

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 30 June 2009

**Public Authority:** Chief Officer of Metropolitan Police Service  
**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Summary

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The complainant requested information relating to instructions or advice given to officers in respect of demonstrations which arose in February 2006 in London following the publication of cartoons depicting the Prophet Mohammed. The public authority refused to provide this information citing a number of exemptions and upheld this position upon review. However, during the Commissioner's investigation it became clear that the public authority had read the request too widely and had not sought clarification from the complainant as to what information he was seeking access to. Some information (which had previously not been identified as falling within the scope of the request) was eventually disclosed to the complainant but a set of information (which had also previously not been identified as falling within the scope of the request) was withheld by virtue of section 31(1)(a) and section 31(1)(b). The public authority argued that the public interest in maintaining these exemptions outweighed the public interest in disclosure. The Commissioner decided that the public authority could rely on section 31(1)(a) and section 31(1)(b) as a basis for withholding the information. However, he identified a series of procedural shortcomings on the part of the public authority relating to delay (sections 1 and 10) and failure to explain application of exemptions (section 17).

### The Commissioner's Role

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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

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2. On 7 February 2006, the complainant requested the following information:  
  
*“What instructions or advice was given to officers either written, verbally or email in respect of the demonstrations arising from the cartoons depicting the Prophet Mohammed”.*
3. The public authority refused to provide the requested information and set out its reasoning in a letter dated 26 April 2006. It argued that the information was exempt under section 30(1) (Criminal Investigations Exemption), section 38(1) (Health and Safety Exemption) and section 44(1)(b) (Statutory Prohibition on Disclosure). It also set out its arguments for the public interest in maintaining the exemptions at section 30 and 38 and explained why it believed that these arguments outweighed the public interest in disclosure. It explained that section 44 is an absolute exemption and not subject to a public interest test.
4. The complainant then made attempts to send faxes to the public authority which sought to challenge this refusal and to seek an internal review of it. The first of these was a hand-annotated version of a handwritten fax addressed to the Commissioner dated 2 May 2006 raising his initial concerns. Due to the way it was annotated, the Commissioner believes that the public authority may not have recognised it was also intended as a request to it for a review of its initial refusal.
5. The complainant then sent another fax on 15 June 2006 which was more clearly addressed and referenced. Unfortunately, it is not clear whether the public authority ever received this.
6. On 24 July 2006, the public authority wrote to the complainant in response to an email *“dated the 4<sup>th</sup> of July [sic]”*. It acknowledged this email as a complaint about its initial refusal to provide the requested information and advised that it intended to respond to him in full by 3 October 2006.
7. The public authority in fact wrote to the complainant again on 1 August 2006 with the outcome of its internal review. It described this as a *“full response to your complaint dated the 2 July 2006 [sic]”*. It upheld its original decision. It also noted that the complainant’s email of 2 July 2006 had included a complaint about a 5 month delay in responding to his request for review. The complainant had apparently asserted that this delay was a deliberate act *“to protect those who I believe for Political correctness reasons failed to take action on the march against the rioters”*. The public authority sought to assure him that this was not the case and that it had no record of receiving a complaint from him before 2 July 2006. This, it stated, was the reason why it had not

addressed his complaint earlier.

## The Investigation

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### Scope of the case

8. On 4 August 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - the public authority had misapplied the exemptions it had cited and therefore the requested information should have been disclosed to him in full;
  - during the course of the Commissioner's investigation, the complainant also asserted that the public authority had erred when it denied holding any record of instructions specifically given to the Gold Commander (senior officer responsible for policing the marches).
9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### Chronology

