

FOI Disclosures September 2019

Index

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

- [Number of IOPC staff who are ex-police officers](#)
- [Non disclosure agreements for IOPC reports](#)
- [Progress of Operation Embley](#)
- [Discriminatory behaviour referrals](#)
- [Outcome of 2014 investigation into sham marriages – Operation Sakar](#)
- [Powers of the IOPC](#)
- [Supervised investigation into Humberside officers](#)

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.

Ref 1007813 Back to top	Number of IOPC staff who are ex-police officers
<u>Request</u>	<p>1) <i>Please may I have the number of current IOPC employees</i></p> <p>2) <i>Please may I have a breakdown of how many of these employees, broken down by senior/lead investigator, deputy senior investigator, investigator, caseworker and so on, are ex-police officers.</i></p> <p>3) <i>Please may I have a breakdown of how many of these employees, broken down by senior/lead investigator, deputy senior investigator, investigator, caseworker and so on, are ex-police service employees/civilians.)</i></p> <p>4) <i>Could you please provide the names of all senior/lead investigators who are ex-police officers</i></p>
<u>Response</u>	<p>1) We have 1030 staff.</p> <p>2&3) Section 21 of the FOIA exempts a public authority from the duty to supply information which is reasonably accessible to the requester by other means. We find that the information you have requested in questions two and three falls into this category because it is available on our website.</p> <p>You can find the response to your questions at pages 17 to 22 of our staff diversity report which can be found on our website here. This information is accurate as at 31 March 2019.</p> <p>4) The IOPC holds information as to the career background of senior and lead investigators from which we would be able to respond to this question,</p>

	<p>however we find that an exemption under section 40(2) of the FOIA applies to our duty to disclose.</p> <p>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 GDPR. The relevant principle in this case requires that any personal data is processed lawfully, fairly and in a transparent manner.</p> <p>We have decided that this information constitutes personal data because disclosure would identify the career background of named individuals.</p> <p>In our view none of the lawful bases set out at Article 6 of the GDPR would support release of this information, in particular we consider that any legitimate interests in disclosure are outweighed by the rights and freedoms of the individuals concerned.</p> <p>We have also concluded that the release of such personal details under the FOIA would be contrary to these individuals' reasonable expectations and so would be inherently unfair.</p> <p>Accordingly, we have decided that disclosure would be neither lawful nor fair, with the result that it would breach the data protection principles and therefore the exemption at section 40(2) of the FOIA applies to this information.</p>
<p><u>Ref</u> <u>1007824</u> Back to top</p>	<p><u>Non disclosure agreements for IOPC reports</u></p>
<p><u>Request</u></p>	<p><i>1)The number of cases where complainants have been required to sign a non-disclosure agreement in order to view the final report produced by the IOPC.</i></p> <p><i>2)The number of cases where the IOPCs final report has been withheld in full from the complainant, due to a refusal to sign a non-disclosure agreement.</i></p> <p><i>3)The number of cases where the IOPCs final report has been withheld in full from the complainant, as a specific decision.</i></p> <p><i>4)The total number of reports produced by the IOPC to date.</i></p>
<p><u>Response</u></p>	<p>1 to 3) The matter of the issuing of a final report to complainants, including the need to use a non-disclosure agreement or confidentiality undertaking, is approached on a case by case basis. We do not keep records of the cases where such agreements are sought in any central repository or case management system and therefore this data cannot be identified and retrieved by means of automated searches.</p> <p>This means that manual scrutiny of case files would be required to locate and extract any information that falls within the scope of these parts of your request.</p>

	<p>Section 12 of the FOIA allows the IOPC to refuse a request when the estimated cost of carrying out certain activities exceeds £450, or 18 hours at £25 per hour.</p> <p>As it would be necessary to search in excess of 3300 independent investigation files that have been completed since 2004, parts one to three of your request would fall within the 18 hour cost limit <u>only</u> if each case could be checked in significantly less than one minute.</p> <p>We conservatively estimate that it would take on average at least 10 minutes to retrieve each file, assess the contents to find relevant correspondence and then extract and compile the material falling in scope that would allow us to answer the questions posed. We have concluded therefore that section 12 of the FOIA applies to parts one to three of your request because it would take significantly more than 18 hours to carry out this work.</p> <p>4) The total number of reports produced since the IOPC's (formerly the IPCC) inception in 2004 to 31 July 2019 is 3366. This figure is based on the number of lead independent investigation cases completed to date. A 'lead' case means either an investigation that is not linked to any other cases or a case that is designated as the main case of two or more linked investigations and denotes the actual number of final reports produced.</p>
<p><u>Ref</u> <u>1007838</u> Back to top</p>	<p><u>Progress of Operation Embley</u></p>
<p><u>Request</u></p>	<p><i>In relation to Operation Embley:</i></p> <ol style="list-style-type: none"> 1. <i>How many final investigation reports have been finalized until now and if they are available to view?</i> 2. <i>Regarding the information on your website: "We received a total of 38 allegations relating to 15 officers and one member of police staff (...) our investigation focused on 21 allegations concerning eight officers and one member of staff." (source: https://www.policeconduct.gov.uk/news/investigation-allegations-concerning-officers-metropolitan-police-services-directorate), what are those 17 allegations you don't deal with?</i> 3. <i>Are there any systemic issues within DPS processes found?</i> 4. <i>On mentioned website, you provided information "We have reviewed a great deal of material, which initially included over five million emails". Do you consider also emails which IOPC and previously IPCC received from citizens about the work of DPS?</i>
<p><u>Response</u></p>	<ol style="list-style-type: none"> 1. Six investigation reports have been finalised. None of them are available to view at this stage. A decision on publication of the reports will be made once all reports and associated proceedings are finalised in line with our Publication Policy which is available on our website. 2. Although we hold this information we have decided that we are not obliged to provide it to you by virtue of exemptions set out at sections 30 and 40 of the FOIA which relate to investigation and proceedings as well as personal data. In relation to information falling within the scope of section 30 we have found that the public interest in maintaining the exemption outweighs the interest in disclosure.

