



**Information Commissioner's Office**  
Promoting public access to official information  
and protecting your personal information

## **Freedom of Information Act 2000**

### **The exemption for criminal investigations, criminal proceedings and confidential sources**

#### **Contents**

<b>Subject</b>	<b>Page no.</b>
Introduction and overview	2
Relationship with section 31	3
General application of the exemption	3
Criminal investigations and prosecutions (Section 30(1))	4
Information obtained by investigating bodies relating to confidential sources (Section 30(2))	5
The public interest test	7
The duty to confirm or deny	11
Other considerations	11
More information	12

## Introduction

The Freedom of Information Act 2000 (FOIA) gives a right of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations under the FOIA and to promote good practice.

This guidance will explain the application of the exemption in section 30 of the FOIA. It will help public authorities when considering this exemption in relation to information obtained during a criminal investigation for the purposes of criminal proceedings, or about confidential sources used during certain investigations.

This guidance replaces Awareness Guidance 16.

## Overview

Section 30 creates an exemption for information:

- which is or has been held for the purposes of a criminal investigation;
- which is or has been held for criminal proceedings conducted by a public authority; or,
- which was obtained or recorded for various investigative functions and relates to the obtaining of information from confidential sources.

Criminal investigations and proceedings include matters dealt with in the Armed Forces either summarily or before a court-martial.

Section 30 provides a class based exemption. This means it is not necessary to identify some prejudice that may arise as a result of disclosure in order to engage the exemption.

As the exemption is subject to the public interest test, a public authority must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Although you do not have to identify some prejudice in order to engage the exemption, it will be an important factor when applying the public interest test.

## Relationship with the exemption in section 31 (law enforcement)

There are areas of overlap between sections 30 and 31:

- Section 30 provides an exemption in relation to particular criminal investigations and criminal proceedings brought by public authorities and in relation to the obtaining of information from confidential sources.
- Section 31 provides an exemption where prejudice might be caused to criminal and other investigations and to more general steps taken in relation to crime prevention, law enforcement and investigatory functions.

Section 31 makes clear that, in cases where section 30 applies, section 31 cannot be used.

This does not mean that a public authority cannot consider both exemptions in relation to the same information. It does mean that, in any refusal notice when both exemptions have been considered, a public authority should make it clear that section 31 applies only to the extent that the information is not exempt under section 30.

Find out more about section 31 in our [guidance on the exemption for law enforcement](#).

## General application of the exemption

The information described in section 30 is exempt only where the public authority has a duty, or the power, to carry out investigations or has a power to conduct the proceedings described below. Public authorities relying on the exemption need to be aware of the legal basis of any investigations or prosecutions which they carry out.

In the area of law enforcement and investigation, some powers and duties are conferred upon officers and officials rather than the organisations to which they belong. For example, the duty to investigate potential criminal activity is conferred on the individual constable rather than the police force. Similarly, it is individual officers of Her Majesty's Revenue and Customs who are granted powers of investigation. For the purposes of this exemption, a public authority is deemed to have the authority to investigate or prosecute that is held by the individual officers of the authority. Similarly, where the duty is invested in a Minister, it is deemed to be the duty of the relevant government department.

## **Criminal investigations and prosecutions (Section 30(1))**

The first part of the exemption covers information which “has at any time been held” by a public authority for any of the following purposes:

- a) Investigations into whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it.

For this element of the exemption to apply the public authority must have a **duty** to carry out the investigations. This will cover the police and related bodies, but will also extend to other authorities such as H M Revenue and Customs, the Department for Business, Enterprise and Regulatory Reform, and the Health and Safety Executive.

- b) Investigations which may lead the authority to initiate criminal proceedings which it has the power to conduct.

In such cases there is no requirement for the authority to have a duty to conduct the investigation, but it must have the **power** to do so as well as the **power** to conduct the criminal proceedings. It is also not necessary for the focus of the initial investigation to be on potential criminal proceedings. For example, during the course of an investigation being conducted by a public authority in accordance with its regulatory functions, the authority may decide to institute criminal proceedings, but, as with a), the information is held for the purposes of the investigation.

- c) Criminal proceedings which the public authority has the **power** to conduct.

There is no investigatory element here; the information is held for the purposes of the criminal proceedings. As with b) above, this will apply to authorities who themselves are prosecuting authorities.

