent method of recording and collecting this data from all police forces.

While the IOPC plays a central role in ensuring that officers are held to account for poor conduct and can direct that they appear at disciplinary proceedings, other bodies are responsible for making the final decisions on whether this is proven and what, if any, sanction they should face.

This means we cannot always explain final outcomes. While we respect the respective remits of the CPS, courts and disciplinary panels, we do not necessarily always agree with their conclusions. The IOPC and disciplinary panels will not always reach the same conclusion on analysis of what is sometimes a complex set of evidence and where different legal thresholds apply.

In response to your questions:

1. & 2.

In the period 1 April 2015 to 30 December 2019, the IOPC completed 2,652 independent investigations. Of these, 2,581 have outcomes available, which relate to 3,435 subjects.

Table 1: Completed Investigations and outcomes by Financial Year

| Outcome findings | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20* | Total |
|--|---------|---------|---------|---------|----------|--------------|
| Completed Independent Investigations | 259 | 444 | 710 | 717 | 522 | 2,652 |
| Total subjects with outcomes available | 559 | 723 | 1050 | 665 | 385 | 3,382 |
| No Case to Answer | 322 | 399 | 612 | 440 | 247 | 2,020 |
| Case to Answer: Gross Misconduct | 98 | 152 | 161 | 99 | 72 | 582 |
| Case to Answer: Misconduct | 139 | 172 | 277 | 126 | 66 | 780 |

*This is only partial year data from 01.04.2019 to 31.12.19

3. Of the 1,385 subjects where the IOPC found a Case to Answer for either Gross Misconduct or Misconduct, 724 are currently recorded as resulting in a misconduct meeting or hearing, 13 of which are recorded as awaiting a misconduct meeting or hearing. Where misconduct proceedings have taken place, the outcomes by the financial year in which the investigation was completed, are presented in Table 2 below.

Table 2: Outcomes of completed disciplinary proceedings

| Was Misconduct/ Gross Misconduct proven? | 2015/16 | 2016/17 | 2017/18 | 2018/19 | 2019/20* | Total |
|--|------------|------------|------------|------------|-----------|------------|
| No | 55 | 73 | 81 | 39 | 7 | 255 |
| Yes | 80 | 105 | 109 | 60 | 21 | 375 |
| Awaiting outcome | 12 | 3 | 22 | 25 | 32 | 94 |
| Total | 147 | 181 | 212 | 124 | 60 | 724 |

*01.04.2019 to 31.12.19

It should be noted that disciplinary proceedings are not the only outcome which may result from an investigation. An investigation can also recommend performance or management action and make learning recommendations to change policing practice.

4. The duration of an independent IOPC investigation is calculated in working days from the date the Appropriate Authority referred the matter to the IOPC, to the date the investigation report is approved by the investigation decision maker.

In the period 1 April 2015 to 31 December 2019 the IOPC completed 2,652 independent investigations. The average duration of these investigations is presented by financial year in Table 3 below.

Table 3: Average duration of completed Investigations by financial year

| Financial Year | Completed investigations | Average time taken (working days) | % completed within 12 months |
|----------------|--------------------------|-----------------------------------|------------------------------|
| 15/16 | 259 | 226 | 75 |
| 16/17 | 444 | 239 | 66 |
| 17/18 | 710 | 223 | 68 |
| 18/19 | 717 | 210 | 79 |
| 19/20 YTD * | 522 | 248 | - |

*01.04.2019 to 31.12.19. The increase in average time taken is attributable to completing several older cases.

We closed nearly 80% of cases (four out of five cases) within 12 months in 2018/19 – a significant increase on the performance achieved in the final year of operation of the IPCC. If we exclude our most complex cases, which are investigated by our Directorate of Major Investigations, we completed **82% of independent investigations within 12 months** (compared to 69% in the previous year).