	<p>We can however confirm the broad themes of the 17 allegations as these are as outlined in the press release and are as follows:</p> <ul style="list-style-type: none"> • interference in investigations to downgrade the severity of charges laid against an officer • interference to assist an officer accused of wrong-doing ignoring a potential conflict of interest failing to properly engage with evidence presented and abuses of process while conducting an investigation an allegation of racist behaviour being dropped in order to protect the reputation of MPS. <p>After undertaking a few lines of enquiry during the fact finding exercise in relation to the 17 allegations, we found that there was no indication of misconduct that would justify disciplinary proceedings and consequently they did not meet our threshold. For this reason they are not the focus of our investigation.</p> <p>3. The investigation is still ongoing and any relevant systemic issues within the processes will be reported on at its conclusion as part of our findings. Any information that would allow us to provide a response to your question is exempt from disclosure at this stage by virtue of an exemption at section 30 of the FOIA. Section 30 is a qualified exemption meaning that we must apply a public interest test. We have decided that the public interest in maintaining this exemption outweighs the interest in disclosure.</p> <p>4. We considered relevant mandatory referrals received from the Metropolitan Police Service to create the terms of reference for each linked investigation. We searched officer accounts using search terms based on the allegations and the terms of reference to obtain the evidence that we required to undertake each investigation. If an email from a 'citizen' was considered relevant to the investigation then it would of course be considered and due evidential weight placed to it.</p>
<p><u>Ref</u> <u>1007828</u> Back to top</p>	<p><u>Investigations into police corruption</u></p>
<p><u>Request</u></p>	<p><i>In the previous five calendar years including 2019 thus far (01/01/2015-07/08/2019)</i></p> <ol style="list-style-type: none"> <i>1. The number of cases of alleged police corruption the IOPC have investigated over the last five calendar years, including 2019 to date.</i> <i>2. For each case, the number of police officers involved, the rank of each officer and the police force/s involved.</i> <i>3. The outcome of each investigation, including the effect on the officer's employment and what disciplinary or prosecutorial action took place, with ongoing cases to be marked as "unresolved" or "ongoing".</i> <i>4. Estimates of the amount spent on each investigation.</i> <i>5. Details of the alleged misconduct or criminal behaviour involving corruption, redacted as appropriate so as not to violate operationally sensitive information.</i>
<p><u>Response</u></p>	<p><u>Number of cases of alleged corruption</u></p>

To identify investigations into alleged corruption, we have used case factors that are attached to cases on our system. Case factors are attached to cases to give information about the content of the case. They are selected from a finite list, and some also have sub-factors to provide further detail. As case factors are manually selected by operational staff to help identify the nature of a case, they should not be relied on to provide definitive data, as the application of case factors is reliant on individual discretion. For example, a factor selected on a case involving a complaint may be relevant to the incident to which the complaint relates but may not be what the complaint is about. Therefore, the data presented here should only be used for illustrative purposes only.

The case factor used to identify corruption is 'Corruption / perjury'. The IOPC's case factor guidance describes this as:

*"- Any attempt to pervert the course of justice or other conduct likely to seriously harm the administration of justice, in particular the criminal justice system.
- Payments or other benefits or favours received in connection with the performance of duties where a Magistrates' Court would be likely to decline jurisdiction.
- Corrupt controller/handler/informer relationships
- Provision of confidential information in return for payment or other benefits or favours where the conduct goes beyond a possible prosecution for an offence under section 55 of the Data Protection Act 1998.
- Extraction and supply of seized controlled firearms, drugs or any other material.
- Attempts or conspiracies to do any of the above.
- Abuse of position for a sexual purpose or to pursue an improper emotional relationship
- Perjury is the deliberate, wilful giving of false, misleading or incomplete testimony under oath. This factor applies in any situation where it is alleged that a person serving with the police has committed perjury."*

The sub-factors associated with 'Corruption / perjury' are:

'Abuse of authority (non-sexual)
'Abuse of powers for sexual gains'
'Falsification of evidence / perjury'
'Theft / fraud / drug supply'
'Unauthorised disclosure / misuse of police systems', and
'Corruption – other'.

