



Heddlu Police

DYFED-POWYS

FOI Reference: 550/2018

Request:

- 1) I would like to know the number of officers (including rank and name, if possible) that have been investigated for sexual misconduct or abuse of position for a sexual purpose, running quarterly from January 2015.
I would then like the total cases broken down by:
- 2) The outcome of the cases, both for:
 - a. Misconduct hearing and outcome (no action, not proven, management advice, written warning, final written warning, final written warning extension, dismissal with notice, dismissal without notice)
 - b. Criminal trial and outcome (proceedings discontinued, not guilty, caution, guilty)
- 3) Number of cases recorded as serious corruption
- 4) Number of cases referred to the IPCC/IOPC
- 5) The means of detection – public complaint, proactive police intelligence or other.
- 6) Number of cases published publicly (e.g. misconduct outcome results on force website). Could you include any of the details that were published publicly e.g. text on the website or press releases?
- 7) Number of cases where the officer's name has been withheld.
- 8) Number of cases where the nature or details of sexual misconduct has been withheld.
- 9) Number of cases where both the nature of the sexual misconduct and officer name has been withheld.

I would like the data to run quarterly from Q32015 to the latest quarter for which the data is held.

Clarification:

Please advise what you refer to when you state “sexual misconduct”.

Response from applicant:

By sexual misconduct I mean any disciplinary action taken by Derbyshire due to behaviour of a sexual nature - this could be anything from criminal sexual behaviour (Eg rape, sexual assault, sexual harassment, voyeurism, child abuse, downloading indecent images of children), to have a sexual relationship with someone met during the course of duties (eg a witness or a victim of crime - see definition below) to undertaking sexual activity, messaging or watching pornography on duty.

This includes the NP's definition in their strategy on abuse of position for a sexual purpose.

(<http://www.npcc.police.uk/documents/Abuse%20of%20position%20for%20sexual%20purpose%20National%20Strategy.pdf>)

The abuse of position for a sexual purpose is defined as:

'any behaviour by a police officer or police staff member*, whether on or off duty, that takes advantage of their position as a member of the police service to misuse their position, authority or powers in order to pursue a sexual or improper emotional relationship with any member of the public'

This includes: committing a sexual act, initiating sexual contact with, or responding to any perceived sexually motivated behaviour from another person; entering into any communication that could be perceived as sexually motivated or lewd; or for any other sexual purpose.

*including volunteers or staff contracted into police roles

Further Clarification:

In addition to this the applicant has also confirmed that they are requesting the information broken down by quarter for all of the questions from 2015 onwards.

Response:

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

Where exemptions are relied upon Section 17 of the Freedom of Information Act 2000 requires Dyfed Powys Police, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which: (a) states that fact, (b) specifies the exemption in question and (c) states (if that would not otherwise be apparent) why the exemption applies.

I can confirm that Dyfed Powys Police does hold the information in respect of your request; however the following exemptions apply to some of that requested information:

Section 30(1)(a) Investigations and Proceedings Conducted by a Public Authorities.
Section 31(1)(g) Subsection 2(b) Law Enforcement
Section 40(2) Personal Information

An explanation of the applied exemption can be found at the end of the document.

Response 1:

I can confirm that Dyfed Powys Police does hold the information requested and is as follows:

Number of Officers investigated for sexual misconduct or abuse of position for a sexual purpose				
2015	Q1	Q2	Q3	Q4
No. of Officers	3	1	4	2
Rank	Constable x 2; Section 40(2) applies x 1	Constable x 1	Constable x 3; sergeant x 1	Constable x 1; Section 40(2) applies x 1
Name	Section 40(2) applies x 4	Section 40(2) applies x 1	Section 40(2) applies x 4	Section 40(2) applies x 2

Number of Officers investigated for sexual misconduct or abuse of position for a sexual purpose				
2016	Q1	Q2	Q3	Q4
No. of Officers	1	2	0	0
Rank	Sergeant x 1	Special constable x 1; Constable x 1	N/A (zero cases recorded)	N/A (zero cases recorded)
Name	Section 40(2) applies x 1	Section 40(2) applies x 2	N/A (zero cases recorded)	N/A (zero cases recorded)

Number of Officers investigated for sexual misconduct or abuse of position for a sexual purpose				
2017	Q1	Q2	Q3	Q4
No. of Officers	1	0	1	1
Rank	Constable x 1	N/A (zero cases recorded)	Constable x 1	Section 30(1)(a) & Section 40(2) applies x 1
Name	Section 40(2) applies x 1	N/A (zero cases recorded)	Section 40(2) applies x 1	Section 30(1)(a) & Section 40(2) applies x 1