We are also closing more cases than ever before (**completing 1,352 investigations** January 2018 to December 2019). The IOPC also inherited a caseload of 538 active investigations from the IPCC and closing those cases, some of which had already been open for too long, has been one of our main priorities.

95% (513) of those legacy cases are now complete. Of the 25 cases remaining, we expect to complete a further 19 of those by March 2020 and the remaining 6 by August 2020.

The closure of these older cases inevitably has a negative impact on our timeliness. To achieve these significant performance improvements, we have had to ensure our performance for cases opened as the IOPC is well above that target.

For those investigations started and completed since becoming the IOPC, we have closed 93% within 12 months to the end of December 2019.

Whilst we are working as hard as we can to improve timeliness of our investigations being completed, timeliness of criminal and misconduct proceedings, inquests and the time taken to organise hearings are outside our control. This impacts the end-to-end timeliness of cases, as processes which follow our investigations can add considerable time to their conclusion.

Actions we have taken to improve timeliness of investigations include streamlining investigation process for lower-risk cases and working with police Professional Standards Departments to reduce delays and increase efficiency.

Several of the forthcoming reforms to the police complaints system will also help to improve timeliness. For example:

- a clear expectation in the Standards of Professional Behaviour that police officers, who are witnesses, should cooperate with investigations.
- the reduction in the number of steps that the IOPC will have to follow when determining what action should be taken at the end of an investigation.
- the statutory ability to re-open our investigations where it becomes apparent that there are compelling reasons to do so.
- the changes to processes for setting up and managing disciplinary hearings.
- change to the definition of misconduct, which may result in a reduction in the

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| | <p>number of cases dealt with under misconduct procedures and disciplinary proceedings, which again may have an impact on overall timeliness of cases across the system.</p> <p>5. We have interpreted this to mean how many subjects retired before a case concluded, which would include the investigation and any subsequent disciplinary processes and/or proceedings.</p> <p>Our database currently shows that 148 subjects retired before the case concluded. In the summer 2019, we recognised a gap in our summary reporting of officer employment status, which we are currently addressing. This has always been captured at an investigation level but is not extracted at a summary level for reporting. Clarification of the total number is currently under review to update our central record and complete this data. Therefore, further data extraction on a case-by-case bases (investigation level) at this time would breach the cost limits under Section 12 (1) of the Freedom of Information Act.</p> <p>6. Definitions of police conduct are defined under paragraph 29, Schedule 3 Police Reform Act 2002. These are:</p> <p>“gross misconduct” means a breach of the Standards of Professional Behaviour so serious as to justify dismissal</p> <p>“misconduct” means a breach of the Standards of Professional Behaviour.</p> <p>These definitions and further information about investigations where there is an indication that a person serving with the police may have behaved in a manner justifying disciplinary proceedings can be found in the IOPC Statutory Guidance and Home Office Guidance on Police Officer Misconduct.</p> |
| <p>Ref 1008113 Back to top</p> | <p><u>Assessment of non recording appeals by Assessment Analysts</u></p> |
| <p><u>Request</u></p> | <p>1. <i>Any document specifying how an Assessment Analyst is required to undertake their duties in respect to verifying the information presented or disclosing it to the parties concerned for comment.</i></p> <p>2. <i>I would especially like to know what if any information is held regarding an Assessment Analyst’s reliance on appearances and feelings and whether any guidance or instructions exist requiring them to establish the facts of the matter exist to prevent "it appears" and "I believe" appearing in reports which are almost impossible to challenge after the fact.</i></p> <p>3. <i>Please also provide any information on whether the draft decision should or indeed could be disclosed for consideration prior to the official disclosure of the final document because the current process is manifestly flawed.</i></p> |
| <p><u>Response</u></p> | <p>1. We do not hold any information specifying that Analysts are required to verify information received from the force or disclose it to the parties for comment.</p> |

Our Operations Manual states that *'the IOPC shall request any information from any person which the IOPC considers necessary to deal with the appeal'*. Therefore, it is within the Analyst's discretion to decide if it is necessary to contact the force or the complainant and ask any questions about the information that has been provided. Ultimately, it is for the Analyst to consider whether any such contact may be necessary, based on the information available to them at the time.

