

**From:** POLICE FOI REFERRAL Mailbox

**Sent:** 06 October 2015 10:18

**To:** S.31(1)

**Subject:** Log No. 1371/15 CRU Circulation (06/10/2015) - S.40(2) - S.40(2) - Result Advice

**Attachments:** ADVG\_1371 15 RESULT ADVICE\_20151005\_115313.DOC

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POLICE EYES ONLY

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Dear All

Please find attached result advice for case no 1371/15.

Regards

S.40(2)

National Freedom of Information Referral Officer

National Police FOI & DP Central Referral Unit

National Police Chiefs' Council

T. S.31(1)

A. c/o ACRO, PO BOX 481, PO14 9FS

E. S.31(1) W. [www.npcc.police.uk](http://www.npcc.police.uk)

For out of hours press enquiries please call S.31(1)

## **National Police FOI & DPA CRU Advice**

**Security Classification:** PROTECT – PRIVATE – POLICE EYES ONLY

**Author:** S.40(2)

S.31(1)

**CRU Case No.:** 001371/15

**Date:** 02/05/2025

**Version:** 1

**Staffordshire Police** has received the below request submitted by S.40(2)

### *Description of information sought:*

*Q1: A schedule or list of all information held by the force relating to the return of one-time fugitive S.40(2) to the UK prior to his arrest by Staffordshire Police.*

*Q2: Under Section 16 of FOI, please advise and assist about what documentation is either held electronically or in paper form about the return of S.40(2) to the UK prior to his arrest.*

*Q3: Please include file names and file types.*

*Q4: Please include email subject lines and wherever possible the names of the senders and the domain names of the email address of the intended recipients of those emails ie everything after the @ symbol: @hotmail.co.uk, etc.*

The advice from a national perspective is:

### **Background to this Request**

In your referral to us you provided the following background information:

“The information is not held in a schedule or list. The file would need to be searched to extract the information.

Between 16.3.12 and 22.9.14 S.40(2) has submitted eight requests (including internal reviews), (last response released on 21.10.14) relating to the murder of Richard Deakin and the tracing of S.40(2). You provided advice on three of the requests (Your ref. 490/12, 556/14 and 1508/14).

The last request was asking for justification/reason/explanation to justify booking the flights, where did the officers travel/visit during their stay, what work did they do and name anyone/organisation they met. This part of the request was answered as Sec. 31 and a S.14 warning included if any future similar requests were submitted.

Although it has been over six months we have now received the current request (Log 6191).”

You have also advised us since submitting the referral that the case is currently subject to an ongoing appeal.

## Responding to your Request

As previously stated by the CRU, there is a significant public interest in scrutinising this investigation as S.40(2) was the first category 'A' prisoner to escape lawful custody in 17 years and remained on the run for 439 days despite the perceived risk he posed to the public, made clear by his categorisation. His alleged criminality when he went on the run led to three UK police forces investigating his past activities. There is a significant public interest in the community knowing that everything was done to track S.40(2) down and bring him to justice – to reassure them of the efforts made to ensure the public's safety and welfare.

However as there is an Appeal currently ongoing and due to be heard at the Court of Appeal (Criminal Division) on 29<sup>th</sup> October, which may be subject to last minute postponement, see below link, any disclosure could be a contempt of court.

<http://www.justice.gov.uk/courts/rcj-rolls-building/court-of-appeal/criminal-division/cases-fixed-for-hearing>

Section 19 of the Contempt of Court Act 1981 provides definitions of certain terms which are used through the Act and includes any **tribunal or body exercising the judicial power of the State**, and legal proceedings shall be construed accordingly.

Section 1 explains what is meant by the Strict Liability Rule. This rule means the rule of law whereby conduct may be treated as contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so, which includes judicial proceedings, including criminal appeals, therefore Section 44(1)(c) Prohibitions on Disclosure is engaged which facilitates the withholding of any information that would, if released, lead to a contempt of court.

Section 44 is a class based absolute exemption and there is no requirement to evidence the harm in disclosure or consider the public interest test

Other exemption that may be relevant are Section 40(2) Personal Information and Section 30(1)(a) Investigations.

