

Please ask for: Andrea Gabbitas
Telephone Number: 0121 626 6060
Our Reference: 2023-00343
wmpcc@westmidlands.police.uk



west midlands
police and crime
commissioner

Public Interest Test

Freedom of Information

Re: Section 36 (1) (b) (2) (b) (i) and (ii) and (c):
Inhibit Free and Frank Provision of Advice
Inhibit Free and Frank Exchange of Views For Purposes of Deliberation
Prejudice to the Effective Conduct of Public Affairs

The Prejudice Test

In legal terms, the word 'prejudice' is commonly understood to mean harm. The term 'inhibit' does not have exactly the same meaning as 'prejudice'. Nevertheless, in the view of the Information Commissioner's Office, the approach to adopt when deciding whether there is a likelihood that the provision of advice or the exchange of views will be inhibited, is the same as that when applying the prejudice test.

This request relates to matters, that are relevant to an ongoing trade dispute, ongoing negotiations to settle that trade dispute, ongoing police operations and claim for a civil injunction. Disclosure of the requested information is exempt, because in the reasonable opinion of a qualified person, disclosure of the information would, or would be likely to inhibit the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation.

This request relates to matters, that are relevant to an ongoing trade dispute, ongoing negotiations to settle that trade dispute, ongoing police operations and claim for a civil injunction. Disclosure of the requested information is exempt, because in the reasonable opinion of a qualified person, disclosure of the information would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

The harm that would be caused is real, actual and of substance. There is a causal link, between disclosing the information and the prejudice claimed. It is submitted that, in view of the ongoing trade dispute, ongoing negotiations to settle that trade dispute, ongoing police operations and claim for a civil injunction that harm would occur, or in the alternative, would be likely to occur.

Factors Favouring Disclosure

There might be an interest on the part of the public and/or a public interest, in disclosing information, relating to operational policing of the trade dispute, because of the public concern and interest, arising from the trade dispute.

There might be an interest on the part of the public and/or a public interest, in disclosing information, relating to the ongoing trade dispute between Birmingham City Council and Unite the Union, including the information referred to in the request for information, relating to West Midlands Police, the Office of the Police and Crime Commissioner and the Police and Crime Commissioner.

Releasing information might promote accountability and transparency, good decision making, justice and fair treatment.

It might enable the public to be informed and/or to understand, how the police have approached the operational policing of the trade dispute and have balanced, various relevant considerations, including concerns that have been raised, about the policing of the trade dispute.

Factors Favouring Non-Disclosure

There is a need for the Commissioner and/or the OPCC, to engage with West Midlands Police, external organisations and individuals, with a view to enabling the free and frank provision of advice or the free and frank exchange of views, for the purposes of deliberation, in connection with matters that relate to policing, crime, community safety and related matters, without that information being disclosed to the public.

This is in the interests of facilitating engagement, to enable relevant parties, to better understand their respective aims and objectives, so as to resolve any misunderstandings or differences, improve mutual trust and confidence and improve relations. This is better and more effectively achieved within a safe space, for the benefit of the parties directly involved in the dispute.

This will facilitate and promote effective and informed communication, both from and to relevant parties and individuals and effective decision making, based on the best available information. That will promote trust and confidence, when dealing with organisations and individuals, that can then in turn achieve by agreement, discussion and understanding, what might otherwise, have to be achieved by enforcement. This is particularly important, within the context of ongoing, contentious and sensitive circumstances.

Disclosing the requested information to the public, would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs. It would adversely impair the quality of deliberation and decision making by the Commissioner and/or the OPCC and relevant partners. It would hinder collective and collaborative working, which is not in the public interest.

Disclosing operational policing information, relating to an ongoing police operation, would otherwise prejudice, or would be likely to prejudice the effective conduct of public affairs. There is a need for the Chief Constable, to be able to brief the Commissioner and/or the OPCC, concerning operational, tactical and strategic policing decision making, that is the responsibility of the Chief Constable, without that information being disclosed to the public, particularly where that relates to ongoing police operations and an ongoing claim for a civil injunction.

This will ensure that the Chief Constable is able to exercise his independent, objective and impartial judgement, on all matters that relate to operational policing of the trade dispute. In turn, this will ensure the Chief Constable acts lawfully, appropriately and proportionality, having regard to the rights and freedoms of all concerned, including those directly and indirectly involved in the trade dispute, the general public and the wider public interest.

To enable the Commissioner to discharge his extensive and wide-ranging duties and responsibilities, including holding the Chief Constable and police service to account, on behalf of the public and to ensure, good decision making, integrity, impartiality, justice, fair treatment, best use of public resources, engaging with relevant parties to facilitate trust and confidence and to balance the rights and freedoms of all those directly and indirectly involved, there is a need to be briefed on operational policing, without that information being disclosed to the public, particularly where that relates to ongoing police operations.

The disclosure of the information requested, will not further the public interest, or add to public understanding, either in relation to the ongoing trade dispute, ongoing negotiations to settle that trade dispute, ongoing police operations and claim for a civil injunction.