The rules relating to the handling of appeals are contained in the Police Reform Act 2002 and the Regulations made under it. These do not impose any information sharing duties on the IOPC in regard to appeals, other than in respect of confirming the appeal decision and the reasons for it.

It's important to stress that if the complainant requires any specific information to be considered by the Analyst then they should ensure that such information is included or referenced in their appeal. This is made clear in the following excerpt from the attached appeal FAQs document, which is sent out in the acknowledgement email to the complainant:

9. Where the IOPC is the 'relevant appeal body', who will you contact about my appeal?

We will contact the police to obtain all of the relevant background papers and evidence about your complaint investigation. We will then use this information to assess your appeal. We will not contact the person you made your complaint about, but we may have to speak to the person who carried out the initial investigation into your complaint. We do not contact complainants to ask for more information when assessing an appeal, unless we feel it is necessary. So we encourage you to provide as much information as possible in your appeal.

The following content from our Operations Manual relating to failure to record appeals is also relevant to this part of your request:

8. Receiving an appeal

Where the IOPC receives a non-recording/failure to notify appeal in relation to a person serving with the police there is a requirement under regulation 11 (8) of the Police (Complaints and Misconduct) Regulations 2012 to inform the chief officer or local policing body, as soon as reasonably practicable, that an appeal has been received. The same principle applies to non-recording /failure to notify appeals that relate to complaints about contractors [see Regulation 90(9) of the Contractor Regulations]. The IOPC shall also request any information from

any person which the IOPC considers necessary to deal with the appeal. The IOPC expects any information it requests to be provided within 5 working days of the request.

Home Office guidance in respect of persons serving with the police states that the appropriate authority should wait 28+2 days until the appeal period has elapsed or an appeal has been received and decided by the IOPC before serving written notice for a misconduct meeting.

8.1 Has the IOPC received enough information?

The information requested should include all of the paperwork relevant to the matter. If papers are incomplete follow this up as appropriate. If the background papers are not accompanied by a response to the appeal, assessment of the appeal should not be delayed. If a specific response is required, this can be requested at any point during the process, provided it is prior to determining the appeal.

What should the IOPC expect to receive in background papers to an appeal against failure to notify or record a complaint?

- a complaint form or similar document detailing the complaint together with any other documents submitted by the complainant;
- any documents taken into account when deciding not to notify or record the complaint - both those that support the decision and those that undermine it;
- copies of any correspondence between the person making the complaint and the contractor, appropriate authority or chief officer (as appropriate).

10. Documenting the decision

The person dealing with the appeal should:

- i. record their rationale and decision on the case management system;
- ii. inform the complainant of the decision on their appeal and any directions given; and
- iii. inform the appropriate authority or chief officer (as appropriate) of the decision. Any correspondence must also set out what directions, if any, the IOPC has given.

The letter or report should clearly illustrate that before making the decision, account was taken of the complainant's appeal points and of the ground(s) relied on by the appropriate authority or chief officer for not recording the complaint (if any have been provided).