In answer to your query about Section 14, as a year has passed since you issued the Section 14 warning, we do not feel it would be feasible to issue a full Section 14(1) response at this time. However you may wish to consider issuing another Section 14 warning notice, but this is entirely a matter for Staffordshire Police.

**If you have any queries regarding this advice please contact the Central Referral Unit before sending your response to the applicant.**

**From:** POLICE FOI REFERRAL Mailbox

**Sent:** 16 November 2015 09:58

**To:** S.31(1)

**Subject:** CASE NO 1371/15 - S.40(2) - INTERNAL REVIEW

**Attachments:** 0002\_IR FROM STAFFS\_20151113\_120623.DOC; 0001\_IR FROM STAFFS\_20151113\_120623.HTM

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S.40(2)

Thank you for advising us that you have received an internal review from the applicant. I have reopened the case (1371/15) and will provide further advice in due course.

In the meantime please could you send a copy of your original response for our records.

Many thanks

S.40(2)

National Freedom of Information Referral Officer  
National Police FOI & DP Central Referral Unit

National Police Chiefs' Council

T. S.31(1)

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S.31(1) W. [www.npcc.police.uk](http://www.npcc.police.uk)

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**From:** POLICE FOI REFERRAL Mailbox

**Sent:** 19 November 2015 16:37

**To:** S.31(1)

**Subject:** Log No.1371/15 CRU Circulation (19/11/2015) - S.40(2) - Internal Review Advice

**Attachments:** ADVG\_1371 15 INTERNAL REVIEW ADVICE\_20151119\_092023.DOC

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POLICE EYES ONLY

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Dear All

Please find attached IR result advice for case no 1371/15.

Regards

S.40(2)

National Freedom of Information Referral Officer

National Police FOI & DP Central Referral Unit

National Police Chiefs' Council

T. S.31(1)

A. c/o ACRO, PO BOX 481, PO14 9FS

E. [acpo.advice@foi.pnn.police.uk](mailto:acpo.advice@foi.pnn.police.uk) W. [www.npcc.police.uk](http://www.npcc.police.uk)

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**National Police FOI & DPA CRU Advice**

**Security Classification:** PROTECT – PRIVATE – POLICE EYES ONLY

**Author:** S.40(2)

S.31(1)

**CRU Case No.:** 001371/15

**Date:** 02/05/2025

**Version:** 1

**Staffordshire Police** received the below request submitted by S.40(2). A response was provided on 14<sup>th</sup> October 2015 where Section 44(1)(c) Prohibitions on Disclosure was cited as there was an ongoing Appeal due to be heard on 29<sup>th</sup> October. The applicant has now requested an Internal Review:

*A schedule or list of all information held by the force relating to the return of one-time fugitive S.40(2) to the UK prior to his arrest by Staffordshire Police.*

*Under Section 16 of FOI, please advise and assist about what documentation is either held electronically or in paper form about the return of S.40(2) to the UK prior to his arrest.*

*Please include file names and file types.*

*Please include email subject lines and wherever possible the names of the senders and the domain names of the email address of the intended recipients of those emails ie everything after the @ symbol: @hotmail.co.uk, etc.*

The applicant has now requested an Internal Review as the Appeal has been heard where S.40(2) was refused leave to appeal, see below link:

<http://www.bbc.co.uk/news/uk-england-34665227>

The Internal Review Advice from a national perspective is:

In your referral to us you provided the following comments:

“Once the information holder has established how much information there is my thoughts are it could be burdensome for us to provide a comprehensive list. Apparently there are some schedules which may require a further breakdown to record what information it relates to. Some parts of the list, if provided, would have to be exempt due to the nature of the information it relates to.

Am I right in thinking that if we do not have a list of all the information then to fulfil this request we would have to create one – therefore creating information for this FOI. To even assist S.40(2) in refining his request would we not have to still create a list as we would still have to go through all the information to ascertain what we hold.

The information requested is not all held in a list format but there will be various schedules that need to be researched further.

We know that we hold the information but the information holder is trying to establish how much there is (potentially there are over 1000 documents to review).”

As the Appeal is now finalised Section 44(1)(c) Prohibitions on Disclosure is no longer relevant.