The following figures represent the number of independent investigations by the IOPC with either the case factor 'Corruption / perjury' or one of its sub-factors.

There were 592 independent IOPC investigations either started or completed within the time period specified (01/01/2015-07/08/2019) with a case factor relating to corruption. This figure includes investigations linked to other cases; when only the lead investigations are considered, the number drops to 399.

Of these 399 investigations, 102 are currently active investigations yet to be completed.

The information we are disclosing does not include data relating to a small number of 'covert' IOPC independent investigations completed by our Anti-Corruption unit during the relevant period.

Numbers and ranks of police officers and police force(s) involved

Our data relating to investigation subjects has been manually recorded by operational staff and its accuracy has not been checked. Therefore, we suggest the data provided should not be considered definitive and should be used only for illustrative purposes.

The information provided is the latest available and is subject to change. It should be noted that in more recent cases we may not hold information because the relevant processes, such as disciplinary proceedings, have not yet taken place.

All cases referred to below relate to investigations that were completed in the time scale you provided. Proceedings may have taken place during the period you have requested in relation to cases which have not been included in the data set as the respective investigation was completed outside of this period.

We recorded 261 completed investigation cases with a corruption case factor in the requested period. In these investigations, there were 482 'subjects' (individuals). Information post-investigation is recorded per subject, not per case, and there can be multiple subjects in an independent investigation. Providing details for each case at the subject level may risk the subjects being identifiable from the data you have requested.

Therefore, although we are unable to provide case details, we have included data below to highlight the number of subjects involved in the highlighted cases by their rank and Appropriate Authority. Please note that we have used the term 'Appropriate Authority' instead of police force, as police forces account for only some of the referrals we receive.

We have withheld the outcomes data relating to two investigations on the basis that its disclosure would be reasonably likely to identify the investigation subjects. This data relates to two independent investigations that were completed during this period.

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 Regulations (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.

When considering the fairness of disclosing personal information under the FOIA it is necessary to recognise that this 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.

We have concluded that any legitimate interest in disclosure of this personal data could not justify the invasion of privacy and potential distress that would be likely to result, making it inherently unfair. In making this assessment we have taken into account the investigative context of this personal data and the reasonable expectations of these persons as to how their information will be processed by the IOPC. This means that none of the conditions under article 6 of the GDPR is applicable to the release of this personal data under your request, with the result that there is no lawful basis that could support disclosure.

In addition, the release of this information does not conform to any of the conditions under which we would normally identify a police officer, as set out in our published [Policy on naming of police officers and police staff](#).

We have decided, therefore, that the exemption at section 40(2) of the FOIA applies to the personal data we have withheld because its disclosure would not be in accordance with the data protection principles.

The following tables break these subjects down firstly by Appropriate Authority (Figure 1), and secondly by Police rank (Figure 2).

Figure 1: Number of subjects in completed investigations related to corruption by Appropriate Authority:

Appropriate Authority	Number of Subjects
Avon & Somerset Constabulary	11
Bedfordshire Police	16
British Transport Police	2
Cambridgeshire Constabulary	7
Cheshire Constabulary	1
City of London Police	11
Cumbria Constabulary	2
Derbyshire Constabulary	3
Devon and Cornwall Constabulary	11
Dorset Police	6
Durham Constabulary	2
Dyfed-Powys Police	2
Essex Police	9
Gloucestershire Constabulary	25
Greater Manchester Police	41
Gwent Police	2
Hampshire Constabulary	8
Home Office	3
Humberside Police	20
Kent Police	12
Lancashire Constabulary	2
Leicestershire Police	1
Lincolnshire Police	1

Merseyside Police	8
Metropolitan Police	70
North Wales Police	8
Northamptonshire Police	3
Northamptonshire Police and Crime Panel	1
Northumbria Police	9
Nottinghamshire Police	10
South Wales Police	12
South Yorkshire Police	11
South Yorkshire Police and Crime Panel	1
Staffordshire Police	7
Surrey Police	4
Sussex Police	29
Sussex Police and Crime Panel	1
Thames Valley Police	7
Warwickshire Police	12
West Mercia Police	3
West Midlands Police	72
West Yorkshire Police	6
Wiltshire Constabulary	4
Wiltshire Police and Crime Commissioner	4
[Redacted]	2
Total	482

Figure 2: Number of subjects in completed investigations related to corruption by Police rank or role:

Police Rank or Role	Number of Subjects
Assistant Chief Constable	2
Assistant Chief Constable (CC) / Commander	3
Assistant Commissioner / Deputy Assistant Commissioner	2

