

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31st May 2007

Public Authority: Public Prosecution Service for Northern Ireland

Address: Belfast Chambers
93 Chichester Street
Belfast
BT1 3JR

Summary

The complainant made a request to the Public Prosecution Service for Northern Ireland ("PPS(NI)") on 23 November 2005 for a copy of the Chief Inspector's report and all supporting documentation submitted by the Police Service of Northern Ireland (PSNI) to the PPS(NI) in relation to his official complaint against several police officers ("the requested information"). The PPS(NI) withheld the requested information relying on exemptions under sections 30(1)(a)(i), 30(1)(b), 30(1)(c), 30(2)(a)(i), 30(2)(a)(ii) (investigations and proceedings conducted by public authorities), 40 (2) and 40(3) (personal data relating to third parties) of the Act. The complainant appealed to the Information Commissioner (the Commissioner). The Commissioner has not upheld the complaint as he is satisfied that the exemptions were applied correctly to the requested information and that, in this particular case, the public interest in withholding the information outweighs the public interest in disclosing the information. However, the Commissioner also finds that the PPS(NI) is in breach of sections 17(1)(c) and 17(3)(b) of the Act as it has failed to provide an adequate refusal notice in accordance with the terms of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The Information Commissioner ("the Commissioner") has received a complaint which states that on 23 November 2005 the following request for information was made to the PPS(NI) in accordance with Section 1 of the Act:

"I wish to make application under the Freedom of Information Act 2000 to receive a copy of Chief Inspector Waterworth's (Complaints and Discipline 'G' Department) submission to you together with all supporting documentation, memos etc relating to my official complaint against {named officers} all attached to [named police department]." ("the requested information").

3. The requested information consists of witness statements, transcripts of interviews with the police officers involved, police reports, forensic reports, correspondence between the PPS(NI) and PSNI as well as the Chief Inspector's report on the matter.
4. On 5 January 2006 the PPS(NI) corresponded with the complainant to inform him that it was unable to provide the requested information as it was subject to exemptions under sections 30, 38 and 40 of the Act.
5. On 6 March 2006 the complainant, having sought the advice of the Commissioner, corresponded with the PPS(NI) to request an internal review of its decision not to provide him with the requested information.
6. On 17 May 2006 the PPS(NI) corresponded with the complainant informing him of the result of the review. This correspondence stated that the decision had been made that the exemption under section 38 of the Act would no longer be relied upon, however the requested information could not be disclosed as the exemptions under sections 30(1)(a)(i), 30(1)(b), 30(1)(c), 30(2)(a)(i) and 30(2)(a)(ii) and 40 (2) and 40(3) of the Act applied.

The Investigation

Scope of the case

7. On 22 May 2006 the complainant applied to the Commissioner for a decision as to whether his request had been dealt with in accordance with the requirements of the Act. The complainant specifically asked the Commissioner to consider the PPS(NI) application of the public interest test. The complainant had initially contacted the Commissioner on 23 January 2006, however at that time the complainant had not requested that an internal review be conducted. The PPS(NI) upheld its initial refusal on review. The Commissioner began his investigation on the 9 June 2006.
8. As a result of the intervention of the Commissioner the complainant has now been allowed to inspect the requested information. Although the PPS(NI) allowed this, it was made quite clear to the complainant that this was disclosure of the requested information to the complainant as an individual and did not amount to disclosure into the public domain under the Act.

