

Public Interest Test

Section 30 (3)

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.

Release of information through the Freedom of Information Act removes any of the legal strictures and assumptions of confidentiality associated with the due legal process. As a consequence any on-going or subsequent court proceedings could be jeopardised where release of information regarding an individual was identified.

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.

Considerations against confirming or denying

Fair Treatment of an Individual or organisations

The interest of the public is best served by the non-disclosure of information which adversely affects the reputation of an individual e.g. whether they are involved in a police investigation.

Public Confidence

The public must be confident that West Midlands Police are committed to ensuring that information provided by them will only be used for appropriate purposes and that the confidentiality of any information given will be maintained. Therefore they should be assured that West Midlands Police would never confirm or deny the existence or otherwise of information that would breach confidentiality.

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.

Legal Proceedings

It would not be in the public interest to confirm or deny the existence or otherwise of information that may be of assistance to offenders/prevent an individual from being brought to justice. The right to a fair trial is of paramount importance and any disclosure which could enhance media attention prior to any proceedings could compromise an individual's right to a fair trial under the Human Rights Act.

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.

The issues of transparency and awareness are noted. However, on balance it is considered that the public interest in confirming or denying whether the information exists is outweighed by the potential impact release would have on individual's privacy and on future law enforcement activities.

Although confirmation of whether or not the requested information is held by the public authority might provide a greater transparency in the investigating process, there are already a number of checks and balances on authorities to assess whether investigations are conducted appropriately. There are legal processes in place to ensure that all parties are given access to all the appropriate information at the time of any trial and subsequently through court records. In addition if a person feels that they have been treated inappropriately by the police there are clear processes in place to ensure that matters are investigated thoroughly and appropriately.

Releasing information outside of such a schedule could undermine the smooth running of these processes and would impact on future judicial proceedings. Therefore the wider public interest lies in protecting the ability of the public authority to conduct an effective investigation and consider the outcome.

Having considered the arguments for and against, 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 reveal personal information or could compromise the future law enforcement role of the force.