

REQUEST

Any correspondence related to the 'scoping exercise' into Dame Cressida Dick that concerns the decision not to refer her to the IOPC.

From media reports, I understand that MOPAC looked at Commissioner Dick with regard to her conduct as part of the Daniel Morgan Independent Panel, before deciding not to refer her to the IOPC. This was sometimes referred to as a 'scoping exercise' - including by that body. What I would like to request is any document related to the decision not to charge her.

RESPONSE

Thank you for your Freedom of Information (FOI) request of 4 January to the Mayor's Office for Policing And Crime (MOPAC) and I apologise for the delay in replying to you. I confirm that your request has been handled under the FOI Act 2000 and that MOPAC does hold information relating to your request. Please see the responses below.

In order to assess whether the threshold for a conduct matter was met and to determine whether an investigation under the Conduct Regulations was required, the following documents (1 – 5 below) were reviewed by MOPAC:

1. The Daniel Morgan Independent Panel (DMIP) report 15 June 2021. This information is exempt from disclosure under Section 21 of the Freedom of Information Act, since it is information which is already published, here: <https://www.danielmorganpanel.independent.gov.uk/the-report/>
2. Home Office Guidance; Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing. This information is exempt from disclosure under Section 21 of the Freedom of Information Act, since it is information which is already published, here: <https://www.gov.uk/government/publications/policing-professional-standards-performance-and-integrity>
3. Independent Office for Police Conduct (IOPC) Statutory guidance on the police complaints system. This information is exempt from disclosure under Section 21 of the Freedom of Information Act, since it is information which is already published, here: <https://www.policeconduct.gov.uk/complaints-reviews-and-appeals/statutory-guidance>
4. Response of Cressida Dick, Commissioner of the MPS, to the DMIP Fairness Process Letter (20 November 2020)
This is exempt from publication under Section 41 – Information Provided in Confidence.

Rationale for this document to be covered by Section 41:

- it was obtained by MOPAC from another person in confidence
- its disclosure would constitute a breach of confidence

- a legal person could bring a court action for that breach of confidence
- that court action would be likely to succeed

The Commissioner's response was provided to MOPAC by the Metropolitan Police Service (MPS) with permission of the Daniel Morgan Independent Panel (DMIP), for the purpose of MOPAC's assessment of the conduct of Cressida Dick during the inquiry. MOPAC is the "appropriate authority" responsible for misconduct by the Commissioner of the Metropolitan Police Service. The document formed part of MOPAC's assessment of whether the matter should be referred to the Independent Office of Police Conduct (IOPC). The document was provided for this specific purpose only, not for any other disclosure and as such is considered to be provided in confidence. The circumstances in which the document was given to MOPAC mean that the document is subject to an obligation of confidence and its disclosure would constitute a breach of confidence.

In addition, this document is covered by the Panel's confidentiality of documents statement, set out below.

Extract from the Daniel Morgan Independent Panel website – Procedures - Protocol on Disclosure of Information:

Confidentiality

Because of the nature of the subject matter of its work, the Independent Panel acknowledges that the documents provided to it must remain confidential to it and its Secretariat. Members of the Panel and the Secretariat will sign confidentiality agreements the terms of which have been agreed between the Panel and each providing organisation.

<https://www.danielmorganpanel.independent.gov.uk/procedures/information-disclosure-protocol/>

Cressida Dick or anyone who provided confidential information which has been incorporated into the response could bring a court action for breach of confidence if this document was disclosed.

A court action for breach of confidence would be likely to be successful. This requires a Public Interest Defence to a breach of confidence claim, set out below:

Public Interest Defence to a breach of confidence claim

The test assumes that the public interest in maintaining confidentiality will prevail unless the public interest in disclosure outweighs the public interest in maintaining the confidence.

Factors in favour of maintaining confidentiality

- disclosure would be an unauthorised use of the information to the detriment of the confider
- disclosure would be a breach of confidence
- disclosure of confidential information will undermine the principle of confidentiality and the relationship of trust between MOPAC and confiders of information

- individuals and organisations may be discouraged from confiding in MOPAC if they don't have a degree of certainty that this trust will be respected
- disclosure could result in a successful court action for breach of confidence

Factors in favour of disclosure

- general public interest in ensuring public bodies are transparent, accountable and open to scrutiny
- further public understanding of, and participation in, the debate of issues of the day
- enable individuals to understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions
- disclosure of this document could shed light on the conduct of a high-ranking Police Officer

Conclusion of Public Interest Defence Test

The factors in favour of maintaining confidentiality outweigh the public interest in disclosure, therefore the document is exempt from disclosure under the FOIA.

Section 41 is an absolute exemption, so there is no other public interest test to be carried out under FOIA.

5. Formal Conduct Consideration carried out by MOPAC

This is exempt from disclosure under Section 31 – Law Enforcement

Section 31(1) applies to information if its disclosure would, or would be likely to, prejudice any of the functions set out in that section from (a) to (i). Section 31(1) (g) applies to “the exercise by any public authority of its functions for any of the purposes specified in subsection (2)” It can therefore apply where disclosure by MOPAC would prejudice functions carried out by another public body (like the IOPC) if those functions of the IOPC are covered by section 31(2).

The purposes in section 31(2) include the following: -

- (a) the purpose of ascertaining whether any person has failed to comply with the law
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise

The IOPC are currently assessing whether any further action or investigation is necessary regarding the conduct of Cressida Dick in this matter, therefore the IOPC is acting for the purposes set out in (a) – (c) above.

Section 31 is a Qualified Exemption therefore a Public Interest is required.

Public Interest Test

Factors in Favour of Disclosure

- There is a general public interest in disclosing information that promotes accountability and transparency in order to maintain confidence and trust
- If there is a plausible suspicion of wrongdoing, this creates a public interest in disclosure
- There is a public interest in releasing information to provide a full picture of the circumstances surrounding this case

Factors in Favour of Non-Disclosure

- The IOPC have not yet decided whether to take any action against the Commissioner relating to the Panel's report, therefore, to release this information now into the public domain would be likely to have an impact on their decision
- Media coverage of this and related issues is already very intense and additional documents being made public at this point could impact on the IOPC's ability to reach an unbiased and rational opinion
- Disclosure of the Formal Conduct Consideration by MOPAC would, or would be likely to, prejudice the IOPC's ability to carry out its own investigation into the Commissioner
- The IOPC and other public bodies must be able to carry out their law enforcement functions

Conclusion of Public Interest Test

The factors in favour of maintaining this exemption outweigh the public interest in disclosure, therefore the document is exempt from disclosure under the FOIA.

Freedom of Information Act 2000 Section 40 – Personal Information

Personal information within both documents - Appendix A and the formal conduct consideration - is also covered by Section 40 of the FOIA – Personal Information.

Section 40 is an absolute exemption, therefore no Public Interest Test is required.

If you are unhappy with the response to your Freedom of Information requests, please see the MOPAC website on what the next steps are at:

<https://www.london.gov.uk/what-we-do/mayors-office-policing-and-crime-mopac/governance-and-decision-making/freedom-information>