Number of Officers investigated for sexual misconduct or abuse of position for a sexual purpose		
2018	Q1	Q2
No. of Officers	1	0
Rank	Section 31(1)(g) & Section 40(2) applies x 1	N/A (zero cases recorded)
Name	Section 31(1)(g) & Section 40(2) applies x 1	N/A (zero cases recorded)

Response 2a (Misconduct hearings):

I can confirm that Dyfed Powys Police does hold the information requested and is as follows:

Please note: Not every report of sexual misconduct or abuse of authority for sexual gain progresses to a Misconduct Hearing. Once a report of this nature is received by the Force an investigation into the allegations commences. Upon conclusion of the investigation, there will be a determination as to whether there is a case to answer for misconduct or gross misconduct. If there is a case to answer for misconduct the officer subject to the investigation will be referred to a Misconduct Meeting. If there is a case to answer for gross misconduct the officer will be referred to a Misconduct Hearing.

2015	Outcome of Misconduct hearing
Q1	1 x Dismissal without notice; 1 x Final Written Warning; 1 x N/A (as case did not progress to a misconduct hearing)
Q2	1 x N/A (as case did not progress to a misconduct hearing)
Q3	4 x N/A (as case did not progress to a misconduct hearing)

Q4	2 x N/A (as case did not progress to a misconduct hearing)
----	--

2016	Outcome of Misconduct hearing
Q1	1 x N/A (as case did not progress to a misconduct hearing)
Q2	2 x N/A (as case did not progress to a misconduct hearing)
Q3	N/A (zero cases recorded)
Q4	N/A (zero cases recorded)

2017	Outcome of Misconduct hearing
Q1	1 x N/A (as case did not progress to a misconduct hearing)
Q2	N/A (zero cases recorded)
Q3	1 x N/A (as case did not progress to a misconduct hearing)
Q4	1 x Investigation ongoing

2018	Outcome of Misconduct hearing
Q1	1 x Investigation ongoing
Q2	N/A (zero cases recorded)

Response 2b (Criminal hearings):

I can confirm that Dyfed Powys Police does hold the information requested and is as follows:

- 1 x Guilty – quarter 2 of 2016
- 1 x Investigation ongoing - quarter 1 of 2018

Response 3:

I can confirm that Dyfed Powys Police does hold the information requested and is as follows:

Number of cases recorded as serious corruption				
Quarter	2015	2016	2017	2018
Q1	1	0	0	1 x Section 31(1)(g) & Section 40(2) applies
Q2	0	0	0	0
Q3	0	0	0	
Q4	0	0	1 x Section 30(1)(a) & Section 40(2) applies	

Response 4:

I can confirm that Dyfed Powys Police does hold the information requested and is as follows:

Number of cases referred to the IPCC/IOPC				
Quarter	2015	2016	2017	2018
Q1	1	0	1	1 x Section 31(1)(g) & Section 40(2) applies
Q2	1	0	0	0
Q3	4	0	1	
Q4	0	0	1 x Section 30(1)(a) & Section 40(2) applies	

Response 5:

I can confirm that Dyfed Powys Police does hold the information requested and is as follows:

2015	Means of Detection
Q1	3 x Internal referral
Q2	1 x Internal referral

Q3	4 x Public complaint
Q4	1 x Internal referral; 1 x Systems check

2016	Means of Detection
Q1	1 x Internal referral
Q2	2 x Internal referral
Q3	N/A (zero cases recorded)
Q4	N/A (zero cases recorded)

2017	Means of Detection
Q1	1 x Internal referral
Q2	N/A (zero cases recorded)
Q3	1 x Public complaint
Q4	1 x Section 30(1)(a) & Section 40(2) applies

2018	Means of Detection
Q1	1 x Section 31(1)(g) & Section 40(2) applies x 1
Q2	N/A (zero cases recorded)

Response 6:

I can confirm that Dyfed Powys Police does hold the information requested and is as follows:

Year	Number of cases published publically
2015	0
2016	0
2017	0 & 1 x Investigation ongoing (Q4)
2018	0 & 1 x Investigation ongoing (Q1)

Response 7:

I can confirm that Dyfed Powys Police does hold the information requested and is as follows:

Please note: Question 7 has been interpreted as the Force's statutory requirement to publish a notice and the outcome of Misconduct Hearings. The notice and outcome can include the officer's details unless otherwise withheld, upon direction of the Chair to the Misconduct Hearing. If a case did not progress to a Misconduct Hearing an answer of N/A (not applicable) has been applied.

