



Date: 31/05/2024
Our ref: 01/FOI/24/012588/U

FREEDOM OF INFORMATION REQUEST REFERENCE NO: 01/FOI/24/012588/U

I write in connection with your request for information dated 05/05/2024, received by Greater Manchester Police (GMP) for the following information:

This request was made by a fellow user of this site in August 2021.

Actions Taken Following R (Rose) v Chief Constable of Greater Manchester Police [2021] - a Freedom of Information request to Greater Manchester Police - WhatDoTheyKnow

Given no response and I am unable to ascertain the users activity on this site, I wish to make the same request for this information now. The above FOI will be forwarded to the ICO as long overdue and again in breach of your Enforcement notice they issued you with recently.

In R (Rose) v Chief Constable of Greater Manchester Police [2021] EWHC 875 (Admin), a businessman successfully challenged a decision not to refer his complaint to the Independent Office of Police Conduct (IOPC) under the mandatory referral criteria. The High Court concluded that the chief constable had failed to review the conduct alleged and consider whether, if substantiated, it would constitute serious corruption as defined in the (then) Independent Complaints Commission (IPCC) Statutory Guidance on the handling of complaints. Instead, he had performed an assessment of the merits which had rendered the decision not to refer the complaint unlawful. The case makes clear that complaints engaging the mandatory criteria, especially that of "serious corruption", must be referred to the IOPC.

The Administrative Court (HHJ Eyre QC) concluded, at para. 44:

"I am satisfied that the Claimant's interpretation of these provisions is correct. The appropriate authority is to look at the conduct which is alleged in the complaint and consider whether that conduct, if substantiated, would constitute serious corruption as defined in the Guidance. If it would then the criteria for mandatory referral are met. The appropriate authority is not at that stage to consider the merits of the complaint but instead to focus on the nature of what is being alleged. Whether the conduct alleged falls within the definition is a matter of objective interpretation of what is being alleged by reference to the definition. It will not be sufficient for a complainant simply to say that "serious corruption" is alleged but once a complainant goes beyond that and alleges particular conduct then the assessment is to be whether such conduct if substantiated would fall within the scope of the definition in the Guidance."

The Chief Constable mounted a "strenuous" defence to the effect that the definition of "serious corruption" required him to assess whether the complaint "had substance", which involved an assessment of the gravity of the alleged conduct (paras. 48-49). It was suggested that the IOPC's mandate was limited to the investigation of only the most serious complaints against the police (para. 50) and that the complaint was not to be taken "at face value": instead, an element of judgment, including consideration of the circumstances, was required (para. 58).

HHJ Eyre QC disagreed (with emphasis added):

"61. At paragraph 36 of his skeleton submissions Mr. Reichhold asserted that the statutory framework and the Guidance "call for some measure of flexibility". He accepted that "referral should be mandatory for the vast majority of complaints that allege 'serious corruption'" but then said that "there must be some flexibility in exceptional cases". Mr. Reichhold said that the 2018 Complaint was such an exceptional case. I was unable to identify any indication in the terms of the Schedule, the Regulations, or the Guidance that there is an exceptional category of case where the appropriate authority is entitled to conclude that the otherwise applicable duty to refer the complaint to the IPCC does not apply. In this context it is relevant to note again the point made at [31] and [46] above that the duty to refer a complaint of serious corruption to the IPCC only arises once the complaint in question has been recorded by the appropriate authority. A complaint which is vexatious, repetitious, or fanciful will not have been recorded. That provision is the safeguard which the Regulations provide by way of filter against patently unmeritorious complaints and there is no basis for implying into the Regulations the flexibility for which [counsel for the Chief Constable] contended.

62. Thus it is not sufficient for a complainant simply to say that he or she is complaining of "serious corruption" for a complaint to be referred to the IPCC. However, once conduct constituting serious corruption as defined in the Guidance is alleged there must be such a referral and there is no scope for the appropriate authority to consider the merits of the allegations before making that referral provided that the complaint has met the requirements for being recorded."

I would like to know

- 1) what learning the Chief Constable has identified as a result of this case.*
- 2) How many police complaint investigations have had their mandatory referral decisions reviewed because of this case.*
- 3) In how many such reviews has it been found that the investigation was not referred when it should have been.*

Result of Searches

Greater Manchester Police (GMP) does not hold the information that you have requested in an easily retrievable format. To provide the data requested would involve a manual search of all professional standards cases to establish if any had been reviewed and if so, how many were reviewed.

Therefore, to comply with the whole of your request the process would take over 18 hours' work which exceeds the appropriate limit of £450.00, the amount to which we are legally required to respond.

As per section 12(1) of the Freedom of Information Act 2000, the cost of providing you with the information is therefore above the amount to which we are legally required to respond i.e. the cost of locating and retrieving the information exceeds the 'appropriate level' as stated in the Freedom of Information (Fees and Appropriate Limit) Regulations 2004.

In accordance with the Freedom of Information Act 2000, this letter acts as a Refusal Notice.

GMP is obligated, pursuant to section 16(1) of the Act to provide you with advice and assistance on refining your request to bring compliance within the fees limit. In order for the force to keep this within the fees limit, the information that you are requesting will need to be reduced to a greatly reduced time period. The resulting response cannot be guaranteed at this point as it will be dependent upon the number of records that fall within the scope of any new request, as they would still have to be manually assessed.

Should you wish to refine and resubmit your request in line with the advice above please respond to freedomofinformation@gmp.police.uk