Chronology of the case

9. **22 May 2006.** The complainant submitted his complaint to the Commissioner.
10. **9 June 2006.** The Commissioner wrote to the complainant acknowledging receipt of his complaint and informing him that his case was to be allocated to a case officer. The Commissioner also wrote to the PPS(NI) informing it of the complaint.
11. **1 November 2006.** The Commissioner wrote to the complainant providing the name and contact telephone number of the caseworker to whom his case had been allocated. On 2 November 2006 the Commissioner wrote to the PPS(NI) requesting clarification of the criteria used in its application of the exemption under section 30 of the Act and inviting it to reapply the public interest test in accordance with section 17 of the Act.
The Commissioner also requested that the PPS(NI) clarify its application of the section 40 (2) and 40(3) exemption to the requested information and asked for sight of that information.
12. **29 November 2006.** The Commissioner's staff met with representatives of the PPS(NI) for the purpose of inspecting the requested information. The PPS(NI) indicated that the matter would be discussed further by PPS(NI) staff and that the public interest test would be re-applied in light of the Commissioner's letter of 2 November 2006. In relation to that information which the PPS(NI) considered to be third party personal data the Commissioner's staff at that meeting enquired as to whether the PPS(NI) would be agreeable to redacting the identifying details from the requested information. It was indicated that this would be discussed by senior staff members within the PPS(NI) with responsibility for dealing with requests under the Act.
13. **1 December 2006.** The Commissioner contacted the complainant to inform him that the Commissioner's staff had perused the information and that the matter was being further discussed by the PPS(NI) with a view to informally resolving the complaint. The Commissioner also enquired as to whether the complainant would be happy to receive the information with all third party personal data having been redacted. The complainant indicated that he neither wanted nor needed to see any such information and would be satisfied with a redacted copy of the requested information. It was agreed with the Commissioner that this was to be considered further by the PPS(NI).
14. **8 December 2006.** The Commissioner contacted the PPS(NI) to enquire as to whether it had had an opportunity to consider providing a redacted copy of the requested information. The Commissioner indicated to the PPS(NI) that the complainant had stated that he would be satisfied with this. The Commissioner further contacted the PPS(NI) on 2 and 10 January 2007 in relation to the matter. On the latter date he raised the issue of the time taken by the PPS(NI) to deal with the complainant's request, as the time taken by the PPS(NI) to respond to the request exceeded the time limit of twenty working days as set out in section 10(1) of the Act (please refer to attached Legal Annex). He also raised the issue of whether the internal review had been carried out in accordance with the PPS(NI)'s performance targets and procedures for dealing with requests for internal review

seeking clarification of same.

The PPS(NI) failed to respond until 19 January 2007, when it contacted the Commissioner and stated that a substantive reply to all his correspondence had been formulated.

15. **25 January 2007.** The Commissioner received the PPS(NI) reply which stated that it considered that the exemptions under sections 30 and 40 still applied and further that it considered its responses to the complainant's initial request and to his request for internal review to be proper, appropriate and in accordance with the Act. This correspondence did not make any reference to the Commissioner's request in his letter of 2 November 2006 for clarification of the application of the exemption under section 40(2) and 40(3) of the Act.
16. **8 February 2007.** The Commissioner responded to the PPS(NI) letter stating that, in the absence of detailed submissions in relation to the points raised in his letter of 2 November 2006, further detailed submissions were required by 22 February 2007. The Commissioner advised that, if same were not received before that date, he would proceed to make his decision on the basis of the information provided to date.
17. **22 February 2007.** The PPS(NI) wrote to the Commissioner providing its detailed submissions in relation to the points raised in the Commissioner's correspondence of 2nd November 2006. The Commissioner has carefully considered same and sets out his conclusions below.

Analysis and Conclusions

Procedural matters

18. The Commissioner considers that the PPS(NI) response to the complainant's request fails to meet the requirements of sections 17(1)(c) and 17(3)(b) of the Act (please refer to attached Legal Annex) in the following respects:-
 - (i) it is a requirement under section 17(1)(c) that a public authority, when claiming that requested information is exempt under the Act, states why the exemption(s) they are claiming apply in that situation.

The PPS(NI) did not, in its initial refusal of the complainant's request, by letter dated 5 January 2006, state with sufficient clarity why the exemptions under sections 30(1)(a)(i), 30(1)(b), 30(1)(c), 30(2)(a)(i) and 30(2)(a)(ii) applied to the requested information. The Commissioner also believes that, in that letter, the PPS(NI) failed to explain why sections 40(2) and 40(3) applied in that it did not address fully the issues of why the information was personal information or consider the issue of the breach of data protection principles.
 - (ii) It is a requirement under section 17(3)(b) that a public authority, when claiming that information is exempt under the Act, states its reasons for claiming that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

In its refusal letter to the complainant, the PPS(NI) lists a number of factors for and against disclosure, however the Commissioner is not satisfied that simply listing the factors for and against disclosure provides the complainant in this case with sufficient information on the reasoning behind the PPS (NI) decision to withhold the the requested information under the Act. The Commissioner considers that the PPS(NI) should have explained fully why the listed factors applied in this particular case, thereby demonstrating that it had considered the exemptions and had weighed the possible adverse effects of disclosure of the requested information against the positive benefit of openness. The Commissioner is of the view that the PPS(NI) incorrectly applied the public interest test as set out in section 2(2)(b) of the Act which states as follows:-

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

The PPS(NI) did not demonstrate in its refusal notice that it had fully considered all the circumstances of the case and the competing balance of public interest factors for and against disclosure of the requested information. In light of this, the Commissioner invited the PPS(NI) to reapply the public interest test, which it eventually did under cover of its correspondence to the Commissioner dated 22 February 2007.

