

Request Reference: 1642A/22

3. As per question 2 – how many of these registered sex offenders have notified police that they are living in The Gambia?

Applicable exemptions:

Section 27(4) - International relations

Section 31(3) - Law enforcement

The duty to confirm or deny in regard to your request for information

The Freedom of Information Act (FOIA) is applicant and motive blind. Any information disclosed under the Act is a disclosure to the world at large and would be disclosed to any individual upon request. For this reason, a request under the Act cannot be a private transaction. Both the request itself, and any information which may be disclosed, are considered suitable for open publication.

Section 1(1)(a) of FOIA requires a public authority to inform a requestor whether it holds the information specified in the request. This is known as the 'the duty to confirm or deny'. The Information Commissioners Office (ICO) states, however, that *'there may be occasions when complying with the duty to confirm or deny under section 1(1)(a) would itself disclose sensitive or potentially damaging information that falls under an exemption...in these circumstances the Act allows a public authority to respond by refusing to confirm or deny whether it holds the requested information. This is called a 'neither confirm nor deny' (NCND) response.'*

Additional ICO Guidance can be found via the following link - [When to refuse to confirm or deny information is held \(ico.org.uk\)](#)

The use of NCND in a consistent manner is recognised in the ICO guidance which states *'It can be important to use a neither confirm nor deny response consistently, every time a certain type of information is requested, regardless of whether the information is actually held or not. For this reason public authorities need to be alert to the possibility of receiving future requests for the same type of information when handling very specific or detailed requests.'*

This consistent approach is further commented upon by the ICO who states, *'There are situations where a public authority will need to use the neither confirm nor deny response consistently over a series of separate requests, regardless of whether it holds the requested information. This is to prevent refusing to confirm or deny being taken as an indication of whether information is held. Before complying with section 1(1)(a), public authorities should consider both whether any harm would arise from confirming that information is held and whether harm would arise from stating that no information is held. Otherwise, if the same (or same type of) requests were made on several occasions, a changing response could reveal whether information was held.'*

As such, the starting point and main focus in most cases will be theoretical considerations about the consequences of confirming or denying that a particular type of information is held. The ICO further reminds public authorities that they can only refuse to confirm or deny whether it holds the information, *'if this would itself reveal information that falls under an exemption'*.

Overall Harm for s27 International Relations and s31 Law Enforcement

Modern-day policing is intelligence led, and West Midlands Police works in partnership with other agencies in order to combat a variety of threats. Confirming or denying that specific information exists relevant to this request would seriously undermine this partnership approach in respect of measures concerning public protection.

Overall, information that undermines the integrity of these intelligence sharing activities will adversely affect public safety within any other member country, including Gambia, and would have a negative impact on both international relations and law enforcement.

Public Interest Test

S27 - Factors in favour of confirming or denying information is held – It is accepted that releasing information about West Midlands Police international work would be of interest to the public. It is agreed that disclosing this information would bring greater transparency and aid the public in being able to see the nature of the work West Midlands Police does and how it supports international policing. This international sharing of knowledge contributes to tackling crime globally which, in turn, is likely to strengthen public perceptions of personal safety.

S27 – Factors against confirming or denying information is held - The importance of building and maintaining goodwill within international relations cannot be underestimated. By confirming or denying whether West Midlands Police has circulated specific information (intelligence) amongst global law enforcement agencies would undermine the relationship and trust built up between police forces and international agencies to the detriment of any future enquiries that may be conducted. A compromise to intelligence sharing could lead to fewer successful international investigations, contrary to the public interest.

S31 - Factors in favour of confirming or denying information is held – Confirmation or denial of this information would lead to better public awareness about how, and where the force undertakes work with other countries in order to tackle threats to Child Sexual Exploitation. It would allow further understanding of potential criminal international threats and show whether the force is addressing this in a proactive way.

S31 - Factors against confirming or denying information is held – Confirmation or denial any information is held would reveal whether or not West Midlands Police has actively shared intelligence in respect of a specific threat to public protection, and to which countries. This would compromise the forces' ability to engage and assist overseas police forces and agencies in tackling other international threats. This would assist the criminal fraternity in understanding the intelligence picture, which they could then exploit for further gain. The safety of the public is of paramount importance to policing purposes, and any increase in crime would place the public at risk of harm.

Balance Test

Whilst there is a public interest in the transparency of how West Midlands Police supports international policing, there is a very strong public interest in safeguarding the flow of intelligence sharing with outside agencies, including police forces abroad.

As much as there is a public interest in knowing that policing activity is appropriate and balanced, this will only be overridden in exceptional circumstances. As discussed above for this case. Intelligence sharing is a sensitive issue and therefore it is our opinion that for the reasons given, confirmation or denial that any information is held, at this time, is not made out.