10. As indicated in paragraph 4, the complainant originally contacted the Commissioner on 2 May 2006 to complain about the public authority's original refusal. The Commissioner advised him to apply to the public authority's internal review procedure before making a complaint under the Act.
11. The initial stages of the Commissioner's investigation focused on identifying and obtaining copies of relevant correspondence. The Commissioner sought to establish exactly when an internal review had been requested. He also sought to ensure that he had sight of all the counter-arguments that the complainant had submitted to the public authority so that he, the Commissioner, could include these in his deliberations. He also wished to check whether there had been any misunderstandings between the parties as to the scope of the complainant's request during the course of their correspondence. He explained this in a letter to the complainant dated 10 December 2007.
12. There was further correspondence between the Commissioner and the complainant on the subject of his request for internal review. A number of misunderstandings were ironed out regarding the status of the fax referred to in paragraph 4 above. The complainant appeared fixed in his view that this fax constituted his request for a review. The public

authority had asserted that it had no record of receiving any correspondence that constituted such a request until early July 2006. Given that it was common ground between the parties that a request for review had been made (and a review had been carried out) the Commissioner decided that no useful purpose would be served in seeking further to determine the actual date a request for review was received by the public authority. He advised the complainant of this decision in an email of 18 December 2007 and no objection was raised to this approach.

13. On 13 December 2007, the Commissioner wrote to the public authority asking for a copy of the withheld information. He set out his initial observations on the public authority's application of exemptions and asked for its full and complete arguments in support of its decision to withhold the information in question. He set a deadline for response of 15 January 2008 to take into account the inevitable delays that would arise around the Christmas holiday break. He also reminded the public authority of his powers under section 51 to issue a formal Notice which would formally require it to provide such information.
14. On 11 January 2008, the public authority telephoned the Commissioner's office and left a message asking for an extension of the deadline. The Commissioner then made several attempts over the next few days to contact the public authority by telephone and by email on this matter with little success. This included sending a letter dated 15 January 2008 setting out the difficulties the Commissioner had experienced in making contact by telephone and email. The letter also reminded the public authority of the Commissioner's section 51 powers referred to above. A revised deadline of 24 January 2008 was set.
15. On 23 January 2008, the public authority telephoned the Commissioner to advise that it now sought to rely on the exemption at section 24 (Safeguarding National Security) and that more information on this would be forthcoming following consultation with relevant bodies. The public authority commented that it would be unlikely that the Commissioner would be allowed sight of the withheld information in the circumstances of the case.
16. On 24 January 2008, the Commissioner wrote to the public authority setting out a number of questions arising from this new development.
17. There then followed a series of emails between the Commissioner and the complainant and the Commissioner and the public authority on this matter. It came to light that there were two "tiers" of information which were caught by the scope of the complainant's request. The first tier was information relating to ordinary policing matters, the second was more closely related to matters of national security such as anti-terrorism activities. It was the potential disclosure of the second tier information which had caused particular concern for the public authority.

18. On 12 February 2008 the public authority sent the complainant a further commentary on the events of 3 February 2006 and the subsequent arrests and prosecutions which took place for offences ranging from Soliciting to Murder and Incitement to Racial Hatred to Failure to Provide Proper Notification of a Demonstration. The public authority described the investigation as still ongoing *“as there are still unidentified people outstanding, and if and when they are identified they will be arrested, charged and brought before the courts”*.
19. The complainant responded to the public authority (with a copy to the Commissioner) saying that the letter provided no more detail than he already knew and stressed that he still wished to see the correspondence qualifying what was said in the letter including *“instructions handed down from above”*.
20. On 26 February 2008, the Commissioner wrote to the complainant to clarify the scope of his access rights under the Act, to ask whether he had any particular information in mind based on his personal experience (the complainant is a former police officer), to set out the sort of information the Commissioner envisaged as falling within the scope of the request and to ask whether he was prepared to exclude “second tier” information from the scope of his request.
21. The complainant replied that the Commissioner had construed his request correctly and added that;  
  