With regard to your query about whether a public authority is required to 'create' a list; the Information Commissioner considers that a public authority is **not** creating new information when compiling a list or schedule.

The rationale for this is that public authorities frequently receive requests for lists or schedules of documents, correspondence or other information where the list itself is not in existence. When considering such a request what should be remembered is that FOI is about the provision of information held on record. Where it is possible to extract the information requested and present it in the form of a list or schedule, this does not amount to the creation of new information.

There is a relevant ICO Decision Notice which confirms this fact, see below link:

[https://ico.org.uk/media/action-weve-taken/decision-notices/2006/382816/DECISION\\_NOTICE\\_FS50070854.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2006/382816/DECISION_NOTICE_FS50070854.pdf)

In addition the ICO's guidance can be found at the below link:

[https://ico.org.uk/media/for-organisations/documents/1159/information\\_from\\_original\\_sources.pdf](https://ico.org.uk/media/for-organisations/documents/1159/information_from_original_sources.pdf)

With regard to your second query about whether Section 14(1) Overly Burdensome would be relevant when compiling a list; our views are that a list or schedule providing, for example the name of each box of information held, is likely to be reasonable to create and would enable to applicant to then just ask for, say, one specific box. Therefore we feel the citing of Section 14(1) in this case would not be tenable.

We would suggest when considering this Internal Review, the independent review considers the original advice with regard to locally assessment the information for any Section 40(2) Personal information and Section 30(1)(a) Investigations sensitivities. Obviously as stated above Section 44(1)(c) is not relevant and cannot be cited.

**If you have any queries regarding this advice please contact the Central Referral Unit before sending your response to the applicant.**

**From:** POLICE FOI REFERRAL Mailbox

**Sent:** 23 December 2015 14:33

**To:** S.31(1)

**Subject:** FW: S.40(2)- IR 1371/15

**Follow Up Flag:** Follow up

**Flag Status:** Flagged

**Attachments:** S.40(2) 6492.doc; S.40(2) 6338.doc; 0001\_1371 15 INTERNAL REVIEW  
ADVICE\_20151119\_092023.DOC

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S.40(2)

It was good to talk to you earlier; as discussed I have reopened this case as an internal review and understand that the previous IR notification was for a new request and was sent as an IR in error.

Having looked through the requests, for ease of reference I have detailed below a chronology of events:

24th September 2015 - initial request referred to us for guidance.

6th October 2015 - advice circulated stating that at that moment in time Section 44(1)(a) Prohibitions on Disclosure was engaged due to an ongoing appeal.

12th November 2015 - Referral received from Staffordshire where it was stated:

"Previous CRU advice 1371/15 received for initial request.

Once the information holder has established how much information there is my thoughts are it could be burdensome for us to provide a comprehensive list. Apparently there are some schedules which may require a further breakdown to record what information it relates to. Some parts of the list, if provided, would have to be exempt due to the nature of the information it relates to.

Am I right in thinking that if we do not have a list of all the information then to fulfil this request we would have to create one – therefore creating information for this FOI. To even assist S.40(2) refining his request would we not have to still create a list as we would still have to go through all the information to ascertain what we hold."

This was interpreted by the CRU as a request for an internal review.

19th November 2015 - Internal Review advice circulated to Staffordshire stating that Section 44(1)(a) was no longer

relevant as the appeal has been finalised. Also confirmed our advice that we did not feel Section 14(1) was relevant in this case as it would be reasonable to provide a list of boxes held so that the applicant could refine their request.

16th December 2015 - Staffordshire responded to applicant as a new request, not IR, by citing Section 14(1) overly burdensome.

22nd December 2015 - Staffordshire advised applicant has requested an internal review to the second request. CRU made aware.

### Advice for this internal review

Having looked through all the information contained within this case we stand by our original advice inasmuch as we do not feel Section 14(1) is relevant in this case.

For ease of reference I have attached a copy of the IR advice for the reviewer's information and assistance.

Please could you let us know the outcome of your IR for our records.

