

Public Interest Test

Section 30 Public Interest Considerations

Factors favouring disclosure

There is information within the public domain confirming that police use covert human intelligence sources to assist them with investigations and the effective delivery of law enforcement. Disclosure would enhance the public's knowledge about how information relating to informants is used by West Midlands police and how the intelligence received assists in day to day investigations and operations to assist the prevention and detection of crime and the apprehension and prosecution of offenders.

Disclosure would also assist in stopping any incorrect rumours or falsehoods relating to how the police store and manage how informants assist the police.

It would also allow the public to determine whether the financial outlay by the force to informants is appropriate in comparison to the level of successful prosecutions.

Factors favouring non-disclosure

Disclosure of the information requested could identify informant activity within a force area. Over a period of time if several disclosures were made, individuals could analyse the information and identify any sudden peaks or troughs in informant activity. This would hinder the prevention and detection of crime and also prejudice our ability to maintain confidential sources. . Consequently, the force's future law enforcement capabilities would be affected.

Similarly, the disclosure of the information would highlight when informants have been used in successful convictions which could place those persons, or those suspected of being an informant, in danger. The disclosure of this information would lead to informants losing confidence in the West Midlands Police Constabulary and would impede the recruitment of informants in the future

Balancing Test

There is information within the public domain confirming that police use covert human intelligence sources to assist them with investigations and the effective delivery of law enforcement. The Police Service is tasked with protecting the community we serve and solving crime and there is a public interest argument in ensuring we are open and transparent with regard to policing investigations and operations. There is no doubt that for the issues outlined above any disclosure relating to sensitive informant information would jeopardise those important roles.

As has been mentioned informants play a vital role in assisting the police, and is based very much on relationships built on trust and the expectation of complete confidentiality (force name) would never disclose information which would compromise our tactics.

It is therefore our opinion that the balance lies in favour of non-disclosure of the information.

Section 31 Evidence of Harm (for question 2 only)

The prevention and detection of crime is the foundation upon which policing is built. The Police Service has a clear responsibility to prevent and detect crime and disorder as well as maintaining public safety. There are a number of tactics available to the Police Service to

ensure public safety is at the top of the agenda when managing informants, also known as covert human intelligence sources (CHIS).

The College of Policing has an Authorised Professional Practice for Intelligence Management which is a national standard adhered to by all police forces across England and Wales. There are four products which are the deliverables of intelligence led policing. They are the result of a collaboration between analysts, intelligence officers and policing units. Each product has a defined purpose and provides recommendations for making decisions and options for action. These four products are strategic assessment; tactical assessment; subject profile and problem profile.

This APP can be viewed at the below link:

<http://www.app.college.police.uk/app-content/intelligence-management/intelligence-products/#content-of-the-strategic-assessment>

It is a business process with an intention to provide focus to operational policing and to achieve a disproportionately greater impact from the resources applied to any problem. It is dependent on a clear framework of analysis of information and intelligence allowing a problem solving approach to law enforcement and crime prevention techniques.

Within the APP is a chapter titled 'Intelligence report' which articulates the procedure to be followed for intelligence collection, development and dissemination, see below link:

<https://www.app.college.police.uk/app-content/intelligence-management/intelligence-report/#top>

Modern-day policing is intelligence led which is particularly pertinent with regard to the management of informants (CHIS). As part of (force name's) responsibility to deliver effective operational law enforcement we ensure all handlers of CHIS follow the strict guidelines published within the APP. The intelligence management processes allow decisions to be made about priorities and tactical options available when managing informants.

To disclose information relating to the tactical options available to us would undermine the College of Policing APP for Intelligence Management and more importantly the whole policing ethos for managing CHIS.

Section 31 Public Interest Considerations (for question 2 only)

Factors favouring disclosure

It is publicly acknowledged that police forces provide financial reward to covert human intelligence sources on receipt of intelligence and there is a call for openness and transparency in the management of CHIS and the amount of financial gain provided to them

Disclosing the way in which West Midlands police decide on the financial reward for the information supplied by informants could highlight how much money is used for intelligence purposes, reassuring the public that that investment in their safety is of paramount importance, this would ensure communities would know that the police are directing funds and how they pay these funds are used in the correct manner

Factors favouring non-disclosure

West Midlands police, the College of Policing and the Police Service generally work together to ensure the effective delivery of operational law enforcement, which includes creating operational information such as guidance, policy and procedure for specific offending. Any disclosure of information which undermines the flow of intelligence into forces and the management of CHIS has potential to place the sources themselves at risk and undermine the College of Policing Authorised Professional Practice as detailed within the harm.

Informants play a vital role in assisting the police and is based very much on relationships built on trust and the expectation of complete confidentiality. West Midlands Police would never disclose information which would compromise our tactics

Informants come from varied backgrounds have varied motivations. methods are put in place to reduce the risk to these individuals, providing details of how payments are made and the value of payments would highlight if individuals suddenly had an influx of cash. may lead to compromise of a CHIS and additionally lead to the misidentification of non-CHIS as communities / associates / family members may assume any persons coming into funds after any enforcement is a CHIS. This in itself would cause concern as this would place individuals at risk, family members may be targeted decreasing effectiveness and increasing the risk to individual and their communities, whether they are a Informant or not .