19. The PPS(NI) failed to respond fully to the complainant's request until 5 January 2006, which was outside the time limit of twenty working days provided for by section 10(1) of the Act. The Commissioner raised this issue in his letter to the PPS(NI) dated 10 January 2007. The PPS(NI) reply dated 25 January 2007 acknowledged that the full response by the PPS(NI) to the complainant's request was sent outside the time limit set out in section 10(1) of the Act. However, the PPS(NI) explained that it had required more time to retrieve the the papers and consider the application of the exemptions and the public interest test and that an acknowledgement letter was sent to the complainant on 21 December 2005 informing him of that fact. The Commissioner considers this time lapse to be reasonable in all the circumstances and has not, therefore, made a finding in this instance that section 10(1) of the Act was breached by the PPS(NI).

Exemptions

Section 40 - Personal Information relating to third parties

The Personal Information

20. Section 40(2) of the Act is an exemption which relates to the personal information of third parties. This provision creates an absolute exemption (one not subject to the public interest test) for information falling within the definition of personal data contained in section 1(1) of the Data Protection Act ("the DPA") (see attached Legal Annex for the full text of the sections of the DPA cited in this Decision Notice).

21. Personal data is defined in section 1(1) of the DPA as:-

"data which relate to a living individual who can be identified:-

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."

The Commissioner is satisfied that some of the requested information, namely that contained in the withheld witness statements, would fall within a) above.

22. The PPS(NI) did not explain to the complainant in its refusal notice that some of the requested information is "sensitive personal data".

Sensitive personal data is defined in section 2 of the DPA. It is personal data which falls into one of the categories set out in section 2 of the DPA, e.g data relating to a person's physical or mental health, his political opinions or his sexual life.

The Commissioner considers, having had sight of the requested information, that some of it constitutes *sensitive personal data* as it falls into the category set out in section 2 (g) of the DPA, namely that the information is:-

"personal data consisting of information as to....the commission or alleged commission by him [the data subject] of any offence."

The Data Protection Principles

23. Section 40 (3) of the Act provides that this exemption will apply if disclosure of the information would contravene any of the data protection principles or breach a notice under section 10 of the DPA. Section 10 of the DPA entitles an individual to serve a written notice upon a data controller stating that processing his or her personal data would cause him or her unwarranted damage or distress. The Commissioner is satisfied that no such notice has been served in this case.

24. However, the Commissioner, having had sight of the requested information, considers that the withheld witness statements contain personal data such as identifying details of the author and views and opinions relevant to the investigation. He is also satisfied that their disclosure to the public would contravene data protection principles. He considers the relevant data protection principle to be the first data protection principle, which provides that:-

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

25. The Commissioner considers that in this case the relevant third parties (the author and witnesses in this case) provided their personal data to the PPS(NI) with the expectation that it was being provided in confidence and would only be used for the purpose for which it was obtained, namely the relevant investigation. The Commissioner therefore considers that disclosure of third party personal data in this case would be unfair to the individuals concerned and would therefore contravene the first data protection principle.
26. The Commissioner recognises that the interests of the individuals involved, for example those who provided witness statements, may be detrimentally affected by the disclosure of the requested information. Those who were witnesses and cooperated with the police are likely to have had some legitimate expectation that their details would not be disclosed except during the course of any proceedings. Those under investigation were ultimately not prosecuted and disclosure now may cause distress to them and/or their relatives.
27. The Commissioner is satisfied, on the basis of the information available to him, that some of the information constitutes personal data, some of which is sensitive personal data as it relates to the alleged commission of a criminal offence by the named officers and that its disclosure would involve contravention of the first data protection principle, as furnishing it would be unfair to the individuals concerned. Further, the Commissioner is satisfied that no conditions exist in this case to justify the disclosure of this sensitive personal data.