2. We do not hold any information relating to this part of your request.

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| | <p>It is considered appropriate for Analysts to use language like 'it appears' and 'I believe' as their role is to analyse and interpret the information provided and then apply their own judgement in relation to that information.</p> <p>3. Neither the rules nor the guidance impose any requirements on the IOPC as to the sharing of draft decisions with complainants. Therefore we do not hold any information relating to this part of your request.</p> <p>Given the nature of appeals, it is unlikely that both the force and the complainant will agree with the decision made; however, if the complainant or the police force wishes to formally challenge the decision then they can do so by means of the judicial review process.</p> |
| <p><u>Ref</u> <u>1008116</u> Back to top</p> | <p><u>Access to porn website by IOPC staff</u></p> |
| <p><u>Request</u></p> | <p><i>A previous FOI response confirmed that there was one attempt to access website 'Chaturbate.com' by a member of IOPC staff.</i></p> <ul style="list-style-type: none"> -What date did the access to Chaturbate.com occur? - Was the access to Chaturbate.com blocked or was it successful? - What grade/band is the employee/contractor who initiated this visit to Chaturbate.com? - Was any investigation initiated in relation to this activity? If so, on what date did this investigation commence? - Is the investigation concluded and if so, what was the outcome? |
| <p><u>Response</u></p> | <p>The attempted access occurred on 3 December 2019 and was blocked by our system, with the result that there was no breach of our policy. Therefore, there was no investigation. The person concerned is at IOPC grade 13.</p> <p>Our network automatically blocks attempted access to web sites under certain classifications as well as specific sites and site content (including, but not limited to, downloads of executable files and YouTube type video content). Staff and contractors are briefed about these security controls when inducted and receive reminders in our annual security briefings, at which they are asked to sign our security operating procedure (SYOPS).</p> |
| <p><u>Ref</u> <u>1008117</u> Back to top</p> | <p><u>Announcement of result of assessment of referral from GLA regarding Boris Johnson</u></p> |
| <p><u>Request</u></p> | <p><i>1. Is the IOPC required to conform to 'purdah' rules required in local and national government during the immediate run-up to an election, usually defined as the 'short campaign', when there is heightened sensitivity about information imparted or made known?</i></p> |

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| | <p>2. <i>If, as I believe, the IOPC is a non-governmental organisation which is not required to accede to 'purdah' rules, was a decision taken to do so during the recent election campaign in relation to the scoping enquiries being carried out involving an alleged failure of Boris Johnson to declare an interest when funding was provided and other benefits offered to his 'friend' Ms Jennifer Arcuri whilst he was Mayor of London? If so, who took this decision?</i></p> <p>3. <i>When will a decision be made in relation to the allegations?</i></p> <p>4. <i>Has the Government - or any part of it - tried to influence either the date of the decision being made or the decision itself?</i></p> |
| <p><u>Response</u></p> | <p>1. As a non-departmental public body that spends public money, makes public announcements and uses government property, the Cabinet Office purdah guidance applies to the IOPC and its staff. The conventions are not legally binding however; and it is the responsibility of the Director General to ensure that the IOPC and its staff operate in a manner consistent with the purdah guidelines. Purdah is referred to in the guidelines as the 'pre-election period'.</p> <p>2. The IOPC has not decided to delay the decision on the mandatory referral relating to the conduct of Boris Johnson when he was Mayor of London. Our assessment is ongoing as we continue to collect information and seek legal advice.</p> <p>3. The decision and its announcement will be made when all relevant information and advice has been considered.</p> <p>4. No.</p> |
| <p><u>Ref</u> <u>1008121</u> Back to top</p> | <p><u>Referral relating to former Cambridgeshire PCC Jason Ablewhite</u></p> |
| <p><u>Request</u></p> | <ul style="list-style-type: none"> • <i>Please provide a copy of the referral sent to the IOPC relating to Jason Ablewhite.</i> • <i>Please provide copies of all casework assessments and MOI decisions.</i> • <i>Please provide copies of all correspondence with the Cambridgeshire PCC and/or force in relation to the referral.</i> |
| <p><u>Response</u></p> | <p>We understand the request to relate to the referral which resulted in an independent investigation involving a series of messages between a member of the public and Jason Ablewhite as reported in various media outlets in November and December 2019.</p> <p>This matter is subject to an independent investigation by the IOPC and this is in its early stages. We have decided that we are unable to release any information to you at this time by virtue of exemptions provided at sections 30 and 40 of the FOIA.</p> <p>In the case of information falling within the exemption at section 30, we have decided that the public interest in disclosure is outweighed in favour of</p> |

maintaining the exemption. Our specific reasons for withholding the information are set out below.

