

Harm

Releasing information collected during the course of an investigation should always be handled sensitively. Disclosure of information through the Freedom of Information Act removes any of the legal strictures and assumptions of confidentiality associated with the due legal process. Routinely disclosing information related to investigations under Freedom of Information could set a harmful precedent for potentially causing interference with the effective conduct of current and future investigations or proceedings. As a consequence, any on-going or subsequent court proceedings could be jeopardised where release of information regarding an individual(s) was identified.

Factors favouring disclosure:

Transparency

Disclosing information about the investigations West Midlands Police conducts would provide a greater transparency in 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. Disclosing the information 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 and subsequently conducting law enforcement activities which fall outside their remit. By making certain that public authorities disclose information in relation to investigations and law enforcement, this should provide the necessary safeguards and satisfy the public interest in this matter.

Factors favouring non-disclosure:

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. 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.

Efficient and Effective Conduct of the Service

Disclosing information about any past or current investigations is not something that was envisaged to fall under the remit of the FOI Act.

The following passage taken from an Information Tribunal decision (case EA/2005/0027) provides a basis to the above point:

'The investigation and prosecution of crime involve a number of essential requirements. These include the need to avoid prejudicing effective law enforcement, the need to protect witnesses and informers, the need to maintain the independence of the judicial and prosecution processes, and the need to preserve the criminal court as the sole forum for determining guilt. Because of this, the Act will exclude information relating to the investigation and prosecution functions of the police, prosecutors, and other bodies carrying out law enforcement work such as the Department of Social Security or the Immigration Service. The Act will also exclude information relating to the commencement or conduct of civil proceedings.'

In light of this decision, the interest of the public is best served by refusing to disclose information if it may adversely affect the investigative process. In this case, the request specifically asks for information involving an investigation. Conclusions drawn from any investigation should be

decided by due proper processes, not by any inference that can be taken from any disclosure under the FOI Act. There would only be a public interest argument if it could be shown that there is a wider public interest that would be served by disclosing that information. 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 activities related to this key law enforcement role effectively away from public scrutiny until such times as the details need to be made public. A hindrance to these activities may ultimately put the public at greater risk.

Balancing Test:

For a public interest test, factors that favour release need to be measured against factors 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 accountability are noted. However, on balance it is considered that the public interest in disclosure of the information is outweighed by the potential impact release would have on current investigations.

Although disclosure of the requested information might provide a greater transparency with regards to the investigative activities that West Midlands Police conduct, there are already a number of checks and balances on authorities to assess whether they are conducted appropriately. Releasing information outside of such a schedule could undermine the smooth running of these processes and would impact on future judicial proceedings.

Having considered the arguments for and against, at this moment in time, it is our opinion that the public interest test favours maintaining the non-disclosure of the requested information. West Midlands Police will not disclose information that could compromise the future law enforcement role of the force.