Section 30 – Investigations and proceedings conducted by public authorities

28. Section 30 of the Act exempts from disclosure information relating to investigations and proceedings conducted by public authorities.. This is a qualified exemption and is the basis upon which the PPS(NI) withheld the requested information. The PPS(NI) seeks to rely on sections 30(1)(a)(i), 30(1)(b), 30(1)(c), 30(2)(a)(i) and 30(2)(a)(ii) (please refer to attached Legal Annex).
29. It is clear from the wording of section 30(1) of the Act that, for the exemption to apply, there is no requirement to establish prejudice to any investigation or proceedings, unlike, for example, section 31 of the Act, where there is a requirement to establish that disclosure of information would cause prejudice to law enforcement.
For the section 30(1) exemption to apply, the information in question must be held for the purpose of “any investigation which the public authority has a duty to conduct”. In effect, there must be a specific or particular investigation with which the authority is concerned in order for it to rely on this exemption.
The Commissioner notes that, where the information is caught by the exemption,

it will remain exempt even if the particular purpose or purposes for which the information was retained is or are no longer material, justified or required, such as would be the case if an investigation resulted, as in this particular case, in a decision not to prosecute (*Guardian Newspapers Ltd v The Information Commissioner and The Chief Constable of Avon & Somerset Police* – Information Tribunal 6th March 2007). The Commissioner therefore agrees that the exemption is engaged. Further he considers that section 30(1) has been relied upon correctly by the PPS(NI) as the requested information relates to an investigation which was carried out by the PPS(NI) in response to an allegation by the complainant that a criminal offence had been committed by certain officers within the PSNI.

The Public Interest

30. Section 2 of the Act sets out the circumstances under which a public authority may refuse a request for information. According to this section, where a public authority has identified a qualified exemption, it must consider whether the public interest in maintaining the exemption outweighs that in disclosing the information. This is often referred to as the “*public interest test*”.
31. When applying the public interest test, a public authority has to decide whether, in all the circumstances of a particular case, it serves the interests of the public better to withhold or to disclose information. There is a presumption running through the Act that openness is, in itself, to be regarded as something which is in the public interest.
32. The Commissioner has considered the PPS(NI) application of the public interest test to the requested information. In a recent decision made by the Information Tribunal, namely ***Guardian Newspapers Ltd v The Information Commissioner and The Chief Constable of Avon & Somerset Police*** (6th March 2007) the Tribunal considered in detail the application of section 30 to the information relating to the investigation and the public interest arguments in favour of both withholding and disclosing the information. The Tribunal upheld the Commissioner’s original decision that there was a stronger public interest in withholding the information. The request for information in that case is similar in nature, although not in gravity, to the complainant’s request. In the former case, the request was for all files held by Avon & Somerset Police in relation to the investigation into and subsequent trial of Jeremy Thorpe, a former Liberal Party leader, following allegations against him of conspiracy to commit murder.
33. The Commissioner in the above case had considered the following public interest arguments in favour of disclosure of the information:-
 - Release of the information would expose to the public the quality of the police investigation, in terms of thoroughness, transparency and vigilance.
 - The age of the information. Under section 63(1) of the Act (see Legal Annex) the “thirty year rule” provides that the section 30 exemption expires when the information is thirty years old and at that point the

information to which that exemption was applied becomes an accessible historical record. The information at that time was 27 years old.

34. The Commissioner has considered the above arguments in detail in this case. The Commissioner considers that there is public interest, acknowledged by the PPS(NI), in allowing public scrutiny of its actions, namely:-
- This may serve to increase the accountability and transparency of the PPS(NI) in the prosecution decision-making process by allowing individuals to understand the reasoning behind decisions made by it which may affect their lives.
 - This may further the interests of justice as it would improve the public's knowledge and understanding of the criminal justice process, thereby encouraging the participation of members of the public in that process.
 - The publication of the information may encourage public confidence in the effective conduct of police investigations.
35. The PPS(NI) has confirmed to the Commissioner in this case that release of the requested information may affect the ongoing willingness of witnesses to supply information in relation to the investigation and prosecution of criminal activity, thereby diminishing the likelihood of successful investigations and prosecutions. Although not mentioned specifically by the PPS(NI) in this particular case, there is a long-held and reasonable expectation by members of the public that information provided by them during the course of police investigations should be treated in confidence and only used for the purpose for which it was provided. The Commissioner considers, in view of this, that people may be discouraged from providing information to the police if they believed that their information might be released publicly without a compelling reason. The Commissioner, while not accepting that this would apply in every case, considers this to be a serious and compelling argument which goes to the very heart of the criminal justice system.
36. The Commissioner has taken into account the age of the requested information in this case (the information is 8 years old). The fact that Parliament has specifically provided, in section 63(1) of the Act, that information which is exempt under section 30(1) of the Act should lose that exemption thirty years after it was created suggests that there is a public interest in maintaining the exemption for the thirty year period unless there are strong public interest arguments in favour of disclosure. In some cases, as in the Avon & Somerset Constabulary decision referred to at paragraph 31 above, the relevant date for removal of the exemption is imminent (the date in the said decision was 1st January 2010). In this particular case, however, the requested information will not become a historical record until March 2029.
37. The Commissioner, having regard to the Information Tribunal's observations that, "*the existence of the thirty year exemption suggests that Parliament regarded that period and no lesser period as the appropriate interval before relaxation of the exemption*" (paragraph 9) does not consider in this particular case that the