Section 30– Investigations and proceedings conducted by public authorities

Section 30(1)(a)(i) exempts material *“held by a public authority for the purposes of any investigation which the public authority has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence”*.

The IOPC is carrying out its own investigation into this case in line with its functions under the Police Reform Act 2002. These include considering whether the investigation report indicates that a criminal offence may have been committed, and referring the report to the Crown Prosecution Service when it does. As the IOPC is required to make these decisions, the material we hold relating to this investigation falls within the class of information covered by section 30 of the FOIA.

Section 30 is a ‘qualified’ exemption subject to a public interest test, meaning we must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

Our arguments regarding the public interest test are as follows:

The public interest in release:

We accept that there is a legitimate and important public interest in publishing information about an investigation into the conduct of a high profile figure such as a Police and Crime Commissioner, as this serves to inspire public confidence around the police complaints process. In turn this would serve the public interest in openness and accountability for decision making and the use of public funds.

This particular case has attracted a lot of media attention and the release of details contained in the original referral would leave the public better informed about the nature and context of the independent investigation, providing reassurance in demonstrating that a serious matter is being thoroughly and fairly investigated.

The public interest in refusal of the information:

This investigation is still ongoing and is in its early stages. On completion of the entire investigation, a decision will be made about what information will be released to the public regarding our findings and conclusions. We consider that it would not be in the public interest to disclose information before the matter is concluded as this could cause prejudice to the ongoing investigation and to effective law enforcement.

Furthermore, we have no way of knowing the significance of details and allegations contained within the referral form and associated correspondence at this stage. The referral is received at the initial stages of an incident. Details recorded within could potentially be discredited following more detailed investigation and therefore to disclose such details without the context of underlying evidence and

findings and prior to the completion of the investigation, could potentially be misleading to the public.

Release of this information at this time could impact on the privacy of individuals associated with the investigation resulting in unwarranted harm or distress.

There is considerable public interest in ensuring that investigations, proceedings and prosecutions are conducted effectively. This requires the avoidance of prejudice to law enforcement, protection of witnesses and a need to maintain the independence of the judicial and prosecution processes by preserving the criminal court as the sole forum for determining guilt. Maintaining this exemption therefore preserves the safe space that can be critical to the investigation and prosecution process.

In addition, the protection of individuals who co-operate with the police ensures that people are not deterred from making statements or reports by the fear that they may be publicised. We therefore consider that confidentiality in these circumstances serves to promote effective investigation.

It is also significant that the release of this particular information in isolation may not enable the public to form a fair or balanced view about the significance of the matters being discussed. There is a risk that the release of this material could be misleading to the public without additional details to give true context.

We have noted guidance from the Information Commissioner's Office in relation to maintaining the exemption at section 30, which states that *"there will always be a strong public interest in maintaining the section 30 exemption whilst an investigation is ongoing"*.

The IOPC will consider the publication of all or some of its report when the investigation and all related proceedings are complete in line with our [publication policy](#). It is highly likely, therefore, that the public interest in being properly informed about this case will be met by those disclosures.

Taking all of these factors into account we have concluded that the public interest in disclosure is outweighed by the public interest in maintaining this exemption.

Section 40 – Personal information

Section 40(2) applies to personal data about someone other than the requester when disclosure would breach any of the data protection principles contained in Article 5 of the General Data Protection Regulation (GDPR). In this case we need to ensure that any personal data is processed lawfully, fairly and in a transparent manner in relation to the individuals concerned.

A number of individuals can be identified from this material meaning it qualifies as personal data within the definition at Article 1 of the GDPR.