### **Key terms**

- The phrase “at any time” (see above) means that information is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.
- The term “charged with an offence” (see (a) above) is not defined in the Act. Technically, suspects are charged after arrest, when they appear in person before a court, or in accordance with procedures in section 29 of the Criminal Justice Act 2003. However, summary prosecutions can be commenced without charge and so we take the view that the phrase should be extended to include investigations which lead to the commencement of criminal proceedings where the defendant is not technically “charged” with an offence.

Cautions given by the police are also included in this definition as they represent an alternative to being charged with less serious offences.

- The term “criminal proceedings” (see (b) and (c) above) refers to the process through which criminal laws are enforced. Proceedings will usually begin either on summons or when the accused is charged with an offence. Included within the definition of criminal proceedings are military procedures for the investigation and prosecution of offences summarily and before courts-martial, and similar courts, in accordance with statutes authorising them.

The application of section 30 is also extended to include the procedures in Scotland for investigating and prosecuting criminal matters.

Section 63 of the FOIA makes clear that section 30(1) does not apply to information which is thirty years old or more, when it is classed as a historical record.

### **Information obtained by investigating bodies which relates to the obtaining of information from confidential sources (section 30(2))**

The second part of the exemption, in section 30(2), is concerned with information held in relation to a wider range of more general investigatory functions and which relates to the obtaining of information from confidential sources. The functions in question must relate to one of the following:

- The investigations and criminal proceedings referred to earlier.
- Other investigations which section 30(2) imports from section 31, namely those investigations conducted for the purposes specified in section 31(2), as follows:
  - ▶ ascertaining whether a person has failed to comply with the law;
  - ▶ ascertaining whether a person is responsible for any improper conduct;
  - ▶ ascertaining whether there are or may be circumstances which would justify regulatory action under any legislation;
  - ▶ ascertaining a person's fitness or competence to manage a corporate body or to continue in any profession or other activity which they are, or would like to become, authorised to carry on;
  - ▶ ascertaining the cause of an accident;

- ▶ protecting charities against misconduct or mismanagement in their administration;
  - ▶ protecting the property of charities from loss or misapplication;
  - ▶ recovering the property of charities;
  - ▶ securing the health, safety and welfare of people at work; and,
  - ▶ protecting people (other than staff) against risks to their health or safety arising from the actions of people at work.
- Civil proceedings brought by or on behalf of a public authority arising from any investigation referred to above. This specifically refers to matters that the authority has the power to investigate or prosecute and would cover, for example, investigations and proceedings for antisocial behaviour orders, enforcement of child protection legislation, orders to forfeit the proceeds of crime and civil action to recover money owed to a charity.

If information held by a public authority is for the purposes of any of these functions **and** it relates to the obtaining of information from confidential sources, it is covered by this exemption.

- It is important to note that the exemption applies to the general process by which information is obtained from confidential sources and does not directly apply to the information supplied by the source.
- Information exempt under this part of the section might include, for example, the methods by which criminal intelligence is gathered from confidential sources which may help the development of either current investigations or those that have not yet been launched. There may be occasions when the information identifies either directly or indirectly the source of the information.
- Confidential sources will include witnesses who do not wish to be identified and police informers.

This provision is principally intended to give protection to the identities of confidential sources so that those sources are not discouraged from approaching investigative bodies to inform on criminal or improper acts.

'Confidential' in this section has a wider, more general, meaning than in other parts of the FOIA and is not limited to circumstances where a breach of the confidence could result in civil action. It is intended to cover the 'confidential' relationship between the source and the public authority whereby protection is given to the identity of the source.

Unlike the first part of the exemption, this part can be used for information contained in historical records.

## The public interest test

Section 30 is a qualified exemption. If the information requested is covered by the exemption, the public authority must then apply the public interest test set out in section 2(2)(b). The information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

This involves weighing the prejudice that may be caused to an investigation or prosecution, or more generally to the investigatory and prosecution processes of the public authority, against the public interest in disclosure. There is general recognition that it is in the public interest to safeguard the investigatory process. The right of access should not undermine the investigation and prosecution of criminal matters nor dissuade individuals from coming forward to report wrongdoing.