*“From my experience, written instructions are often given in marches as important as this with all its potential, with written instructions to Officers of all Ranks from those above. From the Police Commissioner downwards. These are then given to serial Commanders from the Gold Commander to Silver & Bronze Commanders”*.
22. He also confirmed to the Commissioner that he was willing to exclude from the scope of his request *“anti terrorist information ... if it talks about specific matters or enquiries”*, but added a hope that *“you would construe anything else as fair game and not excluded”*.
23. The Commissioner wrote to the public authority on 28 February 2008 to advise it of the complainant’s willingness to exclude information from the second tier where it refers to specific counter-terrorism matters or enquiries. He then repeated his request that the public authority forward all other recorded information caught by the scope of the request and commented that this should include, but not be confined to:
  - any record which reflects general instructions given in anticipation of an unauthorised demonstration;
  - any record of reports from the public or from officers on the ground to show that an unauthorised demonstration had commenced;

- any incident log which records instructions given and decisions made about policing the demonstration from the time the demonstration was reported to the public authority to the time it ended and the crowd dispersed;
  - any emails or similar recorded exchanges between senior officers discussing the approach to take in the light of reports from officers on the ground.
24. The public authority responded on 20 March 2008. In relation to the first bullet point, it provided a copy of a two page "Event Strategy Document" which was completed by the Gold Commander (the senior officer in charge of policing the event) on 3 February 2006 specifically for the demonstration that day. It said that it would be willing to disclose the information in this document. It added that, in its view, the disclosure of this information would satisfy the complainant's request "*albeit late in the day*". It stated that it could locate no additional specific instructions to officers.
25. Describing the Commissioner's letter of 28 February 2008 as "*developing the issue*" it advised that it had found a registered file which might fall within the scope of the request. It described the content as tactical documents, providing further detail as to their content but explaining that they were currently being held in conjunction with an ongoing trial. It provided blank versions of the same documents to give the Commissioner an idea of the sort of information they normally contained.
26. In relation to the information in the actual documents, it said it would rely on section 30 and also section 31 (Prejudice to Law Enforcement) as a basis for non-disclosure because the information related specifically to its tactics and methodology in the deployment of officers during a specific demonstration. Relevant extracts from Sections 30 and 31 are set out in a Legal Annex to this Notice. It also claimed section 40 (Personal Information) in relation to some of the information in the documents. It stressed particular concern about providing to the Commissioner any documents "*which could be provided to witnesses in a court case and would therefore be sub-judice*".
27. It commented that in relation to the final bullet point (as set out in paragraph 23) it was unable to find any information of the type described.
28. The Commissioner wrote to the public authority on 27 March 2008 asking whether the Event Strategy Document had now been disclosed to the complainant. He noted the public authority's concerns about providing his office with copies of the other information it held. However, he stressed that it was essential for his investigation that it do so. Where it was not prepared to do so in response to an informal request, the Commissioner would issue an Information Notice under section 51 of the Act requiring it to do so. The public authority finally



agreed to provide the information and did so in a letter dated 2 April 2008.

29. The Commissioner asked the complainant if the Event Strategy Document satisfied his request. The complainant replied that he believed the public authority was still "*hiding something*". He added that he could not believe that "*instructions from the top can compromise a prosecution*". He also advised his intention to make a formal complaint to the Independent Police Complaints Commission (IPCC), acknowledging that the matter raised in such a complaint would be outside the Commissioner's remit.
30. On 9 April 2008 the public authority provided the Commissioner with copies of completed versions of the form referred to in paragraph 25 above. In a letter acknowledging receipt of the documents sent the same day, the Commissioner asked for further information about the sequence of events from the point where the incident was reported to the point where the officers went off duty, the briefing given to officers and the creation, format and circulation of the "Event Strategy Document".
31. On 18 April 2008, the public authority provided a response and included an extract from a briefing document. It explained that it had excluded those elements which would be caught by the exemption at section 23 (Information supplied by or relating to bodies dealing with security matters). Section 23 is set out in full in the Legal Annex to this Notice. It argued that the remainder was exempt from disclosure by virtue of section 31 because it included detail of policing tactics and methodology. It argued that the information also included personal data which was exempt by virtue of section 40. It also explained that the information could be used in ongoing or future evidence bundles for criminal trials.
32. On 24 April 2008, the public authority provided further detail about the Event Strategy Document which had been outstanding from its earlier letter.
33. On 23 June 2008, following receipt of a series of emails from the complainant asserting that the most senior officers at the public authority must have issued instructions to the Gold Commander as to how the protest should be policed, the Commissioner wrote to the public authority with further questions on this point and about the sequence of events as described by the public authority. He also asked specifically whether any other officer more senior than the Gold Commander was involved in the decision making process in relation to the general policing of the event and, if they were, whether the public authority held a record of any instructions given to the Gold Commander by a more senior officer in relation to the general policing of the event. He asked for a copy of such a record where it was held and an explanation as to why it would be exempt from disclosure