In our view none of the conditions under Article 6 of the GDPR would support disclosure at this time and any legitimate interest in disclosure could not

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| | <p>justify the invasion of privacy and potential distress that would be likely to result.</p> <p>Turning to the fairness aspect, we have concluded that the release of such personal data under the FOIA would be contrary to these individuals' reasonable expectations, particularly in light of the ongoing investigation in relation to the case, and so would be inherently unfair.</p> <p>In assessing the fairness of disclosing personal information under the FOIA it is necessary to recognise that such disclosure is effectively an unlimited disclosure to the world at large, without conditions, which could lead to unwarranted intrusion resulting in damage or distress. In addition, there is no presumption under the GDPR that openness and transparency should take priority over personal privacy.</p> <p>As we have decided that disclosure would be both unlawful and unfair, this would breach the data protection principles meaning that the exemption at section 40(2) of the FOIA applies to the personal data contained within the referral and associated correspondence.</p> |
| <p>Ref 1008119 Back to top</p> | <p><u>What constitutes 'serious misconduct'</u></p> |
| <p><u>Request</u></p> | <p><i>1. Could you please tell me what constitutes 'Serious Misconduct' as defined in s.4 and s.7 The Police (Complaints and Misconduct) Regulations 2012?</i></p> <p><i>2. Please provide a copy of any document or guidelines that confirms your interpretation of 'Serious Misconduct?'</i></p> |
| <p><u>Response</u></p> | <p>Regulations 4 and 7 of the Police (Complaints and Misconduct) Regulations 2012 set out, respectively, the rules as to the referral of complaint and conduct matters. The term 'serious misconduct' does not appear in either of these Regulations, though they do include the words 'serious' and 'misconduct', with the latter occurring only in the context of 'misconduct proceedings'.</p> <p>We have understood your request as seeking confirmation of the criteria for referral of complaint and conduct matters to IOPC. These are set out in the Regulations themselves, supplemented by section 8 of the IOPC Statutory Guidance. We would refer you in particular to 'mandatory referral criteria' and 'definitions of referral criteria' on page 44. The IOPC's Operational advice note - mandatory referral criteria update (April 2017) also contains relevant information.</p> <p>In regard to Regulation 7 of the 2012 Regulations it may assist you to take into account section 6 of the IOPC Statutory Guidance (pages 36 to 39) which sets out the framework for the initial handling and recording of conduct matters. Information about complaint handling is contained in section 3.</p> |

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| | <p>As this information is available to you on our web site, we are not obliged to supply it separately to you in response to your request. This is the effect of the exemption under section 21 of the FOIA, which applies to information which is reasonably accessible to the person making the request.</p> <p>In case this may be relevant to your request, we can confirm that the categories of police conduct are defined under paragraph 29, Schedule 3 Police Reform Act 2002. These are:</p> <p>“gross misconduct” means a breach of the Standards of Professional Behaviour so serious as to justify dismissal</p> <p>“misconduct” means a breach of the Standards of Professional Behaviour.</p> <p>Guidance as to how conduct should be assessed is contained in paragraphs 9.29 to 9.42 (pages 58-60) of the IOPC Statutory Guidance and paragraphs 2.107 to 2.129 of the Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures.</p> |
| <p><u>Ref</u> <u>1008144</u> Back to top</p> | <p><u>Status of referral from GLA regarding Boris Johnson</u></p> |
| <p><u>Request</u></p> | <p>In relation to a referred conduct matter involving Boris Johnson whilst he was Mayor of London you requested the following information:</p> <ul style="list-style-type: none"> - <i>The current status of the investigation.</i> - <i>If it hasn't been completed yet, the estimated completion date.</i> - <i>If it has been completed then the results of said investigation</i> |
| <p><u>Response</u></p> | <p>Our assessment of this matter is progressing. We continue to acquire material from various sources and this process has not slowed or paused – it is very much ongoing. We are also seeking appropriate legal advice.</p> <p>Once our assessment is complete, we will decide whether the matter requires investigation.</p> <p>We are aware of the public interest in this matter and once a decision has been made we will make a further statement.</p> |
| <p><u>Ref</u> <u>1008123</u> Back to top</p> | <p><u>IOPC response to subject access requests</u></p> |
| <p><u>Request</u></p> | <p><i>In the last 10 years, how many times has the IOPC failed to respond to SARs within the legal timescale?</i></p> <p><i>In the last 10 years, how many times has the IOPC failed to supply info in full in response to SARs</i></p> |

