

The Office of the Police and Crime Commissioner for West Yorkshire (OPCC) neither confirms nor denies that it holds any of the information requested.

S17(1) of the FOI Act states that, in relation to any requests for information, a public authority which is relying on a claim that the duty to confirm or deny is relevant or that the information is exempt must give a notice which states the fact, specifies the exemption in question and states why the exemption applies.

To give a statement of the reasons why neither confirming nor denying is appropriate in this case would itself involve the disclosure of exempt information, therefore under S17(4), no explanation can be given. S17(4) states that a public authority is not obliged to make a statement under S17(1) if the statement would involve the disclosure of information which would itself be exempt information.

To the extent that section 40 (5) (b) (i) applies this exemption is absolute. S40(5)(b)(i) states that the duty to confirm or deny does not arise where the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA).

The exemption under S40(5)(b)(i) is engaged because to confirm whether or not the information is held would reveal the personal data of the data subjects as defined by Section 1(1) of the Data Protection Act. To confirm whether or not the information is held would then contravene one of the data protection principles, namely the first one which states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in schedule 2 is met, and in the case of sensitive personal data, at least one the conditions in schedule 3 is also met. Information about criminal records is considered to be sensitive personal information. This exemption is absolute and does not require a public interest test.