

Freedom of Information – Response – 26677

1. What consideration was given to applying for a Restraint Order under s.40 of the Proceeds of Crime Act 2002 (POCA) in relation to Mr XXXXX?

Suffolk County Council (SCC) can confirm that consideration was given to this by the lead AFI (accredited financial investigator) at the time however, records of this are no longer held.

2. Please confirm whether the statutory test (“reasonable grounds to suspect benefit from criminal conduct” combined with a risk of dissipation) was ever assessed by any officer or legal adviser.

Yes.

3. If the test was assessed, what was the outcome of that assessment and what rationale excluded the use of a restraint order?

The outcome was not to proceed. Further details held are being withheld under s.30 and s.42 of the Freedom of Information Act 2000, further details of these exemptions can be found at the bottom of this response.

4. If the test was not assessed, please explain the procedural omission and identify which officer(s) or department(s) were responsible for decisions regarding POCA applications.

N/A.

5. I formally request disclosure of all internal documents, emails, risk assessments, legal advice (where not legally privileged), and decision logs relating to the consideration—or lack thereof—of POCA restraint powers in this case.

SCC can confirm that this information is held however it is being withheld under s.30 and s.42 of the Freedom of Information Act 2000. Please see the bottom of this response for details.

Section 30

Section 30 of the Freedom of Information Act 2000 provides an exemption from disclosing information that a public authority has held at any time for certain investigations or proceedings.

There is no requirement to demonstrate any prejudice or adverse effect when applying s.30 however, the public authority is under a duty to consider whether disclosure should nevertheless be made in the public interest.

Factors in favour of disclosure:

- Further understanding of, and participation in the debate of issues of the day
- Facilitate the accountability and transparency of public authorities for decisions taken by them.

Factors in favour of withholding:

- Trading Standards must ensure they are effective in their investigation and prosecution of offences. Releasing this information in relation to an investigation would likely lead to methods used by Trading Standards being released into the public domain leading to individuals being aware of how investigations are conducted, enabling them to identify ways to avoid detection and lead to less effective investigations.
- A vital element of investigations and proceedings is the intelligence provided by confidential sources, if we released this information, it would likely lead to individuals being unwilling to provide Trading Standards with vital information to assist them in conducting successful investigations and prosecutions.
- Releasing information that has been provided to Trading Standards through their investigation by confidential sources could lead to the individuals fearing for their safety, particularly if the information they provided allows the individual being investigated to identify them.
- Trading Standards require a safe space in which to operate and releasing this information while the potential of an appeal is still live would likely lead to issues within the judicial processes and impact the fairness, should an appeal be lodged.
- All information that can be released is already in the public domain.

Section 42

Section 42 provides an exemption from disclosing information that is subject to Legal Professional Privilege (LPP). LPP protects confidential communications between lawyers and clients and is a fundamental principle of English Law. It protects a client's ability to speak freely and frankly with his or her legal adviser in order to obtain appropriate legal advice and helps ensure complete fairness in legal proceedings.

There is no requirement to demonstrate any prejudice or adverse effect when applying s.42 however, the public authority is under a duty to consider whether disclosure should nevertheless be made in the public interest.

Factors in favour of disclosure:

- Further understanding of, and participation in the debate of issues of the day
- Facilitate the accountability and transparency of public authorities for decisions taken by them.

Factors in favour of withholding:

- Disclosure of correspondence between a client department and their legal adviser would undermine the principle of English law that a client should be able to seek and receive legal advice from their legal adviser in confidence.
- Such confidentiality promotes respect for the rule of law by encouraging the client to seek legal advice and allowing for full and frank exchanges between clients and their legal advisers. This would be undermined should the information be released.
- SCC is still involved in proceedings (the individual could still lodge an appeal), it would be inappropriate to share details of internal discussions used to inform the decision-making in this matter.

The Council has determined that releasing this information would not be in the public interest. Therefore, it is withheld under s.30 and s.42 of the Freedom of Information Act 2000.