It is also not in the public interest to undermine the prosecution process and the role of the criminal courts as the bodies responsible for determining guilt. Where it is quite clear that disclosure could prejudice the right to a fair trial, it would not be in the public interest to release it.

This principle was recognised by the Information Tribunal, in the case of [Mr A Digby-Cameron v the Information Commissioner \(EA/2008/0023 &0025; 26 January 2009\)](#), when it stated that the general public interest served by section 30 was “the effective investigation and prosecution of crime, which itself requires in particular (a) the protection of witnesses and informers to ensure that people are not deterred from making statements or reports by the fear that they may be publicised, (b) the maintenance of the independence of the judicial and prosecution processes and (c) the preservation of the criminal court as the sole forum for determining guilt.”

The following examples also demonstrate the recognition by the Information Tribunal of the public interest inherent within the exemption:

### Example

In [Department of Trade and Industry v Information Commissioner \(EA/2006/0007; 10 November 2006\)](#), a case about information relating to an investigation conducted under the Companies Act 1985, the Information Tribunal stated that the FOIA acknowledges “that there is a public interest in recognising the importance of the proper conduct of investigative processes and procedures carried out by public authorities, particularly those which might lead to criminal proceedings, and moreover that in relation to such procedures and possible proceedings, the maintaining of confidential sources must be respected.”

**Example**

In [Guardian Newspapers Ltd v Information Commissioner and the Chief Constable of Avon and Somerset Police \(EA/2006/0017; 5 March 2007\)](#), the Tribunal, having identified minimal public interest either in maintaining the exemption or in disclosure of the requested information, determined that the overriding factor was “the interest in principle, recognised by the exemption applying to s30(1), in protecting information acquired, often in confidence, in police investigations”. It concluded that the public interest in maintaining the exemption outweighed that in the disclosure of the information.

Other public interest considerations to take into account include:

- **Timing of disclosure**

The public interest in maintaining the exemption will be very strong while an investigation is being carried out or, having been suspended, may be re-opened. However, once an investigation is completed, the public interest in understanding why an investigation reached a particular conclusion, or in seeing that the investigation had been properly carried out, may outweigh the public interest in maintaining the exemption.

We have seen above (in the Guardian/Avon and Somerset Police case) that the interest in principle can be the overriding factor in cases where there is little public interest either in maintaining the exemption or in disclosure. By definition, this is likely to mean that the public interest in maintaining the exemption will be considerable in cases where information is requested relating to an open police investigation.

**Example**

In [Digby-Cameron v Information Commissioner \(EA/2008/0023 & 0025; 26 January 2008\)](#) the applicant had requested documents which had been given voluntarily in connection with an on-going police investigation and the Tribunal stated that the usual expectation concerning such evidence is that it “would only be used for the purposes of ... a criminal case in court and not disclosed to third parties .... in advance.” It went on to state that “the independence of the prosecution process and the preservation of the position of the criminal court may have been undermined if the information was disclosed without consent in advance of a criminal case or decision not to prosecute.”

Public authorities must not assume that they should not release any information about ongoing investigations, although the public interest in maintaining the exemption will often be considerable where an investigation is open. Much will depend on the effect of disclosure. There will be a strong case for maintaining the exemption where keeping the information secret is important to the success of the investigation.

In cases where a prosecution has collapsed for reasons of procedural failure or mismanagement on the part of the investigating or prosecuting authority, the public interest in favour of the disclosure of information about the investigations may be stronger.

- **Information in the public domain**

There tends to be considerable public interest in criminal cases and in seeing that justice is done. What is already in the public domain is a relevant factor when considering disclosure. This may shift the balance of public interest in favour of the disclosure of information about completed cases or those which have been abandoned with no reasonable prospect of being reopened. Authorities should still exercise caution, as there will be cases where information has previously entered the public domain, for example by disclosure in court, but does not necessarily remain in the public domain.

**Example**

This was discussed in the case of [Armstrong v Information Commissioner and HMRC \(EA2008/0026; 14 October 2008\)](#) concerning a request made for information relating to the trial of Abu Bakr Siddiqui at Southwark Crown Court. The Information Tribunal said: “Even if the information had previously entered the public domain, that is not in itself conclusive of whether the public interest weighs in favour of disclosure, it is merely one consideration to be weighed in the public interest balance.”

