

Public Interest Test – 11855/19

Applicable Exemption:

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

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 whether further any information is held would provide confirmation of the existence, or otherwise, of further investigations allowing anyone involved (including the offenders) to ascertain the level of police knowledge of the incidents.

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 investigation 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 or denying 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.

Considerations against confirming or denying

Law Enforcement:

Where the 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 any further investigation(s) 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.

Although confirmation of whether or not any further 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.

The issue of transparency is noted. However, on balance I consider that the public interest in confirming or denying whether any further information exists is outweighed by the potential impact release would have on future law enforcement activities. West Midlands Police will not disclose information that could reveal personal information or could compromise the future law enforcement role of the force.

No inference can be taken from the above however that any further information does or does not exist.