

OFFICIAL



Heddlu Police

DYFED-POWYS

FOI Reference: 501/2020

Request:

I'm seeking the following information under the Freedom of Information Act 2000. In order to assist you with this request, I've tried to outline my requests as specifically as possible. If any points are unclear or you anticipate any resolvable issues with this request, I would be very grateful if you would contact me at an early stage so I can clarify or reword it. If the cost of responding to all of the questions is too high, please prioritise questions in the following order – 1, 5, 3, 4, 2.

Please provide the information in digital form, either on a spreadsheet or word processing document to the email address provided below.

If you have any queries please don't hesitate to contact me via email or phone and I will be very happy to clarify what I am asking for and discuss the request, my details are outlined below.

1. In each of the months since and including May 2019, how many times has Dyfed-Powys Police been made aware of comments or behaviour of a potentially racially discriminative nature posted by staff in private groups or messages on social media platforms, including WhatsApp and Facebook.

2. In each of the months since and including May 2019, how many times has the force been made aware of potentially inappropriate comments or behaviour of a racially discriminative nature posted publicly by staff on social media platforms, including WhatsApp and Facebook.

3. If any, how many staff members in total have been accused of potentially inappropriate conduct on social media platforms of a racially discriminative nature since 1 May 2019.

4.a) If any, how many staff members in total have been reprimanded for such behaviour since May 2019?

b) How many times was each individual reprimanded, and what form did this take?

5. If any, how many of these incidents were referred to the IOPC?

Response 1:

I can confirm that Dyfed-Powys Police does hold the information requested, however the following exemptions apply (please see the end of the document for the explanation of the applied exemptions).

- **Section 31(1)(g) subsection 2(b) – Law Enforcement**
- **Section 40(2) – Personal Information**

Response 2:

I can confirm that Dyfed-Powys Police does hold the information requested, the details of which are as follows:

- There have been a total of zero (0) times in which Dyfed Powys Police force been made aware of potentially inappropriate comments or behaviour of a racially discriminative nature posted publicly by staff on social media platforms.

Responses 3 and 4:

I can confirm that Dyfed-Powys Police does hold the information requested, however the following exemptions apply (please see the end of the document for the explanation of the applied exemptions)

- **Section 31(1)(g) subsection 2(b) – Law Enforcement**
- **Section 40(2) – Personal Information**

Response 5:

I can confirm that Dyfed-Powys Police does hold the information requested, however the following exemptions apply (please see the end of the document for the explanation of the applied exemptions)

- **Section 31(1)(g) subsection 2(b) – Law Enforcement**

Explanation for the applied exemptions:

Section 31(1)(g) subsection 2(b) – Law Enforcement

Section 31 is a prejudiced-based qualified exemption and there is a requirement to articulate the harm that would be caused by disclosing the information, as well as carrying out a public interest test in order to establish whether the public interest in maintaining the exemption may be outweighed by a wider public benefit in disclosure.

Overall Harm:

In this particular case the requestor has requested under the Freedom of Information (FOI) Act, information in relation to misconduct investigations. To disclose the details/information that has been recorded for the purpose of misconduct investigations would or would be likely to prejudice the force of its function in relation to Law Enforcement. This would have an adverse effect not only on the force but also on any individual(s) involved.

Public Interest Test:

Factors favouring disclosure

Disclosure of the information would provide a better awareness which may reduce crime or lead to more information from the public as well as provide transparency and satisfaction to the public that such investigations are conducted properly.

Factors favouring non-disclosure

To release the requested information would undermine and compromise the authorities approach to law enforcement in relation to misconduct investigations of such matters as a consequence of which the investigation would be prejudiced and an individual's right to a fair trial would be undermined. This in turn would hinder the prevention and detection of crime thereby placing individuals at risk.

Balancing Test

After considering the advantages and disadvantages in disclosure it falls upon Dyfed-Powys Police to conduct a balance test on the issues. The strongest argument for release, which is public awareness, needs to be weighed against the strongest argument for non-release which in this case is effective law enforcement.

Effective Law Enforcement is the core function of the police service and is of paramount importance. The Force has a duty to ensure that it does not disclose information that would undermine or compromise its approach to law enforcement; which would result in misconduct investigations being prejudiced and an individual's right to a fair trial being undermined and the force failing in adhering to the policing purpose. In this case there would be no tangible community benefit by the release of the information which is the main focus in considering the public interest.

Therefore, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Section 40(2) Personal Information:

Section 40(2) applies to third party personal data and is exempt from disclosure under the Freedom of Information Act 2000 if disclosure, in relation to data subject to law enforcement processing, would breach any of the data protection principles contained within Part 3 - Chapter 2 of the Data Protection Act 2018. Under Section 34 within Chapter 2 "The Controller in relation to personal data is responsible for and must be able to demonstrate, compliance with" Chapter 2. Such information would not be released under the Freedom of Information Act 2000 unless there is a strong public interest. One of the main differences between the Freedom of Information Act 2000 and the Data Protection Act 2018 is that any information released under FOI is released into the public domain, not just the individual requesting the information and disclosure under the Act must be made with that in mind. As such, any release that identifies an individual through releasing their personal data, even third party personal data is exempt.

Personal data is defined under Section 3 of the Data Protection Act 2018 as:

"(2) 'Personal data' means any information relating to an identified or identifiable living individual (subject to subsection (14)(c)).

(3) 'Identifiable living individual' means a living individual who can be identified, directly or indirectly, in particular by reference to—

(a) An identifier such as a name, an identification number, location data or an online identifier, or

(b) One or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual."

All members of the public including those employed by the force have an intrinsic right to privacy and these rights are protected by virtue of the Human Rights Act, the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) and a public authority must not

interfere with that right. Any release of the information subject to the exemption is likely to compromise those rights.

Data Protection Act 2018

Part 3 – Law Enforcement – Chapter 2 Principles Section 35

The first data protection principle:

“(1) The first data protection principle is that the processing of personal data for any of the law enforcement purposes must be lawful and fair.”

General Data Protection Regulation

Article 5 of the GDPR – ‘Principles relating to processing of personal data’ provides:

“1. ‘Personal data’ shall be

- (a) Processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);*
- (b) Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest...*

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 (‘accountability’).”

Dyfed-Powys Police would not want to disclose any information that could potentially identify individuals. In this particular case, to release information in relation to misconduct investigations would lead to the identification of individuals. To release such information would be a direct breach of Data Protection legislation i.e. the first data protection principle and as a consequence I am satisfied that Section 40(2) Personal Information exemption is applicable to the release of the information.

The Section 40 exemption is a class-based exemption. This means that the legislators when writing the legislation considered that the release of such information under the Freedom of Information Act 2000 would cause harm to the public authority or individual concerned and is in part qualified and in part absolute, in the present case it would be absolute as to release the information would breach Data Protection legislation and therefore there is no requirement to carry out a public interest test.

It should be noted that owing to the systems adopted by Dyfed-Powys Police in relation to the recording of such matters the information provided may or may not be accurate.

(This is a response under the Freedom of Information Act 2000 and disclosed on 28/09/20)