- **Significance of the information**

This was one of the issues in the Guardian/Avon and Somerset Police case, and has been considered by the Information Tribunal in other cases.

**Example**

The case of [Keeley v Information Commissioner \(EA/2007/0113; 19 May 2008\)](#) concerned a request to the Department of Business, Enterprise and Regulatory Reform for information relating to the applicant’s original request for the Department to investigate his complaint against a publicly listed company. The Department’s

response to his request for an investigation was subject to external scrutiny by the Parliamentary Ombudsman. The Tribunal concluded that, although “the publication of information would serve to inform public debate into the quality and effectiveness of its work”, on balance the significance of the information was slight and was “reduced by the fact that the standard of the Department’s work has already been considered by the Ombudsman.” As a result, the public interest in withholding details of the Department’s investigative methodologies outweighed that in disclosing information about those processes.

### **Public interest and confidential sources**

There is a clear public interest in the ability of public authorities to be able to obtain information from confidential sources in relation to the investigations and proceedings covered by this exemption. As mentioned above, this was confirmed by the Information Tribunal in the Department of Trade and Industry and Guardian/Avon and Somerset Police cases. The disclosure of such information could have very serious consequences both for the individual source and the future willingness of people to provide information.

#### **Example**

In the case of [Alcock v Information Commissioner and Chief Constable of Staffordshire Police \(EA/2006/0022; 3 January 2007\)](#) the Information Tribunal stated that whilst the disclosure of information could assist the public “in understanding the decisions taken by the Staffordshire Police and in holding the Staffordshire Police accountable for their actions and for their use of public funds”, this was outweighed by the risk that the disclosure of information “provided to them on a confidential basis would be likely to deter others from providing information to them” and which “would be likely seriously to hinder police efforts in the prevention and detection of crime.”

#### **Example**

In the case of [The Metropolitan Police v Information Commissioner \(EA/2008/0078; 30 March 2009\)](#) the Information Tribunal decided that police ledgers dating from 1888-1912 should be disclosed to the requester, but that the names of informants should be removed. In doing so, the Tribunal recognised “the overwhelming importance of the longstanding policy adopted by the MPS that informants can be assured that their names and identities will not be disclosed even after they die.” Disclosure of such information could discourage potential informants from coming forward in the future.

Applying the public interest test in relation to this exemption is likely to involve a number of considerations including human rights issues and an assessment of the impact of disclosure on the success of an investigation or potential prosecution. We strongly advise public authorities to put procedures in place for identifying the difficult cases and for taking appropriate legal advice.

For more advice see [The Public Interest Test - Awareness Guidance 3](#) .

## **The duty to confirm or deny**

Public authorities should also remember the duty to confirm or deny whether they hold the information. Even if the information itself is exempt from disclosure, authorities may still need to confirm that they hold it unless the confirmation itself would be exempt under section 30(3). In the same way, if they do not hold the information, they must say this unless the denial itself would be exempt. Any refusal to confirm or deny is also subject to the public interest test.

The success of many investigations depends on making sure that information about them is not disclosed prematurely. Similarly, bodies responsible for carrying out investigations will want to protect confidential sources. In many instances damage can be caused by the confirmation that information is held. It is therefore likely that public authorities will want to respond to a number of requests for information by neither confirming nor denying that information is held.

It is not acceptable to provide no response. The FOIA requires public authorities to explain which exemption applies to information and indicates that fuller explanation is not required if this in itself would involve the disclosure of exempt material. As a matter of good practice, we strongly recommend that those authorities who are likely to want to neither confirm nor deny that they hold the information requested, prepare a statement of policies about disclosure. This can then be provided to applicants without the risk of implying comment on particular requests.

For more advice see [The duty to confirm or deny \(Awareness Guidance 21\)](#).

## **Other considerations**

In many circumstances the exemption in section 40 will also apply to information about living individuals mentioned in investigation files. We have produced detailed guidance on how to use [the exemption for personal information](#).

If the information requested is environmental information, the most relevant exception is that in regulation 12(5)(b) which applies when disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature. For more advice see our guidance [An Introduction to the EIR Exceptions](#).

## More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

Phone: 08456 30 60 60  
01625 54 57 45

Email: please use the online [enquiry form](#) on our website

Website: [www.ico.gov.uk](http://www.ico.gov.uk)