Chief Constable	1
Chief Inspector	4
Chief Inspector / Inspector	53
Chief Superintendent	1
Chief Superintendent / Superintendent	16
Deputy CC / Chief Constable	9
Deputy Chief Constable	3
Detective Chief Inspector	2
Detective Chief Superintendent	2
Detective Constable	11
Detective Inspector	1
Detective Sergeant	8
Detective Superintendent	1
Inspector	6
Police Constable	225
Sergeant	63
Special Constable	1
Superintendent	2
Staff/Non-Officer	46
Unidentified	20
Total	482

Investigation outcomes

At the conclusion of an IOPC independent investigation, we can make a finding that an individual under investigation (subject) may have a case to answer (CTA) for Misconduct or Gross Misconduct. In these instances, we can instruct that the relevant police force hold disciplinary proceedings to decide if the case to answer is proven. If the force disagrees with our findings, we can make a formal recommendation or, ultimately, direct them to hold such proceedings.

The maximum sanction for a finding of Gross Misconduct is dismissal without notice.

The maximum sanction for a finding of Misconduct is a final written warning.

The IOPC does not conduct disciplinary proceedings or criminal charges and thus has no control over the outcomes.

The following table shows the outcomes of IOPC investigations, where CTA refers to 'Case to Answer'. There were 229 subjects for which a CTA was found. Please

note that while a CTA may have been identified for some subjects, further proceedings may not yet have taken place.

CTA Level	Number of Subjects
No CTA	226
Gross Misconduct	137
Misconduct	90
Not Specified (Staff)	2
Data Pending	27

The outcomes of disciplinary hearings are shown in the table below, where data is available:

Hearing Outcome	Number of Subjects
No Conduct Proven	31
Gross Misconduct	23
Misconduct	28
Outcome Not Yet Recorded	28

A breakdown of these subjects by Police rank and by Appropriate Authority can be found in the attached spreadsheet titled "Annex 1".

The following table shows outcomes of concluded criminal proceedings arising from IOPC investigations in the period stated:

Verdict	Number of Subjects
Guilty	3
Hung jury	1
Not guilty	6
Not heard	2
Data pending	2
Total	14

Of the three Guilty verdicts, all officers were Police Constables. Further data was available for two of these three; One subject received a custodial sentence and one received a fine.

	<p><u>Estimates of investigation costs</u></p> <p>We cannot provide information about the overall costs associated with each of our investigations. This is because the IOPC accounting system only records investigation costs for known expenses and purchases. We do not record precise breakdowns of costs for individual investigations, so for example, items such as investigator time, organisational overheads, media handling or work undertaken after completion of the report are not included.</p> <p>Details of alleged misconduct or criminal behaviour involving corruption</p> <p>We can confirm that we hold this information. We have decided, however, that the work involved in complying with this part of your request would exceed the cost limit under section 12 of the FOIA, with the result that we are not required to disclose the information to you. This is because we have estimated that the work involved in locating, retrieving and extracting the information necessary to create the summaries you require would exceed the cost limit under section 12 of the FOIA, which applies when the estimated cost of compliance exceeds £450, or 18 hours at £25 per hour.</p> <p>The number of IOPC/IPCC investigations that we would have to search is 399.</p> <p>As compliance could not be achieved by means of an automated data query, it would be necessary to carry out a manual search of the documents in each of these investigations. This work could be completed within 18 hours only if each case could be checked in less than 2.7 minutes. We have concluded that section 12(1) of the FOIA applies to your request because it would be likely to take an average of 10 minutes to identify extract and compile the relevant information required to produce a summary of the conduct in each case.</p> <p>Therefore, we are refusing these parts of your request under section 12 of the FOIA.</p>
<p><u>Ref</u> <u>1007850</u> Back to top</p>	<p><u>Discriminatory behaviour referrals</u></p>
<p><u>Request</u></p>	<p><i>How many cases of discriminatory behaviour based on race have been referred to you as either the IPCC and/or the IOPC since 1st June 2017 and August 15th 2019</i></p> <p><i>How many of the numbers of cases referred to you were referred back to police for Local resolution</i></p> <p><i>Discontinued no case to answer</i></p> <p><i>Progressed to a full misconduct hearing</i></p> <p><i>Please breakdown by the number of cases received from each force</i></p>
<p><u>Response</u></p>	<p>You have requested data relating to cases of discriminatory behaviour based on race. This is what we refer to as a 'case factor'. We record factors to help us</p>

monitor trends and themes on the cases we deal with. A factor is a theme that might apply in the given circumstances of a case. However, as the IOPC is not responsible for initial recording of the complaints, we collect only limited information about those made directly to us. The majority of these complaints do not have factors recorded on our case management system.

Since case factors are manually selected by operational staff to help identify the nature of the circumstances of a case, they should not be relied on to provide definitive data as application of case factors is reliant on individual discretion. A factor selected on a case involving a complaint may be relevant to the incident to which the complaint relates but may not be what the complaint is about. Therefore, the data presented here should be used for illustrative purposes only.