public interest arguments in favour of disclosure are sufficiently strong to justify the premature release of the requested information.

38. The Commissioner has considered all of the above arguments. Having weighed those arguments in favour of maintaining the qualified exemption against those in favour of disclosure of the information, he has concluded that there are stronger arguments in favour of maintaining the exemption. The Commissioner considers that the arguments regarding the age of the information and the Tribunal's ruling in the decision cited at paragraph 34 above, and regarding witnesses' willingness to provide information to assist investigations, are strong and compelling. The Commissioner considers that those factors outweigh the arguments put forward in favour of disclosing the information. Therefore he considers that, in all the circumstances of the case, the public interest in maintaining the exemption under section 30(1) of the Act outweighs that in disclosure of the information.

The Decision

39. The Commissioner considers that the exemption under section 30 (Investigations and proceedings conducted by public authorities) is engaged in relation to the entirety of the information and the Commissioner considers that the public interest in disclosure of the information is outweighed by that in maintaining the exemption.
40. Some of the information is exempt under section 40 (personal information) as it is the Commissioner's view that disclosure would contravene the first data protection principle as defined in Schedule 1 of the DPA.
41. Although the complaint in this case has not been upheld, the Commissioner considers that the PPS(NI) did not deal with the complainant's request in accordance with the procedural requirements of sections 17(1)(c) and 17(3)(b) of the Act in that it failed to comply with the requirements set out in those sections of the Act.

Steps Required

42. The Commissioner's decision is that the PPS(NI) was correct in its application of the exemptions under sections 30(1)(a)(i), 30(1)(b), 30(1)(c), 30(2)(a)(i), 30(2)(a)(ii) and sections 40 (2) and 40(3) to the complainant's request. In light of this conclusion, and due to the fact that the matter has now been informally resolved to the complainant's satisfaction, the Commissioner requires no steps to be taken.

Other matters

43. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
44. The Commissioner sent his initial investigation letter to the PPS(NI) on 2 November 2006 and a meeting took place at the PPS(NI) offices on 29 November 2006. The Commissioner since that date contacted the PPS(NI) several times to enquire as to the progress of the matter so that the complainant could be kept up to date regarding same.
45. It was not until 25 January 2007 that the Commissioner's attempts to communicate with the PPS(NI) were acknowledged. Section 6 of the Memorandum of Understanding between the Secretary of State for Constitutional Affairs (on behalf of government departments) and the Information Commissioner ("the MOU"), which is binding upon all government Departments, including the PPS(NI), entitles the Commissioner to request the Department to provide all information relevant to an application under section 50 of the Act and invite the nominated Department contact to comment on the case. Section 7 of the MOU states that the information should be provided to the Commissioner within 20 working days and any subsequently requested information should be provided within 10 working days.

Failure to comply

46. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

47. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 31st day of May 2007

Signed

**Marie Anderson
Assistant Commissioner (NI)
Information Commissioner's Office
Regus House
33 Clarendon Dock
Belfast
BT1 3GB**

Legal Annex

Relevant Extracts from the Freedom of Information Act 2000:-

Section 2 - Effect of Exemptions

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (c) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (d) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Section 10 - Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 17 – Refusal of request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant 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 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, on a claim that in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the

information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 30 - Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.”

Section 30(2) provides that –

“Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources.”

Section 40 – Personal Information

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and

- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”