Number of cases where the officers name has been withheld				
Quarter	2015	2016	2017	2018
Q1	2 x withheld; 1 x N/A	1 x N/A	1 x N/A	1 x Section 31(1)(g) & Section 40(2) applies
Q2	1 x N/A	2 x N/A	N/A (zero cases recorded)	N/A (zero cases recorded)
Q3	4 x N/A	N/A (zero cases recorded)	1 x N/A	
Q4	2 x N/A	N/A (zero cases recorded)	1 x Section 30(1)(a) & Section 40(2) applies	

N.B - N/A = Not progressed to a Misconduct hearing

Response 8:

I can confirm that Dyfed Powys Police does hold the information requested and is as follows:

Number of cases where the nature or details of sexual misconduct has been withheld				
Quarter	2015	2016	2017	2018
Q1	2 x withheld; 1 x N/A	1 x N/A	1 x N/A	1 x Section 31(1)(g) & Section 40(2) applies
Q2	1 x N/A	2 x N/A	N/A (zero cases recorded)	N/A (zero cases recorded)
Q3	4 x N/A	N/A (zero cases recorded)	1 x N/A	
Q4	2 x N/A	N/A (zero cases recorded)	1 x Section 30(1)(a) & Section 40(2) applies	

N.B - N/A = Not progressed to a Misconduct hearing

Response 9:

I can confirm that Dyfed Powys Police does hold the information requested and is as follows:

Number of cases where the nature or details both the nature of the sexual misconduct and officer name has been withheld				
Quarter	2015	2016	2017	2018
Q1	2 x withheld; 1 x N/A	1 x N/A	1 x N/A	1 x Section 31(1)(g) & Section 40(2) applies
Q2	1 x N/A	2 x N/A	N/A (zero cases recorded)	N/A (zero cases recorded)
Q3	4 x N/A	N/A (zero cases recorded)	1 x N/A	
Q4	2 x N/A	N/A (zero cases recorded)	1 x Section 30(1)(a) & Section 40(2) applies	

N.B - N/A = Not progressed to a Misconduct hearing

Explanation of the applied exemption - Section 30(1)(a) Investigations and Proceedings conducted by Public Authorities:

The Section 30(1)(a) exemption is a class-based qualified exemption. This means that the legislators when writing the legislation considered that the release of such information under the Freedom of Information Act 2000 would cause harm to the public authority or individual concerned. There is therefore no requirement to carry out a HARM Test in respect of such information. However there is a requirement to carry out a Public Interest Test in order to establish whether the public interest in maintaining the exemption may be outweighed by a wider public benefit in disclosure.

*(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of -
(a) Any investigation which the public authority has a duty to conduct with a view to it being ascertained (i) whether a person should be charged with an offence, or (ii) whether a person charged with an offence is guilty of it.*

Public Interest Test

Considerations favouring disclosure:

Disclosure of the information would improve the public's knowledge and awareness and would provide satisfaction to the public that these cases are investigated thoroughly and offenders are being dealt with accordingly.

Considerations favouring non-disclosure:

This exemption covers information held at any time for the purpose of an investigation, whether the case is ongoing, closed or abandoned. To release details of an ongoing investigation, as in this case, could undermine and prejudice those investigations. This would impact on the forces' future law enforcement capabilities by hindering the prevention or detection of crime.

Balancing Test

After considering the advantages and disadvantages in disclosure, it falls upon Dyfed-Powys Police to conduct a balance test on the issues. The strongest argument for disclosure, which is public awareness, needs to be weighed against the strongest arguments for non-disclosure, which in this case is that the release would undermine and prejudice an ongoing investigation, which would impact on the forces' future law enforcement capabilities by hindering the prevention or detection of crime.

Therefore, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Explanation of the applied exemption - Section 31 (1) (g) subsection 2 (b) Law Enforcement:

Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to prejudice:

- (g) The exercise by any public authority of its functions for any of the purposes specified in section (2).
- (2) The purposes referred to in subsection (1) (g) to (i) are
- (b) The purpose of ascertaining whether any person is responsible for any conduct which is improper.