The case factor relevant to your request is 'Discrimination'. This factor is recorded on a case where there is alleged discrimination on the basis of race, disability, gender, sexual orientation, religion or belief or age. This includes perceptions of, as well as demonstrable discrimination. The discrimination factor has the following sub-factors:

- Age
- Disability
- Gender/gender reassignment
- Race
- Religion and belief
- Sexual orientation
- Other discrimination

For the purpose of your request, we have identified cases where the 'Race' sub-factor has been applied.

Referrals received

All complaints are recorded by the police force concerned in the first instance. Complainants may send their complaint directly to the IOPC but our role is limited to passing the complaint on to the relevant police force so they can consider whether it should be formally recorded.

Forces are also required to refer certain incidents such as death or serious injury to the IOPC regardless of whether there has been a complaint. For more information on the types of incidents that are referred to the IOPC and the mandatory referral criteria please see section 8 of our Statutory Guidance, which can be found at the following link:

<https://policeconduct.gov.uk/complaints-and-appeals/statutory-guidance>

Once a referral is made to the IOPC, we must determine whether the matter should be investigated. If we decide that the matter should be investigated, we then must determine the 'mode' of investigation - considering the seriousness of the case and the level of public interest. The mode of investigation may be:

- A local investigation - an investigation carried out by the police force on its own behalf
- A supervised investigation - an investigation carried out by the police force under the IOPC's supervision

- A managed investigation - an investigation conducted by the police force under the direction and control of the IOPC
- An independent investigation - an investigation carried out by the IOPC

Further information about referrals to the IOPC can be found in the IOPC Statutory Guidance (Section 8):

In the period 1 June 2017 to 15 August 2018, the IOPC received 588 and completed 538 referrals that have the 'Race' sub-factor applied. These figures, along with the mode of investigation decision for completed referrals, are broken down by Appropriate Authority in tables one and two in the Excel document - provided separately.

Investigation outcomes

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. In these instances, we can instruct that the relevant police force holds disciplinary proceedings to decide if the case to answer is proven. If the force disagrees with our findings, we can make a formal recommendation or, ultimately, direct them to hold such proceedings.

Information relating to investigation outcomes is recorded manually by operational staff on an IOPC database, therefore the data provided is the most recent available and is subject to change. As such, the information provided should not be considered definitive and should be used for illustrative purposes only. It should also be noted that in more recent cases we may not hold information because the relevant processes, such as disciplinary proceedings, have not yet taken place.

In the period 1 June 2017 to 15 August 2019, the IOPC completed 70 independent investigations that had the 'Race' sub-factor applied. A breakdown of completed investigations by Appropriate Authority is set out in table three of the excel spreadsheet – provided separately. Of these, 64 are recorded on our database, which relate to 172 subjects.

Of the 172 subjects recorded the IOPC found:

- 114 had no case to answer
- 25 had a case to answer for Gross Misconduct
- 30 had a case to answer for misconduct
- 3 had no case to answer finding recorded

A breakdown of case to answer finding by Appropriate Authority can be found in table four of the excel spreadsheet - provided separately.

Of the 55 subjects where the IOPC found a case to answer for either Gross Misconduct or Misconduct, 22 are currently recorded as resulting in a misconduct meeting or hearing.

Subjects who attended misconduct meetings/hearing - listed by Appropriate Authority can be found in table five of the excel spreadsheet provided.

	<p>I trust you will find this information useful. More information about the role of the IOPC can be found in the IOPC Annual Report (2018/19). This can be found on the IOPC website using the following link:</p> <p>http://www.policeconduct.gov.uk/page/annual-report-and-plans</p>
<p>Ref 1007844 Back to top</p>	<p><u>Outcome of 2014 investigation into sham marriages – Operation Sakar</u></p>
<p><u>Request</u></p>	<p>The case about which I am requesting information concerned a collapsed trial into alleged sham marriages. The case against seven defendants collapsed in 2014 after the judge found that immigration officers had lied on oath, and the IPCC said it would investigate. Further identifying details of the case can be found here: https://www.theguardian.com/uk-news/2014/dec/04/immigration-officers-sham-marriages-trial</p> <p>I kindly request information as to the outcome of this investigation, as well as any reports that were drawn up relating to the case.</p>
<p><u>Response</u></p>	<p>We have decided to release the attached information after confirming that the report was not considered under our Policy on the publication of final investigation reports and report summaries, as it should have been. Had the publication policy been applied to this report it is likely that a level 2 anonymised investigation summary would have been published on our web site in accordance with the criteria contained in paragraphs 18-30 of the policy (pages 3 to 5).</p> <p style="text-align: center;"> R - OP Sakar - extracts from IPCC Final Report.pdf</p> <hr/> <p>We have decided that the remainder of the report would have to be extensively redacted with the result that any disclosable content would not contribute in any meaningful way to the public's understanding of this case.</p> <p>We are refusing to provide any further information in reliance on the exemptions under sections 30(1)(a)(i) and 40(2).</p> <p>In the case of information falling within the terms of sections 30(1)(a)(i) we find that the public interest in maintaining the exemption outweighs the public interest in disclosure.</p> <p>Our specific reasons for withholding the information are set out below.</p> <p><u>Section 30 – investigations conducted by public authorities</u> Section 30(1)(a)(i) exempts material <i>“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”</i>.</p> <p>The IPCC carried out its own investigation into this matter 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 Director of Public Prosecutions (DPP) when it does. As the IOPC was required to make these decisions, the information we hold about this investigation falls within the class of information covered by section 30(1)(a)(i).</p>