Public Interest Test

We have carefully considered the basis of the exemptions at Section 36 (1) (b) (2) (b) (i) and (ii) and (c), the prejudice test, the factors favouring disclosure, the factors favouring non-disclosure, the Information Commissioner's Office Guidance and all the relevant circumstances, relating to the case and request.

We have weighed the public interest in maintaining the exemption against the public interest in disclosure. We have decided to apply the exemptions at Section 36 (1) (b) (2) (b) (i) and (ii) and (c), because the public interest in maintaining the exemption, outweighs the public interest in disclosure, for the following reasons:

Free and Frank Provision of Advice and Free and Frank Exchange of Views for Purposes of Deliberation

There is a need for the Commissioner and/or the OPCC, to engage with West Midlands Police, external organisations and individuals, with a view to enabling the free and frank provision of advice or the free and frank exchange of views, for the purposes of deliberation, in connection with matters that relate to policing, crime, community safety and related matters, without that information being disclosed to the public.

This is in the interests of facilitating engagement, to enable relevant parties, to better understand their respective aims and objectives, so as to resolve any misunderstandings or differences, improve mutual trust and confidence and improve relations. This is better and more effectively achieved within a safe space, for the benefit of the parties directly involved in the dispute. The absence of an opportunity to do so, will be counter-productive and disruptive, to effective and efficient governance and contrary to the public interest.

This will facilitate and promote effective and informed communication, both from and to relevant parties and individuals and effective decision making, based on the best available information. That will promote trust and confidence, when dealing with organisations and individuals, that can then in turn achieve by agreement, discussion and understanding, what might otherwise, have to be achieved by enforcement. This is particularly important, within the context of ongoing, contentious and sensitive circumstances.

Prejudice to the Effective Conduct of Public Affairs

Disclosing operational policing information, relating to an ongoing police operation, would otherwise prejudice, or would be likely to prejudice the effective conduct of public affairs. There is a need for the Chief Constable, to be able to brief the Commissioner and/or the OPCC, concerning operational, tactical and strategic policing decision making, that is the responsibility of the Chief Constable, without that information being disclosed to the public, particularly where that relates to ongoing police operations and an ongoing claim for a civil injunction.

This will ensure that the Chief Constable is able to exercise his independent, objective and impartial judgement, on all matters that relate to operational policing of the trade dispute. In turn, this will ensure the Chief Constable acts lawfully, appropriately and proportionality, having regard to the rights and freedoms of all concerned, including those directly and indirectly involved in the trade dispute, the general public and the wider public interest.

To enable the Commissioner to discharge his extensive and wide-ranging duties and responsibilities, including holding the Chief Constable and police service to account, on behalf of the public and to ensure, good decision making, integrity, impartiality, justice, fair treatment, best use of public resources, engaging with relevant parties to facilitate trust and confidence and to balance the rights and freedoms of all those directly and indirectly involved, there is a need to be briefed on operational policing, without that information being disclosed to the public, particularly where that relates to ongoing police operations.

This request relates to matters, that are relevant to an ongoing trade dispute, ongoing negotiations to settle that trade dispute, ongoing police operations and claim for a civil injunction. The public interest is in favour of ensuring, that these matters are progressed, whilst remaining between the relevant parties, recognising the importance of preserving and promoting trust and confidence between the relevant parties and the sensitivities relating to the contentious discussions and negotiations between the relevant parties, because this will best serve the prevention of crime and disorder, ensure lawful picketing, promote public health and facilitate negotiations in good faith, with a view to reaching a settlement at the earliest possible opportunity.

The harm that would be caused is real, actual and of substance. There is a causal link, between disclosing the information and the prejudice claimed. It is submitted that, in view of the ongoing trade dispute, ongoing negotiations to settle that trade dispute, ongoing police operations and claim for a civil injunction that harm would occur, or in the alternative, would be likely to occur.

Disclosing operational policing information, relating to an ongoing police operation, would, or would be likely to, prejudice the prevention or detection of crime, enforcement of the law and/or the administration of justice.

The disclosure of the information requested, will not further the public interest, or add to public understanding, either in relation to the ongoing trade dispute, ongoing negotiations to settle that trade dispute, ongoing police operations and claim for a civil injunction.

Conclusion

For the reasons that are set out in this Public Interest Test:

We have carefully considered the basis of the exemptions at Section 36 (1) (b) (2) (b) (i) and (ii) and (c), the record of the qualified person's opinion, the prejudice test, the factors favouring disclosure, the factors favouring non-disclosure, the Information Commissioner's Office Guidance and all the relevant circumstances, relating to the case and request.

We have weighed the record of the qualified person's opinion and the public interest in maintaining the exemptions against the public interest in disclosure. We have decided to apply the exemptions at Section 36 (1) (b) (2) (b) (i) and (ii) and (c), because the public interest in maintaining the exemption, outweighs the public interest in disclosure.