Publishing what and by what methodology CHIS get paid this would lead to a reduction of information being provided to the police impacting on operational effectiveness. The reward a Informant is offered are unique to their circumstances

Officers are already placed in a role of increased risk, providing further information of the people that authorise payments would provide a person who may be intent on criminal activities with invaluable information placing these officers at increased risk. is the responsibility of the force to take reasonable measures to protect the health, safety and wellbeing of its officers, while ensuring law enforcement is not compromised.

Balancing Test

The points above highlight the merits for and against disclosure. Undoubtedly disclosure will provide a greater openness and transparency to the community at large on how payments to sources are regulated. The management of these individuals is appropriate and in line with current national guidance and recommendations.

As much as there is a public interest in knowing the delivery of operational law enforcement surrounding the use of CHIS is appropriate and balanced, this will only be overridden in exceptional circumstances. Therefore, at this moment in time, it is our opinion that for these issues the balance test for disclosure of the information is not made out.

In addition West Midlands Police can neither confirm nor deny that they hold any other information relevant to this request by virtue of the following exemptions:

Section 23(5) Information supplied by or concerning, certain Security Bodies;
Section 24(2) National Security
Section 30(3) (by virtue of Section 30(2)) Investigations

Section 23 is a class based absolute exemption and there is no requirement to consider the public interest.

Section 24 is a qualified exemption and as such there is a requirement to evidence any harm confirmation or denial that any other information is held as well as consider the public interest.

Section 30 is a class based qualified exemption and there is a requirement to consider the public interest to ensure neither confirming nor denying any other information is held, is appropriate.

Harm in confirming that Information is held

Disclosure of informants data could impact on the recruitment and retention of CHIS in general, due to the perception of (rather than the actual) risk of identification. In an Information Tribunal case relating to the payments made to CHIS in Croydon (EA/2010/0006), it was accepted that this argument applied as much to CHIS providing intelligence in relation to national security concerns as to CHIS engaged in countering more traditional criminal threats. In this way, the disclosure of payment information would damage national security through discouraging current national security CHIS from co-operating with the Police Service in other geographical areas, or preventing the recruitment of national security CHIS in the future - regardless of whether the area in question actually currently runs CHIS reporting on serious crime, terrorist or other threats.

Public Interest Test

Section 24 - Factors favouring confirming or denying that any other information is held

Confirming or denial that any other information exists relevant to the request would lead to a better informed public and the public are entitled to know how public funds are spent. The information simply relates to national security and disclosure would not actually harm it.

Factors against confirming or denying that any other information is held

Other organisations outside the Police Service are also widely engaged in rewarding informants in a number of ways, and therefore by confirming or denying that any other information exists relevant to the request would harm the close relationship that exists with such organisations, where trust and confidence in this specific area has been built up in the exchange of information and financial assistance during the Criminal Justice process.

To confirm or deny whether West Midlands Police hold any additional information would allow inferences to be made about the nature and extent of national security related activities which may or may not take place in a given area. This could enable terrorist groups to take steps to avoid detection, and as such, confirmation or denial would be damaging to national security.

By confirming or denying any policing arrangements of this nature would render national security measures less effective. This would lead to the compromise of ongoing or future operations to protect the security or infra-structure on the UK and increase the risk of harm to the public.

Public Interest for Section 30

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. Confirming that information exists could promote public trust in providing transparency and demonstrating openness and accountability into how the investigation took place. It could also provide reassurance to the public that the Police Service takes all reports of a crime seriously and conducts investigations

appropriately. To confirm could allow the public to have a better understanding of the effectiveness of the Police Service.

However, by its very nature information held relating to informants is sensitive in nature. Under FOI there is a requirement to comply with Section 1(1)(a) and confirm what information is held. In some cases it is that confirmation, or not, which could disclose facts harmful to informants. In some cases their mere existence can place individuals in grave danger. The only methodology which will provide the required degree of protection to those individuals is if the force takes advantage of its ability under FOI legislation to, when appropriate, not confirm or deny that the information requested is or is not held. The Police Service will never disclose information which could identify investigative activity and therefore undermine their investigations. To do so would hinder the prevention or detection of crime.

Balancing Test

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. The security of the country is of paramount importance and the Police Service will not divulge whether any other information is or is not held if to do so would place the safety of an individual at risk or undermine National Security. Whilst there is a public interest in the transparency of policing operations and investigations, providing assurance that the Police Service is appropriately and effectively engaging with the threat from criminals, there is a very strong public interest in safeguarding both National Security and the integrity of police investigations in knowing that policing activity is appropriate and balanced in matters of National Security; this will only be overridden in exceptional circumstances.

These points were agreed by the Information Tribunal in the case of *ICON v Metropolitan Police*, EA/2010/2006, where the request was for informant spend at borough level.

Although the information in this case was subject to substantive exemptions, the key public interest balancing point, was highly persuasive.

'CHIS are given strong guarantees that their identities will be protected. In some instances, a prosecution may be stopped rather than risk the identity, or in some cases even the existence, of a CHIS being revealed. We accept the evidence of DI D as to the "paranoia" of those acting, or contemplating acting, as a CHIS and accept that they would view the disclosure of the disputed information as a breach of confidence that would significantly undermine their confidence in having their identities protected'.

It is therefore our opinion that for these issues the balancing test for confirming or not that any other information is held, is not made out.