

Corporate Information Management Department

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Office hours 0800-1700

18 March 2014

Private

Our Reference 1113/13

Mr David Orr

request-184925-52e484e6@whatdotheyknow.com

I write to you in response to your request for a fresh internal review of your request under the Freedom of Information Act.

I have reviewed the original internal review and acknowledge the omission of a public interest test in relation to Section 41 - Information Provided in Confidence, for which I apologise. The Section 31 and 43 considerations still stand and so this follow-up response is just concerned with a fresh look at Section 41.

Section 41 is an absolute and class based exemption and although not qualified, there is a requirement to conduct a Public Interest Test (PIT) on whether the common law duty of confidentiality can be overcome. This differs from the usual PIT applied under FOI as the default position favours non-disclosure unless overwhelming evidence is provided favouring disclosure.

Factors favouring disclosure:

Where public funds are being spent, there is a public interest in relation to the security of the SAP system and whether it is fit for purpose.

Factors favouring non –disclosure

Although the Constabulary holds the information for the purposes of the Act, it does not own it. The information requested was provided in confidence, has the necessary quality of confidence and should be protected by an obligation of confidence. The Constabulary is satisfied that any breach of confidence that would occur from the release of the information would be actionable by the aggrieved third party. The aggrieved third party has legal standing.

In balancing the factors for and against disclosure, I am satisfied that in this case the factors favouring disclosure do not overcome the common law duty of confidence and it would not therefore be in the Public Interest under the Act to disclose the information.

This letter represents a refusal notice.

If you consider Constabulary has failed to meet its obligations under the Act you have the right to raise the matter with the Information Commissioner who may agree to investigate this matter on your behalf. The Information Commissioner can be contacted at Wycliffe house, Water Lane, Wilmslow, Cheshire, SK9 5AF, Telephone 0303 1231113.

Yours sincerely

Jeff Hines
Information Access Manager