

OFFICIAL



Heddlu Police

DYFED-POWYS

FOI Reference: 005/2021

Request:

1. How many Osman warning notices, also known as threat to life notices, did your force issue between 1/1/2020 and 31/12/2020. How many were issued to individuals less than 18 years old? How many were issued to men and how many to women?

Please state the age in years of the youngest individual to receive such a notice during this period

2. How many Osman warning notices, also known as threat to life notices, did your force issue between 1/1/2019 and 31/12/2019? How many were issued to individuals less than 18 years old? How many were issued to men and how many to women?

Please state the age in years of the youngest individual to receive such a notice during this period

3. How many Osman warning notices, also known as threat to life notices, did your force issue between 1/1/2018 and 31/12/2018? How many were issued to individuals less than 18 years old? How many were issued to men and how many to women?

Please state the age in years of the youngest individual to receive such a notice during this period

4. How many Osman warning notices, also known as threat to life notices, did your force issue between 1/1/2017 and 31/12/2017? How many were issued to individuals less than 18 years old? How many were issued to men and how many to women?

Please state the age in years of the youngest individual to receive such a notice during this period

Response 1&2:

I can confirm that Dyfed-Powys Police does hold the information requested, however we are withholding some of that information by virtue of Sections 31, 38 and 40 (please see the end of the document for an explanation of the applied exemptions).

| Year | No. of Osman notices | Under 18 | Gender | Age of youngest |
|------|----------------------|--|--------|-----------------|
| 2019 | 6 | S31(1)(a)(b), S38(1)(a)(b) and S40(2) applies | | |
| 2020 | 5 | | | |

Response 3&4:

Please see the previous similar requests, reference nos. 060/2018 and 391/2019 that have been attached to your initial email.

Explanation of the applied exemptions:

Section 1 of the Freedom of Information Act 2000 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 Freedom of Information Act 2000 requires Dyfed Powys Police, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which:

- (a) states that fact,
- (b) specifies the exemption in question and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

Section 31(1)(a)(b) – Law Enforcement
Section 38(1)(a)(b) – Health and Safety
Section 40(2) – Personal Information

The Section 31 and 38 exemptions are prejudice-based qualified exemptions. There is therefore a requirement to carry out a HARM Test in respect of such information and there is a requirement to carry 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.

Section 40(2) is a class-based absolute 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. There is therefore no requirement to carry out a HARM Test in respect of such information. There is also no requirement to carry out a Public Interest Test.

Section 31(1)(a)(b) – Law Enforcement:

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to prejudice -

- (a) the prevention or detection of crime*
- (b) the apprehension or prosecution of offenders”*

Section 31 Evidence of Harm

Under the Act, we cannot, and do not request the motives of any application for information. We have no doubt that the vast majority of requests made under the Act are legitimate and the applicants do not have any ulterior motives. However, in disclosing information to one applicant, we are expressing a willingness to provide it to anyone in the world. This means that a disclosure to a genuinely interested and concerned person automatically opens it up for a similar disclosure, including those who would use the information to gain an advantage over our ability to exercise our core function which is Law Enforcement.

In considering whether or not this information should be disclosed, consideration has been given to the potential harm that could be caused by disclosure.

The police service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. Disclosure of broken down information i.e. the age/gender in respect of an individual who is the subject of an Osman warning could pose a potential risk of identifying that individual/victim by providing further details of each warning issued. Disclosure of this information could also identify to those who commit such matters; that the victims they have made threats to may or may not have made a report to police, which would allow those involved to be more confident to target individuals and may lead to an increase in crime which in turn would impact upon not only police resources within the Force but also law enforcement in relation to hindering the prevention and detection of crime thereby undermining the Force's approach to law enforcement in relation to protecting the communities we serve. By allowing a victim that is already at risk to become at more risk would mean providing more protection by the police service which would again affect police resources. As a police service, our duty is to prevent and reduce crime and providing the broken down information relating to an Osman warning would increase the risk of more crimes being committed against individuals who are already at risk.

Public Interest Test

Factors favouring disclosure:

Factors favouring the disclosure of this information would include better awareness regarding Osman warning information and further details of why Osman warnings are being issued.