This Section 31 Law Enforcement exemption is a qualified and prejudice-based exemption and, as such I am required to apply both the harm and public interest test and evidence the harm in disclosure. (See below)

Harm:

In this particular case the requestor has requested under the Freedom of Information (FOI) Act, broken down information in relation to Police Officer misconduct hearings. It has been established that there are ongoing investigations currently being conducted by the force to ascertain whether any person is responsible for any conduct which is improper concerning these matters. Therefore to disclose any information whilst these matters are being investigated could not only compromise the investigation but would be likely to prejudice the exercise by the force of its function. This would have an adverse effect not only on the force but also on any individual(s) involved.

Public Interest Test:

Factors favouring disclosure

Disclosure of the information would provide a better awareness which may reduce crime or lead to more information from the public as well as provide transparency and satisfaction to the public that such investigations are conducted properly.

Factors favouring non-disclosure

To release the requested information would undermine and compromise the authorities approach to law enforcement in relation to ongoing investigation(s) of such matters as a consequence of which the investigation would be prejudiced and an individual's right to a fair trial would be undermined. This in turn would hinder the prevention and detection of crime thereby placing individuals at risk.

Balancing Test

After considering the advantages and disadvantages in disclosure it falls upon Dyfed-Powys Police to conduct a balance test on the issues. The strongest argument for release, which is public awareness, needs to be weighed against the strongest argument for non-release which in this case is effective law enforcement.

Effective Law Enforcement is the core function of the police service and is of paramount importance. The Force has a duty to ensure that it does not disclose information that would undermine or compromise its approach to law enforcement; which would result in ongoing investigations being prejudiced and an individual's right to a fair trial being undermined and the force failing in adhering to the policing purpose. In this case there would be no tangible community benefit by the release of the information which is the main focus in considering the public interest.

Therefore, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Explanation of the applied exemption – Section 40(2) Personal Information:

Section 40(2) applies to third party personal data and is exempt from disclosure under the Freedom of Information Act 2000 if disclosure, in relation to data subject to law enforcement processing, would breach any of the data protection principles contained within Part 3 - Chapter 2 of the Data Protection Act 2018. Under Section 34 within Chapter 2 "The Controller in relation to personal data is responsible for and must be able to demonstrate, compliance with" Chapter 2. Such information would not be released under the Freedom of Information Act 2000 unless there

is a strong public interest. One of the main differences between the Freedom of Information Act 2000 and the Data Protection Act 2018 is that any information released under FOI is released into the public domain, not just the individual requesting the information and disclosure under the Act must be made with that in mind. As such, any release that identifies an individual through releasing their personal data, even third party personal data is exempt.

Personal data is defined under Section 3 of the Data Protection Act 2018 as:

“(2) ‘Personal data’ means any information relating to an identified or identifiable living individual (subject to subsection (14)(c)).

(3) ‘Identifiable living individual’ means a living individual who can be identified, directly or indirectly, in particular by reference to—

(a) An identifier such as a name, an identification number, location data or an online identifier, or

(b) One or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.”

All members of the public including those employed by the force have an intrinsic right to privacy and these rights are protected by virtue of the Human Rights Act, the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) and a public authority must not interfere with that right. Any release of the information subject to the exemption is likely to compromise those rights.

Data Protection Act 2018

Part 3 – Law Enforcement – Chapter 2 Principles Section 35

The first data protection principle:

“(1) The first data protection principle is that the processing of personal data for any of the law enforcement purposes must be lawful and fair.”

General Data Protection Regulation

Article 5 of the GDPR – ‘Principles relating to processing of personal data’ provides:

“1. ‘Personal data’ shall be

(a) Processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency);

(b) Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest...

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 (‘accountability’).”

Dyfed-Powys Police would not want to disclose any information that could potentially identify an individual. In this particular case, to release names of Police Officers and in some cases rank of Police Officers relating to criminal and misconduct hearings would lead to the identification of that individual. To release such information would be a direct breach of Data Protection legislation i.e. the first data protection principle and as a consequence I am satisfied that Section 40(2) Personal Information exemption is applicable to the release of the information.

The Section 40 exemption is a class-based exemption. This means that the legislators when writing the legislation considered that the release of such information under the Freedom of Information Act 2000 would cause harm to the public authority or individual concerned. There is therefore no requirement to carry out a HARM Test in respect of such information.

The Section 40 exemption is in part qualified and in part absolute, in the present case it would be absolute as to release the information would breach Data Protection legislation and therefore there is no requirement to carry out a public interest test.

It should be noted that owing to the systems adopted by Dyfed-Powys Police in relation to the recording of such matters the information provided may or may not be accurate.

(This is a response under the Freedom of Information Act 2000 and disclosed on 18/09/18)