Many thanks

S.40(2)

[REDACTED]  
National Freedom of Information Referral Officer  
National Police FOI & DP Central Referral Unit

National Police Chiefs' Council

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**From:** S.40(2), S.31(1)

**Sent:** 22 December 2015 09:12

**To:** POLICE FOI REFERRAL Mailbox

**Subject:** S.40(2)- IR 1371/15

Hi,

Please see attached referral form.

Kind regards

S.40(2)

Freedom of Information  
Corporate Communications  
Staffordshire Police  
Direct Dial: **S.31(1)**

**Previous Response:**

\*\*\*\*\*

**"Keeping our Communities Safe and Reassured"**

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**CRU FOI Referral FORM V6**

When referring **any** request to the CRU this form must be completed and sent by e-mail.

1. Force reference number:	6492
2. Date request received:	21/12/15
3. Type of request	Internal Review
4. All known applicant details:	<p><b>S.40(2)</b></p> <p>████████████████████</p>
<p>5. Actual wording of request:  <i>Please do not attach a PDF –paste in or attach e-mail only</i></p>	<p>I hope you are well. I write in reference to my previous FOI requests, your ref 6191 and 6338 respectively. Please may you conduct an internal review of the decision to withhold the information requested?</p> <p>I am asking for an internal review for the following reasons:</p> <ul style="list-style-type: none"> <li>- I believe the information should have been disclosed after the first request your ref 6191, receipt of which was acknowledged by the force on 15 September 2015, as I do not believe the exemption cited was correct. The force then cited Section 44 (1) (c) and a perceived Contempt of Court risk. The appeal the force mentioned was in relation to a different investigation regarding <b>S.40(2)</b> drugs convictions, and that investigation had been led by a different police force in West Midlands Police. I fail to see how disclosing a schedule of information held about Staffordshire Police's separate investigation, which my request specifically covered, provided a Contempt of Court risk. I believe my argument is strengthened by the force's referring me to the press office in its reply to the request your ref 6191. I would argue disclosing the information requested in itself would not have created any Contempt of Court risk but the force's reply suggested it leapt to a conclusion based on its belief I would be involved in the publication or broadcasting different information to that requested about <b>S.40(2)</b></li> <li>- After I flagged up the above, I believe the force should have treated the request your ref 6338 as an internal review request for the earlier request 6191 rather than as a fresh request, and I believe it should have endeavoured to expedite the reply given that, rather than replied late.</li> <li>- I believe the force's reference to internal problems with its free text search facility in reply to the request your ref 6338 should not cause the information to be withheld. As aforementioned, I saw no reason why the force should not have disclosed the relevant information in September – potentially before such problems arose. As such, it is justified that the force finds other means to locate and disclose the information requested.</li> <li>- I believe the force has not considered what information it could disclose in its reply your ref 6338. For example, what system does the force use for its emails – Microsoft Office or Lotus Notes or Gmail or Hotmail for example – could it have performed keyword searches of relevant officers' email inboxes and sent items to ascertain if it could provide some if not all of the information requested? Could it suggest when it could provide some of the information requested when its technical issues are resolved?</li> <li>- I believe the force has not conducted itself in the spirit of</li> </ul>

	<p>Section 16 of FOIA to "provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made requests for information" as it did not call me at any point to discuss delays or flag up technical issues or try to anticipate expected delays despite my request your ref 6191/6338 "If the force cannot provide all the information I have requested, please call me to discuss what information it could supply at the earliest opportunity on S.40(2) [REDACTED]"</p> <p>- I infer from the force's email to me dated 1 December 2015 that it had not begun to research my request your ref 6338 by 1 December, when the reply was already due. I inferred that from S.40(2) [REDACTED] suggestion the force was investigating if any other exemptions applied to the information, but made no mention of the aforementioned technical problems which surely would have been in evidence by then if they had persisted since September.</p> <p>- I believe the force breached Section 1(1) and Section 10(1) of FOIA with regards the request your ref 6338 as it replied after 33 working days.</p> <p>- I believe the force has incorrectly deemed the request your ref 6338 "vexatious" because it has not considered the key questions in recent ICO guidance which stressed that to meet that description, "the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress". I would argue given the history of this request includes the incorrect citing of Section 44 (1)(c) which held up the disclosure of the information in the request your ref 6191, and technical problems which have arisen in the period after this information should have already been disclosed, there is a strong argument in favour of the force finding other means to locate and disclose any of the relevant information requested as a more conciliatory approach and observing the aforementioned spirit of Section 16 of FOIA.</p> <p>I am aware that guidance from the Information Commissioner in The Guide to Freedom of Information, says internal reviews should in most cases be completed within 20 working days.</p> <p>I look forward to receiving your response in line with the Commissioner's guidance.</p>
6. Person dealing with request and contact number:	S.40(2) [REDACTED]
7. Reason for referral	N/A
8. If a mandatory referral and you have not requested disclosure advice, confirm your rationale.	N/A
9. If a technical query and/or request for disclosure advice specifically what is the issue? (For S14 queries please enter as much detail as possible)	N/A