Factors favouring non-disclosure:

Factors favouring non-disclosure would be that by disclosing broken down information in relation to Osman warnings could cause victims to be identified and to become more of a target for offenders to commit crimes against. An increase in crime and the fact that any victim put at risk would require stronger protection from the police service would have an impact on police resources and hinder the prevention or detection of crime and place 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 better awareness for the public, needs to be weighed against the strongest argument for non-release which in this case is effective law enforcement. The Police Service is tasked with the prevention and detection of crime and protecting the public. Whilst there is a public interest in better awareness of crimes there is a very strong public interest in reducing crime and the effective use of police resources.

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

Section 38(1)(a)(b) – Health & Safety:

“(1) Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) Endanger the physical or mental health of any individual, or*
- (b) Endanger the safety of any individual”*

Section 38 Evidence of Harm

Wikipedia provides a definition for an Osman Warning letter or notice as described below:

http://en.wikipedia.org/wiki/Death_threat

“Named after a high-profile case, Osman v United Kingdom, these are warnings of death threat or high risk of murder that are issued by British police or legal authorities to the expected victim. They are used when there is intelligence of the threat, but there is not enough evidence to justify the police arresting the expected murderer.”

The basis of the harm is that disclosing broken down information i.e. age/gender in relation to Osman warnings becomes more meaningful and there is a risk of the persons involved being identified. Whilst this is unlikely to happen amongst the general population, those involved in the types of criminality likely to result in the issue of such a warning may be able to draw a meaningful conclusion from the information. The disclosure of details requested regarding Threat to Life warnings, coupled with any information already known could lead to the identification of an individual. For example, if a criminal suspects someone has been given a Threat to Life warning, then they will become aware that there is intelligence available and this could therefore place that individual at risk. The slightest indication or evidence confirming their suspicions would be enough for them to justify taking unlawful action against those they ‘suspect’ have provided the police with intelligence. Disclosure of low level data could ultimately lead to threats, intimidation, serious violence, and serious damage to property or in extreme cases death. Such harm might not be just to the recipient of the warning, but also associates and family.

Public Interest Test

Factors favouring disclosure:

Osman Warnings are a high profile subject and disclosure of the information would provide better informed public awareness and debate in relation to this subject matter as well as the use of public funds in respect of those matters.

Factors favouring non-disclosure:

As detailed within the harm, to disclose broken down information concerning Osman warnings makes the information more meaningful, especially when coupled with any other information already known, which could lead to the identification of an individual. As a consequence the risk to individuals are significant, for example, if a criminal suspects someone has been given an Osman Warning then they will become aware that there is intelligence available and this could therefore place that individual at risk. The slightest indication or evidence confirming their suspicions would be enough for them to justify taking unlawful action against those that they ‘suspect’ have provided the police with intelligence. This could ultimately lead to threats, intimidation, serious violence and serious damage to property or in extreme cases death. Such harm identified might not just be limited to the recipient of the Osman Warning; it may extend to associates and family. As a consequence this would lead to a loss of confidence in the police force to protect the well-being of the community.

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 arguments for disclosure, which is better informed public awareness and debate and use of public funds need to be weighed against the strongest arguments for non-disclosure, which in this case are the risks to individuals are significant and evidenced as well as the loss of confidence in the public authority to protect the well-being of the community. Public safety is of paramount importance

and the police service will not divulge information if to do so would place the safety of an individual at risk.

Therefore, at this moment in time, it is our opinion that for these issues the balancing test for disclosure is not made out.

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 an individual. In this particular case, to release further details regarding the victims, considering the low number of Osman Warnings issued across the force, could lead to the identification of individuals. To release such information would be a direct breach of Data Protection legislation 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 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.

Police Forces in the United Kingdom are routinely required to provide crime statistics to government bodies and the recording criteria is set nationally. However, the systems used for recording these figures are not generic, nor are the procedures used locally in capturing the data. It should be noted that for these reasons this Force's response to your questions should not be used for comparison purposes with any other response you may receive.

(This is a response under the Freedom of Information Act 2000 and disclosed on 01/02/21)