



Derbyshire Constabulary

Ms Claire Wilde

Telephone: 101
Direct Line: 0300 122 8752
Ask For: Freedom of Information
Our Ref: 003148/21
Your Ref: Arrests at Protests
Date: 29 June 2021

Dear Ms Wilde

FREEDOM OF INFORMATION REQUEST - REFERENCE NO: 003148/21

I write in connection with your request for information which was received by Derbyshire Constabulary on 04/06/2021. I note you seek access to the following information:

I would like you to provide me with the number of people arrested by the force during their participation in a protest from the beginning (01/01/20) of 2020 up to 31/05/21 broken down by month. For each person arrested, I would like you to provide me with the protest type (e.g. Black Lives Matter, 5G, pro-life) attended, the person's age, sex and ethnicity, and the power under which they were arrested.

In addition to this, I would like you to provide me with the outcome of each person's arrest: e.g. a fine, a charge.

The Constabulary can neither confirm nor deny that it holds any information relevant to this request as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply, by virtue of the following exemptions:

Section 30(3) - Investigations

Section 31(3) - Law Enforcement

Section 40(5) - Personal Information

Section 30 is a class based qualified exemption and consideration of the public interest must be given as to whether neither confirming nor denying information exists is the appropriate response.

Section 31 is a prejudice based, qualified exemptions both evidence of harm and public interest considerations need to be articulated.

Section 40 is an absolute, class-based exemption and therefore there is no requirement to conduct a harm or public interest test if to do so it may, either of itself or when linked to something already in the public domain, reveal the identity of an individual and in doing so breach Article 6 of the Data Protection Act 2018 namely 'Lawfulness of Processing'.

Overall harm for the NCND

The police service is charged with, amongst other issues, the investigation of alleged offences with a view to it being ascertained whether any person has failed to comply with and/or whether any person is responsible for any conduct which is improper.

However, where an individual reports a crime or has contact with the police there is an expectation that this is done with a degree of confidence attached; the same applies to any investigation that may or may not be underway. Unless the police release a press statement or make a direct plea for assistance it is highly unlikely that any details around contact/an investigation would be released for obvious reasons. To do so would damage the standing of the police within the community and ultimately send a message out that they do not take their responsibilities seriously. This will lead to mistrust, the possibility of individuals not coming forward to report issues and jeopardise any ongoing investigation if relevant.

The general public has no expectation that generic details of individuals/cases would be released as this would impact on the credibility of the Constabulary and damage the confidence the overall public has in the service delivered.

All must be set against the basic premise is that a disclosure under the Freedom of Information Act is a disclosure to the public at large and not just the applicant. Consequently, the public authority, if prepared to disclose, has to be aware of this and content to release to anyone who asks subsequently. It also has to be aware that data following such release may be made public by the recipient in any medium they choose. The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) confirmed that, “Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions” (paragraph 52).

Police work is ever more intelligence led with evidence coming from various sources to include more frequently partner agencies. Any confirmation/denial at this time would impact on our ability to police effectively and share information with partners if/where needed. We would not be seen as a competent service but as one who is prepared without valid reason to alienate those members of the public/other agencies who share/with whom we share information. This would directly impact on our current and future law enforcement capabilities in that it would directly impact on our ability to prevent/detect crime as well as the apprehension of offenders.

Investigations by their very nature are traumatic for those involved and their immediate family/friends. In this respect the Constabulary has to demonstrate high degrees of judgement and professionalism in how it handles information that it may or may not hold as any failure to do so may place individuals at risk and risk a loss of confidence in the public authority’s ability to protect the wellbeing of the community. There is an established process for keeping parties updated on the process of an investigation the responsibility for which falls to the officer in the case. However, these also must work within the remit of current legislation and established practices.

Section 30(3) Investigations

Public Interest Test

Factors favouring complying with Section 1(1)(a) confirming information is held

Confirming or denying whether information exists relevant to this request would lead to a better-informed general public by identifying that the Constabulary robustly investigate any offences that may occur within our communities. This fact alone may encourage individuals to provide intelligence in order to assist with investigations and would also promote public trust in providing transparency and demonstrating openness and accountability into where the police are currently focusing their investigations.

The public are also entitled to know how public funds are spent.

Factors against complying with Section 1(1)(a) neither confirming nor denying that information is held

The Constabulary is charged with the prevention or detection of crime and the apprehension or prosecution of offenders. To confirm/deny the requested information is held may hinder the prevention or detection of crime and undermine the partnership approach to law enforcement.

Section 31(3) Law Enforcement

Factors favouring complying with Section 1(1)(a) confirming information is held

In this instance, to neither confirm nor deny information is held would suggest that Derbyshire Constabulary take their responsibility to gather evidence and information as part of the investigative process seriously and appropriately to ensure the effective delivery of operational law enforcement.

Factors against complying with Section 1(1)(a) neither confirming nor denying that information is held

Derbyshire Constabulary and the Police Service generally rely heavily on the public providing information to assist in criminal investigations and has a duty to protect and defend vulnerable individuals. The public has an expectation that any information they provide will be treated with confidence. Anything that places that confidence at risk, no matter how generic, would undermine any trust or confidence individuals have in the Police Service.

Balancing Test

The points above highlight the merits of confirming, or denying, whether information pertinent to this request exists. The Police Service is charged with enforcing the law, preventing, and detecting crime and protecting the communities we serve. As part of that policing purpose, various operations with other law enforcement bodies/partner organisations may or may not be ongoing. The Police Service will never divulge whether any information is held if to do so would place the safety of an individual(s) at risk or undermine ongoing/future investigations.

The public also entrust the Police Service to make appropriate decisions regarding their safety and protection and the only way of reducing risk is to be cautious with any information

that is released. In this case, and irrespective of what information is or isn't held, the effective delivery of operational law enforcement takes priority and is at the forefront of the Constabulary to ensure the prevention and detection of crime is carried out and the effective apprehension or prosecution of offenders is maintained. This includes ensuring our relationship with other law enforcement agencies runs smoothly in the joint approach to multi-agency investigations.

Therefore, at this moment in time, it is our opinion that for these issues the balance test for confirming, nor denying, that information is held is not made out.

No inference can be taken from this refusal that information does or does not exist.

Right to Request a Review (Complaint)

Your attention is drawn to the attached sheet, which details your right of complaint.

I would like to take this opportunity to thank you for your interest in Derbyshire Constabulary.

Should you have any further enquiries concerning this matter, please write or contact the Freedom of Information Officer, on the above telephone number quoting the reference number in the header.

Yours sincerely

Kevin Lea
Freedom of Information Officer

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