10. Do you know what information you hold?

Yes. We held a meeting with a senior officer who worked on the case. We were told there was a hard copy file and that on the system but they were unable to access the system at that time due to change of servers, so it would be a huge burden to go through the several boxes of files. I have attached the previous response (Log 6338). I note that **S.40(2)** that the previous request was an internal review. Looking at our log it was logged as an initial request and the applicant had not asked for an internal review. I think there may have been a mix-up on **S.40(2)**. Apologises. However, the applicant has now submitted an internal review.

You provided advice for the initial request Ref. 1371. I have made the senior officer aware of the internal review and arranging to have another meeting with him.

I have attached our previous response **S.40(2)**



# Keeping our communities safe and reassured



FOI ref no: 6338

16/12/2015

S.40(2)

Dear S.40(2)

**Freedom of Information request: reference 6338 first notified to us on 29 October 2015.**

Thank you for your recent request under the Freedom of Information Act 2000.

The force's response to your enquiry is as follows:

*The appeal you mentioned related solely to S.40(2) convictions and sentences for conspiracy to supply drugs and I was in court earlier today when S.40(2) was refused leave to appeal.*

*Given there is no risk of Contempt of Court, could you please provide the schedule I requested?*

*PREVIOUS REQUEST LOG REF. 6191 WHICH THE ABOVE REFERS TO:*

*Description of information sought:*

*A schedule or list of all information held by the force relating to the return of one-time fugitive S.40(2) to the UK prior to his arrest by Staffordshire Police.*

*Under Section 16 of FOI, please advise and assist about what documentation is either held electronically or in paper form about the return of S.40(2) to the UK prior to his arrest.*

*Please include file names and file types.*

*Please include email subject lines and wherever possible the names of the senders and the domain names of the email address of the intended recipients of those emails ie everything after the @ symbol: @hotmail.co.uk, etc.*

I can confirm Staffordshire Police does hold the information you have requested. It would require a free text search to ascertain the information relating to your request. Staffordshire Police has been undergoing a system upgrade since September 2015. A fault has occurred where the free text search facility is not accessible. Therefore, I am unable to provide any accurate list/schedule at this present time. The old system which holds historical data cannot be accessed via this free text search and our ICT

department are currently working to resolve this issue. The information is held as hard copies and duplicated in electronic format in Word/Excel files. The documents may consist of a single page or can contain multiple pages.

With regard to creating a manual list/schedule I have applied section 14(1) Vexatious request exemption. The information is also held in five large boxed files and each box would need to be manually searched to obtain the correct information and create an accurate list for your request. An officer from the Investigative Services department would have to complete this manual search and then highlight any personal or sensitive information from the list/schedule. This list/schedule would then have to be checked by one of the Freedom of Information team to ensure that correct exemptions and no personal information was released. This would be a burden on both departments. The Freedom of Information team consist of two full time and one part time staff members. The team are currently dealing with 149 Freedom of Information requests. To complete the task would delay other requests being responded to.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of this email and should be addressed to:

**S.40(2)**

Freedom of Information  
Corporate Communications  
Staffordshire Police  
PO Box 3167  
Stafford  
ST16 9JZ

Please remember to quote the reference number in any future communications.

Should you require any further information please contact me on **S.31(1)**

Yours sincerely

**S.40(2)**

Freedom of Information