

Devon and Cornwall Police Authority
MINUTES

A meeting of the **Standards Committee** was held on 15 May 2007 in the Conference Room, Endeavour House, Pynes Hill, Exeter starting at 10:00 hrs.

Present:

Chairman: Mr M Harvey
Mr M Bull, Sir Simon Day, Mr Carl Wallin, Mrs A Mayes

Officers:

Mr G Davey (Chief Executive), Miss J Norris (Assistant Chief Executive -for part of the meeting)
Ms K Tebbey – Legal Advisor

The Police Staff Communications Group (PSCG) had submitted an appeal against the Authority's refusal to provide them with the full version of the Richard Penn report in relation to Job evaluation.

The grounds of appeal submitted were: -

- (a) failure to disclose the Penn report
- (b) failure to provide an explanation as to the exemptions relied upon
- (c) failure to explain the reasons for refusing to disclose the Penn report
- (d) failure to respond to the request within 20 days

The Committee met and considered two reports. One provided a background to the production of the Penn report and the basis upon which it was discussed by the Police Authority. Reference was made to the conclusions and recommendations in the Penn report which were published by the Authority.

The second report related to legal advice in relation Freedom of Information issues.

Copies of both of these reports had been sent to the PSCG. The Group had advised that they did not wish to attend the meeting and that in accordance with the legislation they did not intend to provide any information as to why they had requested the report.

Joy Norris the Authority's Assistant Chief Executive had taken the decision not to release the report. Graham Davey the Authority's Chief executive and Monitoring Officer advised the members that he had not been party to that decision, nor in the preparation of reports for this meeting. He could therefore advise members at this meeting.

The Committee were agreed that the purpose of this meeting was to look at the position when the original decision not to release the reports was taken and also to consider whether anything had now changed which might now alter that decision.

In terms of how the meeting would be conducted the Chairman advised that he intended to follow the agreed procedure for hearings but acknowledging that the PSCG would not be attending this would primarily offer a structure for dealing with the business.

Joy Norris was invited into the meeting and provided a brief summary of the report already circulated. She set the Penn report in the context of the other reports that were issues in relation to JE and confirmed that there was still an on-going investigation by Gloucestershire police known as 'Operation

Tay'. This investigation had been initiated as the original investigation by the Metropolitan police had been concluded unsatisfactorily.

Joy Norris indicated that the decision not to release the Penn Report was supported by legal advice of Counsel received at the time – copies of this advice was made available to the Chairman. The advice had primarily been on the basis that a number of those interviewed by Richard Penn had done so on the understanding that the information provided would only be shared with the Police Authority. However, the question of personal information was a factor.

In relation to items (b) (c) and (d) of the grounds of appeal Joy Norris acknowledged that these grounds of appeal were valid and that she had no evidence to the contrary. Members felt that a formal letter of apology should be sent to the PSCG.

Joy Norris confirmed that procedures were now in place to ensure future compliance with FOIA 2000.

The Committee then went into closed session to receive a formal briefing on the legal advice provided in the report from Kathryn Tebbey who had prepared it.

Insert below:

Members considered whether the information contained in the Penn Report was subject to one or more exemptions under the Freedom of Information Act 2000. Members concluded that the exemptions contained in section 36 (effective conduct of public affairs), section 40 (personal information) and section 41 (information provided in confidence) applied to various parts of the Penn Report and that it was difficult to separate the exempt and non-exempt information – to do so would lead to confusion and the potential for misunderstanding. Members further considered that the balance of the public interest lay in withholding the Penn report at the current time, although they recognised that the application of the exemptions and the public interest test might change in future.

Members were advised that Section 36 could only be used if, in the reasonable opinion of a qualified person, the disclosure of the information would have such an effect. Members were advised that for the purposes of a Police Authority the qualified person was the Chairman and members requested that he be asked to agree the use of this exemption. (Subsequent to the meeting the Chairman agreed to the use of Section 36)

The Committee therefore agreed

- (i) to uphold the appeal by PSCG in relation to grounds (b), (c) and (d)
- (ii) that a full decision in writing be sent to the PSCG in accordance with Committee's hearings procedure.
- (iii) that ground (a) be refused on the basis of the exemptions in the Freedom of Information Act 2000 under Sections 36, 40 and 41 for the following reasons:
 - a) the release of the Penn Report could prejudice the effective conduct of the affairs of the Authority as it could interfere with the ongoing investigation 'Operation Tay' and inhibit the full and frank exchange of views and advice within the Authority;
 - b) the Penn Report contains information about unnamed individuals contained within the report who can be identified from that information. The release of that information could breach the

Data Protection Act 1998 principles, in particular the question of fairness and processing which might cause damage and distress;

and

- c) much of the information provided to the authors of the Penn report had been so provided in the expectation of confidence between the interviewee and the Authority.