Our assessment of the balance of the public interest is as follows.

The public interest in release:

We accept that there is a legitimate and important public interest in publishing information about an IOPC investigation as this enables the public to evaluate our work and the effectiveness of the police complaints system more generally.

The public interest in this case arises from comments by the trial judge about the conduct of immigration officers involved in Operation Sakar, an immigration enforcement investigation. In these circumstances, the public is entitled to expect an account of the IPCC investigation, as this would help them to decide whether the IOPC's investigation was sufficiently rigorous.

Disclosure would also serve the public interest in openness and in accountability for decision making and the use of public funds.

The public interest in refusal of the information:

As confirmed in guidance from the Information Commissioner's Office, section 30 is designed to protect the independence of the judicial and prosecution processes by preserving the criminal court as the sole forum for determining guilt.

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 preserves the safe space that can be critical to the investigation and prosecution process.

These considerations persist even after the conclusion of an investigation or prosecution so as to take into account the interests of justice and fairness that the criminal process is designed to uphold. This means that there may be good reasons to preserve the confidentiality of at least some of the details of an investigation and that the public interest in the non-disclosure of evidence gathered by a completed investigation is likely to increase with the passage of time.

Balance of the public interest under section 30(1)(a)(i):

We consider the information we are providing as to the outcome of the investigation to be a proportionate response to the public interest in transparency and accountability, having regard to the competing public interest in preserving the confidentiality of investigations and the persons to whom they relate. In reaching this decision we have taken into account the length of time that has elapsed since the events in question and the investigation outcome, which followed scrutiny of the evidence by the Crown Prosecution Service and the Home Office as well as the IPCC.

It is also relevant to the balance of the public interest that there has been no suggestion that the IPCC investigation is flawed, or that its findings were not supported by evidence. In our view, the public interest in

disclosure of the report is significantly reduced by the lack of any such concerns. In all of these circumstances we consider the public interest in disclosing our detailed findings to be relatively weak, especially when several years have passed since these events.

Taking all of these factors into account we conclude that the public interest in maintaining the exemption under section 30 outweighs the public interest in disclosure of the information we are withholding.

Section 40(2) – 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 Regulations (GDPR). In this case we have considered Article 5(1), which requires 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 the report. It may be helpful to explain that personal data does not only constitute names, addresses and dates of birth but encompasses any data that may result in the identification of an individual, whether directly or indirectly. Even with anonymisation, the persons involved in our investigations will always be identifiable to themselves, and most likely to others who have had some level of involvement with the case, particularly other Home Office employees who will much more readily be able to piece together information and/or gossip they already know. Motivated journalists may be in a similar position, particularly where the trial has not been the subject of significant reporting restrictions.

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.

Some of the information is criminal offence data as defined in section 11(2) of the Data Protection Act 2018, meaning that it must be processed in accordance with the conditions imposed by section 10(5) of the DPA. We do not consider that compliance would meet any of the conditions in Parts 3 of Schedule 1. In particular, paragraph 29 (consent from the data subject) nor paragraph 32 (data made manifestly public by the data subject) would be satisfied by compliance. This means that there is no lawful basis for this disclosure of this criminal offence data under your request.

In our view none of the conditions under Article 6 of the GDPR would support release of the personal data contained within this report and any legitimate interest in disclosure at this time could not justify the invasion of privacy and potential distress that would be likely to result. This takes into account the investigative context of this personal data and the reasonable expectations of these persons as to how their information will be processed by the IOPC.