Response

The following table contains the data in response to the first part of your request.

| Year | Number received | Number completed | % completed in time |
|-------------|------------------------|-------------------------|----------------------------|
| 2010/11 | 228 | 150 | 66% |
| 2011/12 | 246 | 194 | 79% |
| 2012/13 | 278 | 222 | 80% |
| 2013/14 | 509 | 392 | 77% |
| 2014/15 | 315 | 246 | 78% |
| 2015/16 | 265 | 196 | 74% |
| 2016/17 | 195 | 107 | 55% |
| 2017/18 | 182 | 122 | 67% |
| 2018/19 | 226 | 208 | 92% |

Please note that we do not hold this data for 2009/10.

As to the second part of your request we can confirm that only a very small minority of the subject access requests received by the IOPC result in the disclosure of all of the requested information. This is because the right of subject access entitles the requester to receive only their own personal data, meaning that there is no right of access to any documents in which this personal data is contained. Nearly all of the subject access requests we process are made by persons involved in police complaints who request the police and other documents that we hold in respect of their cases. As a general rule, at least some of the information contained in these documents either does not consist of the requester's personal data (so that the right does not apply to it), or consists of the requester's data mixed with the data of others. As you may be aware, there is no entitlement to such 'mixed' data unless it is reasonable to disclose without the consent of the other person. Owing to its policing context, the requester's personal data may also be refused under the exemptions from the GDPR relating to law enforcement.

It is for these reasons that we advise complainants/requesters that there are other more appropriate legal gateways to access information which could be relevant to a legal challenge, or which may assist them to understand how their cases have been handled.

As a result, subject access requests to the IOPC tend not to result in full disclosure unless they relate only to copies of information provided by the requester. If after considering this letter you require specific data as to the number of these requests on which we have withheld information, we can provide this to you for the last few years but this would only confirm that subject access is unlikely to result in full disclosure when applied to police complaint documents.

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| <p><u>Ref</u> <u>1008126</u> Back to top</p> | <p align="center"><u>Recruitment contracts and agency workers</u></p> |
| <p><u>Request</u></p> | <ol style="list-style-type: none"> 1) <i>Does your organisation have a Master Vendor contract in place for recruitment? If yes, which organisation holds the contract?</i> 2) <i>When did this contract commence? When does this contract expire?</i> 3) <i>Please can you confirm to me how many agency workers are working within your organisation as of the time of this request</i> 4) <i>What is the split between operational and support staff within this cohort.</i> |
| <p><u>Response</u></p> | <ol style="list-style-type: none"> 1) As an Arm's Length Body we recruit the majority of our agency workers under Public Service Resourcing (PSR), under Home Office Guidelines. 2) We are not in control of the contract with PSR as it is procured through the Home Office. 3) At the time of your request there were 28 agency workers. 4) The split is as follows: 54% operational staff 46% support staff. |
| <p><u>Ref</u> <u>1008132</u> Back to top</p> | <p align="center"><u>First contact regarding Operation Embley</u></p> |
| <p><u>Request</u></p> | <p><i>What was the first official date in which the MPS DPS contacted the IOPC or the IOPC contacted the MPS DPS (depending on which is most accurate) regards allegations/investigations which lead to the instigation of Operation Embley?</i></p> <p><i>Can you please confirm which organisation (DPS or IOPC) officially made contact first in relation to the above.</i></p> |
| <p><u>Response</u></p> | <p>We confirm that the first official contact between the IPCC (as we then were) and the MPS Directorate of Professional Standards was made by the DPS to the IPCC on 31 October 2017.</p> |