

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held. Where exemptions are relied upon Section 17 of the FOIA requires that we provide the applicant with a notice which: a) states that fact b) specifies the exemption(s) in question and c) states (if that would not otherwise be apparent) why the exemption applies.

West Midlands Police can neither confirm nor deny that it holds any other information relevant to serious/terrorism offences pertinent to this request as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply, by virtue of the following exemptions:

Section 24(2) National Security
Section 31(3) Law Enforcement

Sections 24 and 31 are prejudice based qualified exemptions, both evidence of harm and public interest considerations need to be articulated to the applicant.

Harm in Confirming or Denying that Information is held

Policing is an information-led activity, and recording of all offences, including serious/terrorism offences, forms part of a fundamental day-to-day delivery of effective operational law enforcement.

Although purely statistical data, to confirm or deny whether any information relating to serious/terrorism offences is held would reveal investigative activity enabling serious offenders to identify force areas which may be 'safer' to carry out their offending.

To confirm or deny whether information relating to serious/terrorism offences is held would be extremely useful to those involved in serious criminal / terrorism activity which would ultimately undermine ongoing investigations would could lead to police officers having to be removed from their frontline duties in order to increase manpower on an investigation.

Furthermore, to confirm or deny whether information relating to question 1(ii) has the potential to undermine the flow of information (intelligence) received from members of the public into the Police Service relating to these types of offences thereby undermining National Security and leaving the United Kingdom at risk of more terrorist attack.

Public Interest Considerations

Section 24(2) National Security

Factors favouring complying with Section 1(1)(a) confirming that information is held

The public are entitled to know how public funds are spent and how resources are distributed within an area of policing. To confirm where these offences have occurred would enable the general public to hold West Midlands Police to account ensuring all such offences are recorded and investigated appropriately. In the current financial climate of cuts and with the call for transparency of public spending this would enable improved public debate.

Factors against complying with Section 1(1)(a) confirming or denying that information is held

Security measures are put in place to protect the community we serve. As evidenced within the harm to confirm where serious/terrorism offences have occurred would highlight to criminals/terrorists, and individuals intent on carrying out criminal activity, vulnerabilities within West Midlands Police.

Taking into account the current security climate within the United Kingdom, no information (such as the citing of an exemption which confirms serious/terrorism offences have occurred within West Midlands Police jurisdiction; or conversely, stating no information is held) which may aid an offender should be disclosed. To what extent this information may aid an offender is unknown, but it is clear that it will have an impact on a force's ability to monitor serious crime / terrorist activity.

Irrespective of what information is or isn't held, the public entrust the Police Service to make appropriate decisions with regard to their safety and protection and the only way of reducing risk is to be cautious with what is placed into the public domain.

The cumulative effect of criminals gathering information from various sources would be even more impactful when linked to other information gathered from various sources about serious crime /terrorism. The more information disclosed over time will give a more detailed account of the tactical infrastructure of not only a force area but also the country as a whole.

Any incident that results from such a disclosure would, by default, affect National Security.

Section 31(3) Law Enforcement

Factors favouring complying with Section 1(1)(a) confirming that any other information is held

Confirming that any other information exists relating to serious crime / terrorism offences would lead to a better informed public which may encourage individuals to provide intelligence in order to reduce offences.

Factors against complying with Section 1(1)(a) neither confirm nor denying that any other information is held

Confirmation or denial that information relating to serious offences is held in this case would suggest West Midlands Police take their responsibility to protect information dismissively and inappropriately.

West Midlands Police has a duty of care to the community at large and public safety is of paramount importance. If an FOI disclosure revealed information to the world that would undermine the security of the national infrastructure, offenders, including criminal / terrorist organisations, could use this to their advantage which would compromise public safety and more worryingly encourage offenders to carry out further crimes.

By its very nature, information relating to whether or not serious/terrorism offences have occurred within a specific force area undoubtedly undermines the effective delivery of operational law enforcement. 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 members of the public, police officers, other law enforcement agencies and their employees.

Balancing Test

The points above highlight the merits of confirming or denying whether serious/terrorism offences have occurred in your force area which are linked to social media. The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. As part of that policing purpose, information is gathered which can be highly sensitive relating to high profile investigative activity.

Weakening the mechanisms used to monitor any type of criminal activity, and specifically serious/terrorist activity would place the security of the country at an increased level of danger.

In addition anything that places that confidence at risk, no matter how generic, would undermine any trust or confidence individuals have in the Police Service. Therefore, at this moment in time, it is our opinion that for these issues the balance test favours neither confirming nor denying that any information is held with regard to question 1(ii).