	<p>In particular, compliance with your request does not conform to any of the conditions under which we would normally identify a person under investigation, as set out in our published Policy on naming of police officers and police staff.</p> <p>We are satisfied, therefore, that disclosure of this personal data would not be necessary to meet any legitimate interest, with the result that releasing this information to you would not be lawful, as required under Article 5(1)(a) of the GDPR. Accordingly, we have concluded that the exemption at section 40(2) of the FOIA applies to the personal data we are withholding.</p> <p>Section 40 is an 'absolute' exemption meaning that there is no need to consider the public interest.</p>
<p><u>Ref</u> <u>1007859</u> Back to top</p>	<p><u>Powers of the IOPC</u></p>
<p><u>Request</u></p>	<ul style="list-style-type: none"> • <i>What are the formal and lawful obligations of the IOPC?</i> • <i>What are the formal guidelines that the IOPC must abide by?</i> • <i>When a Police Constabulary fails or refuses to act appropriately on a submitted complaint against them, what authority does the IOPC have to act, intervene or investigate?</i>
<p><u>Response</u></p>	<p>The IOPC's powers and duties are set out in legislation, in particular the Police Reform Act 2002 and the Police Reform and Social Responsibility Act 2012 and delegated legislation made under those acts, in particular the Police (Complaints and Misconduct) Regulations 2012.</p> <p>IOPC Statutory Guidance on how forces should carry out their responsibilities under the legislation along with information about how to make complaints and appeal to the IOPC is available on our own website: https://www.policeconduct.gov.uk/complaints-and-appeals/statutory-guidance.</p> <p>We understand your third question to relate to circumstances where an individual has complained about a police force and either:</p> <ul style="list-style-type: none"> • the force has decided not to formally record the complaint and will therefore not act upon it; or • the police force has dealt with the complaint but the complainant believes they have not acted appropriately. <p>Where a complaint has not been formally recorded</p> <p>In the case where a complaint has not been formally recorded by the police force, the complainant may submit an appeal to the IOPC to request an independent review of the recording decision. The IOPC does not "intervene" or "investigate" in these circumstances.</p> <p>Our role is to consider whether the recording decision made by the police force meets with the requirements of the police complaints legislation. We do not investigate the original complaint.</p>

The grounds on which the appropriate authority/chief officer can make a decision not to record the complaint are set out in [Regulation 3 of the Police \(Complaints and Misconduct\) Regulations 2012](#).

The IOPC is required under [paragraph 3\(4\), Schedule 3 of the Police Reform Act 2002](#) (PRA) to make a determination on the appeal against the decision not to record a complaint. As such we will determine whether the grounds relied on by the police force for not recording the complaint are satisfied. If we believe the grounds are correct then the non-recording appeal will not be upheld.

If we believe that the grounds are not met then the non-recording appeal will be upheld. In most circumstances the police force will then be directed to record the complaint.

Where a complainant is dissatisfied with an investigation

If a complainant is unhappy with the way their police complaint was investigated by the relevant force, then a complainant has a right of appeal to the relevant appeal body.

[Regulation 30 of the Police \(Complaints and Misconduct\) Regulations 2012](#) sets out the circumstances under which the IOPC will be the relevant appeal body. We do not consider all investigation appeals. Further information and guidance regarding which body should consider which type of appeal is set out in the [Statutory Guidance](#).

In dealing with the appeal for which we are the relevant appeal body, the IOPC will ascertain what the complaint was, what evidence has been gathered and whether it supports the police force's findings. We do not investigate the original complaint.

If we are satisfied that the complaint has been handled appropriately and in accordance with the legislation and Statutory Guidance then we will not uphold the appeal.

If we decide that the findings of an investigation need to be reconsidered, [paragraph 25\(8\) Schedule 3 of the Police Reform Act](#) allows us to:

- review the findings without the need for further investigation, or in other words to 'substitute' the findings; or
- to direct a re-investigation.

Under [paragraph 26 of Schedule 3 of the PRA](#), the IOPC may:

a. uphold the findings in whole or in part;

b. give the appropriate authority directions:

- i. as to the carrying out by the appropriate authority of its own review of the findings
- ii. as to the information to be provided to the complainant, and
- iii. generally as to how the matter should be handled; or

	<p>c. direct that the complaint be re-investigated.</p> <p>The IOPC cannot ask for or initiate new lines of enquiry, such as requesting a particular officer be interviewed. This goes beyond the IOPC’s legal remit when assessing an appeal and can only be done as part of any re-investigation.</p> <p>A direction for a re-investigation is used in cases where there is a clear requirement for additional evidence to be obtained, which has the potential to significantly alter the original outcome of the complaint investigation. The re-investigation will be conducted by the police force, not the IOPC.</p> <p>The IOPC can make formal recommendations for disciplinary proceedings under paragraph 27 (3) of Schedule 3 of the PRA following an investigation appeal if there is sufficient evidence upon which a misconduct meeting or hearing could make a finding of misconduct or gross misconduct.</p> <p>The IOPC can recommend or direct that a person serving with the police attend a misconduct meeting or hearing.</p> <p>If such a recommendation is made, the police force must notify the IOPC whether it accepts the formal recommendation and if it does what steps it proposes to take to implement it.</p> <p>If the appropriate authority does not accept the recommendation, only then can the IOPC make a direction under paragraph 27(4) (a) of Schedule 3 of PRA.</p> <p>Further information regarding our role and remit in respect of appeals can be found on our website. The FAQ section may assist you in understanding the IOPC’s role further.</p> <p>The Statutory Guidance sets out useful information relating to the different aspects of the police complaints process that you may find helpful. It includes references to relevant legislation where applicable. In particular chapters 3 and 13 may assist you in understanding the processes.</p>
<p><u>Ref</u> <u>1007865</u> Back to top</p>	<p><u>Official police definitions</u></p>
<p><u>Request</u></p>	<p><i>Please can you direct me as to where I can find the Official Police/legal definition of the terms:</i></p> <p><i>'Breach of the Peace'</i></p> <p><i>'Disorderly Conduct'</i></p> <p><i>'Trespassing'</i></p> <p><i>'Assault'</i></p> <p><i>'Battery'</i></p> <p><i>'Arrest'</i></p> <p><i>. & other Police terminology</i></p>
<p><u>Response</u></p>	<p>We note that you have not provided a full list of the terms to be defined with the result that we would be unable to answer your request if we were obliged to do so.</p> <p>As regards the terms contained in your list, we have decided that we are not required by the FOIA to provide the requested information. This information consists of legal and other definitions at least some of which are likely to be held by the IOPC in legal sources, internal guidance and IOPC cases in which these</p>

