

Prejudice/Public Interest Test

Exemptions engaged:

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

Section 31(3) - Law enforcement

Section 38(2) - Health and safety

Harm

Should officers currently be subject to an investigation for allegations of sexual misconduct, it would likely ensue that in some cases formal charges may be made. However, we also need to consider that not all allegations are proven and may not lead to a formal charge. To confirm or deny that any information is held regarding ongoing investigations, would highlight that officers are or are not currently subject to an investigation. Such an awareness would also highlight to suspects that their victims have either reported their offending to the police or not, which either way could lead to further offending against their victims causing physical and/or emotional trauma.

Irrespective of whether information is or isn't held, ongoing investigations would also be compromised if the offender were made aware an investigation into their behaviour is ongoing, which would enable steps to be taken by them to destroy evidence or put pressure on their victims to drop their allegations.

*Section 30 - Factors favouring complying with section 1(1)(a) confirming or denying information is held:*

Confirming or denying whether any other information exists relevant to this request would lead to a better-informed public, by identifying that West Midlands Police robustly investigate all aspects of criminal offending, including allegations made against their own officers. This fact alone may encourage individuals to provide intelligence in order to assist with investigations and promote public trust in providing transparency, and demonstrating openness and accountability into where the police are currently focusing their investigations.

*Section 30 - Factors favouring not complying with section 1(1)(a) neither confirming nor denying information is held:*

Confirmation or denial that any other information is held would suggest West Midlands Police take their responsibility to appropriately handle and manage intelligence supplied to them flippantly.

Under FOI there is a requirement to comply with s1(1)(a) and confirm what information is held. In some cases it is that confirmation, or not, which could disclose facts which would undermine the investigative process, and in such cases, West Midlands Police takes advantage of its ability under FOI legislation to, where appropriate, neither confirm nor deny that information is or is not held.

Irrespective of what information is or isn't held, any information which could be used to undermine prosecutions or aid offenders to continue with their behaviour, is not in the public interest.

*Section 31 – Factors favouring complying with section 1(1)(a) confirming or denying information is held:*

To confirm or deny in this case, would provide transparency in the way police officers are dealt with when suspected of carrying out criminal sexual offending, and may improve public debate into the credibility of how West Midlands Police deals with these allegations within the force. It would also serve to demonstrate that West Midlands Police is open and accountable.

*Section 31 - Factors favouring not complying with section 1(1)(a) neither confirming nor denying information is held:*

To confirm or deny that any other information is held, would risk undermining the investigative process whilst determining whether any officer is responsible for improper conduct and/or a criminal offence; including whether or not an allegation of this nature leading to police intervention was proportionate under the circumstances.

West Midlands Police has a duty of care to the community at large and public safety is of paramount importance. If a FOI disclosure revealed information to the world (by citing an exemption or stating no information held) that would undermine an investigation and place the safety of an individual at risk, this could be used to offenders' advantage which would compromise any potential victims and public safety generally. It may also encourage offenders to carry out further crimes as detailed within the harm above.

West Midlands Police relies on information being supplied by the public. Irrespective of what information is or isn't held in relation to this request, by applying substantive exemptions would indicate that information is held and there are currently ongoing investigations. Such action would act as a deterrent to the public to provide intelligence to the force, which would further undermine public safety with repercussions that could hinder the prevention or detection of crime.

*Section 38 - Factors favouring complying with section 1(1)(a) confirming or denying information is held:*

Confirmation of whether information is or isn't held would provide reassurance to the public that West Midlands Police take all allegations seriously. This awareness could be used to improve any public consultations/debates in relation to this subject and also allow the public to take steps to protect themselves.

*Section 38 - Factors against complying with s1(1)(a) neither confirming nor denying that information is held:*

Confirming or denying that information exists could lead to the loss of public confidence in the ability of west Midlands Police to protect the wellbeing of the community.

West Midlands Police has a duty of care towards the public and to reveal information via a FOI request which would place the safety of individuals in danger, is not in the public interest.

Balance Test

The points above highlight the merits of confirming, or denying, whether any other information relevant to this request exists. 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, various operations may or may not be ongoing. The Police Service will never divulge whether any other information pertinent to these questions does or does not exist, if to do so would place the safety of an individual(s) at risk, compromise an ongoing investigation, or undermine the policing purpose in the effective delivery of operational law enforcement.

Whilst there is a public interest in the transparency of policing operations and investigations, providing reassurance that the Police Service appropriately and effectively investigates allegations of offending by police officers, there is a very strong public interest in safeguarding the health and safety of individuals. As much as there is a public interest in knowing that policing activity into allegations against its own police officers is appropriate and balanced, it will only be overridden in exceptional circumstances.

Therefore after considering the arguments above, it is my opinion that the balance test for confirming or denying that any other information is held, weighs more heavily on the side of neither confirming nor denying and is appropriate.

No inference can be taken from this refusal that information does or does not exist.