

Public Interest Test – 21866/18

Applicable exemptions:

Section 30 (3) – Investigations and proceedings conducted by the public authority

Section 31(3) – Law enforcement

Harm

The Freedom of Information Act makes it a legal requirement that an authority has to not only provide information, unless it is exempt, but to also confirm whether or not that information is held, unless to do so would in itself provide exempt information. In this case to confirm or deny details of an investigation would provide confirmation of the existence, or otherwise, of an investigation. It would also allow for criminals to ascertain sensitive investigatory knowledge that would affect any ongoing investigations.

Modern day policing is intelligence led and the Police Service share information with other law enforcement agencies as part of their intelligence gathering process. To confirm or not whether information is held related to this request would hinder the prevention and detection of crime and undermine the partnership approach to law enforcement. Information of this nature could be used by criminals to adapt their offending which would prejudice the prevention or detection of crime.

Section 30 Considerations that favour confirming or denying

Transparency

Disclosing information about investigations would provide a greater transparency in the investigating process and the actions of a public authority. It is clear that there is a public interest in public authorities operating in as transparent a manner as possible, as this should ensure they operate effectively and efficiently. Confirming the existence of an investigation could help to ensure that authorities do not overlook issues which they should investigate or that they have good reasons for not investigating.

Accountability

There is a clear public interest in ensuring that public authorities do not act outside their authority by investigating matters which fall outside their remit. By making certain that public authorities confirm or deny whether information is held in relation to investigations, this should provide the necessary safeguards and satisfy the public interest in this matter.

Section 30 Considerations against confirming or denying

Law Enforcement

Where current or future law enforcement role of the force may be compromised by the release of information, then this is unlikely to be in the interest of the public. In this case, for the reasons outlined above, confirming or denying the existence of an investigation could jeopardise future police operations and compromise the future prevention and detection of crime.

Efficient and Effective Conduct of the Service

There is an inherently strong public interest in public authorities carrying out investigations to prevent and detect crime. This ensures that offenders are brought to justice and that the necessary checks and balances are in place to safeguard public funds and resources. To allow the effectiveness of investigations to be reduced, as described in the harm above, is not in the public interest. West Midlands Police need to be allowed to carry out investigations effectively away from public scrutiny until such times as the details need to be made public, otherwise it will be difficult for accurate, thorough and objective investigations to be carried out.

Section 31 Considerations that favour confirming or denying

There is a clear a public interest in public authorities operating in as transparent a manner as possible, as this should ensure they operate effectively and efficiently.

Section 31 Considerations against confirming or denying

The disclosure of this information could compromise law enforcement tactics, which may hinder the Police force's ability to prevent and detect crime and could be detrimental to the effective operation of policing activities. This would have a negative impact on police resources and more crime would be committed, placing individuals at risk.

Releasing the information into the public domain would compromise the current and future law enforcement role of the force. It would likely allow offenders to change their tactics in order to avoid detection and prosecution. Where current or future law enforcement capabilities of the force may be compromised by the release of information, it is unlikely to be in the interest of the public.

There is an inherently strong public interest in public authorities carrying out investigations to prevent and detect crime. West Midlands Police need to be allowed to investigate crime effectively and ensure that offenders are brought to justice.

Balancing Test

For a public interest test, issues that favour release need to be measured against issues that favour non-disclosure. The public interest is not what interests the public, or a particular individual, but what will be the greater good, if released, to the community as a whole.

Any release under FOI is a disclosure to the world, not just to the individual making the request. Police forces work in conjunction with other agencies and on a daily basis information is freely shared in line with information sharing protocols. Modern day policing is intelligence led and this is particularly pertinent with regard to law enforcement.

Confirmation or denial of whether information is held is likely to show whether or not intelligence-led activity is on-going, potentially alerting individuals or gangs to the possibility that they have been identified by the force and are potentially being monitored

Having considered the arguments for and against, it is my opinion that the public interest test favours maintaining the exclusion of the duty to confirm or deny whether the information exists. West Midlands Police will not disclose information that could interfere with investigations or compromise the future law enforcement role of the force.