	<p>matters have been considered. These definitions are already available to you from publicly accessible sources, as they are to any person who wishes to confirm the legal or other meanings of particular words. Legal terms are defined in statute or common law sources or in legal and other text books, including dictionaries. This means that the definitions of the words in your list are exempt under section 21 of the FOIA, which applies to information which is reasonably accessible to the requester without recourse to the general right of access.</p> <p>At least some of the information you require is readily accessible from free online sources. The Gov UK web site contains information about your rights and the law including police powers of arrest. The College of Policing Authorised Professional Practice (APP) is the official source of police professional practice and includes information about the legal framework relating to different aspects of policing. For example, information about breach of the peace can be found here in the APP. All UK legislation is available on the legislation.gov web site.</p> <p>Detailed information about the law and procedure relating to police complaints is available in our statutory guidance. More specific advice about how to make a complaint against police is available on the IOPC web site or by contacting us.</p> <p>Should you require advice regarding the application of the law to a specific incident we would recommend that you contact a solicitor or visit a law centre in your local area.</p>
<p>Ref 1007873 Back to top</p>	<p><u>Supervised investigation into Humberside officers</u></p>
<p><u>Request</u></p>	<p>In relation to an investigation into the conduct of officers working for Humberside Police as reported in the following media article: https://www.hulldailymail.co.uk/news/hull-east-yorkshire-news/three-police-officers-arrested-misconduct-2195358, you requested the following information:</p> <p><i>“Can you please confirm any details as to the degree of your involvement? For example do you have the remit to prevent any officers leaving the force, retiring or seeking secondments, whom, throughout the process of the investigation, have been found to have a case to answer (to circumvent criminal or misconduct proceedings)?”</i></p>
<p><u>Response</u></p>	<p>In response to the first part of your request, we can confirm that this investigation is being supervised by the IOPC.</p> <p>Our Operations Manual contains the following description of our involvement in a typical IOPC supervised investigation:</p> <p><i>“A supervised investigation is conducted by the police where the IOPC decides that an incident or a complaint or allegation of misconduct is of a level of seriousness and probable public interest which does not require an independent or managed investigation, but where oversight by the IOPC is appropriate.</i></p>

The IOPC approves the choice of police investigator and agrees the terms of reference and investigation plan which are both drafted by the force.

A process for regular review, including risk assessment, may be agreed at the outset, depending on the nature and scale of the investigation, and included in the terms of reference. Any changes made to the terms of reference should be recorded.

Responsibility for maintaining the record of investigation decisions and for conducting a timely investigation rests with the force. The IOPC may impose any reasonable requirements relating to the conduct of an investigation of a supervised investigation as appear to it to be necessary. The complainant also has the right of appeal to the IOPC at the end of the investigation.”

We would emphasise that the nature and extent of our involvement in a supervised investigation can vary a great deal depending upon the circumstances of the particular case.

Our Regional Director, Miranda Biddle, has made the following statement about this case in response to enquiries from media outlets:

“As supervisors of this case, our role was one of oversight and liaison. We communicated regularly with the force, and our lead investigator was consulted throughout.”

It is the police force that carries out any disciplinary action and holds meetings for gross misconduct or misconduct.

In relation to the second part of your request, the rules relating to the resignation or retirement of officers subject to misconduct investigations are contained in legislation, supplemented by the [Home Office Guidance on Police Officer Misconduct, Unsatisfactory performance and Attendance Management Procedures](#). We would refer you to pages 23 and 24 for guidance relating to resignation and retirement following an allegation or complaint.

As this information is available to you from official on-line sources, we are not obliged to provide it to you under the FOIA. This is the effect of section 21, which provides an exemption for information when it is reasonably accessible to the applicant without recourse to the FOIA right of access.

You may find our [position statement](#) helpful, which is available on our website, as it explains the procedure that the IOPC will follow when deciding whether it is reasonable and proportionate to bring disciplinary proceedings against an officer who retired or resigned.