where the public authority believed that to be the case. He also asked the public authority to set out what searches it undertook to reach the view that no such record was held.

34. On 3 July 2008, the public authority responded. It explained that it did not become aware that the static demonstration was to be a protest march until the day of the march itself, 3 February 2006. It reproduced the text of an email sent by the Gold Commander to its Information Access Team on this subject as follows:

*“As the Gold Commander for this event I can confirm that I prepared the strategy and rationale without reference or guidance from a more senior officer”.*

35. It went on to list the departments it had searched in order to determine whether or not a record of such an order was in fact held.
36. On 2 September 2008, the Commissioner sent the complainant a copy of the text of what the Gold Commander had said on the subject and invited his comments. The complainant replied the same day and reiterated his view that it was unlikely that a more senior officer had not been involved in the decision making process.
37. On 3 October 2008, the complainant wrote with information about a separate complaints avenue he had been pursuing at the IPCC. On 4 November 2008, the Commissioner wrote to the complainant asked for further detail about this, which he duly provided.
38. On 6 November 2008, the Commissioner spoke to the complainant on the telephone to discuss the case and the extent and limit of the Commissioner's remit. He also advised that he had on the same day written to the public authority regarding concerns that the complainant had raised about how the Event Strategy Document was protectively marked.
39. The Protective Marking System (also known as the Government Protective Marking System/Scheme or GPMS) is an administrative system used by many public authorities and is designed to protect information (and other assets) from accidental or deliberate compromise. According to the website of the Cabinet Office, GPMS:

*“is the Government's administrative system to ensure that access to information and other assets is correctly managed and safeguarded to an agreed and proportionate level throughout their lifecycle, including creation, storage, transmission and destruction. The system is designed to support HMG [Her Majesty's Government's] business, and meet the requirements of relevant legislation, international standards and international agreements”.*

[http://www.cabinetoffice.gov.uk/spf/sp2\\_pmac.aspx](http://www.cabinetoffice.gov.uk/spf/sp2_pmac.aspx)



40. The website goes on to explain the legal framework associated with information held by public authorities including the Official Secrets Acts 1911 to 1989, the Data Protection Act 1998 (DPA98) and this Act. It comments:

*“The Protective Marking System is an administrative system designed to protect information (and other assets) from accidental or deliberate compromise, which may lead to damage, and/or be a criminal offence, and must therefore be viewed against the legal background”.*

41. The complainant noted a number of apparent contradictions in the protective markings recorded on the document and alleged that this was evidence that the public authority had deliberately withheld information which should have been disclosed to him upon request.
42. On 26 November 2008, the public authority wrote to apologise for ambiguities in the way that the document was protectively marked. It explained that these arose as a result of human error and added that this was compounded by the fact that the ambiguities were not picked up until the document was eventually released to the complainant. It explained that the manner in which the Public Order Branch (from where this document originated) undertook protective marking had been reviewed and updated to ensure that information is correctly marked now and in the future.
43. It also explained that, according to its information request handling records, the Event Strategy Document did not appear to have been mentioned at the time as being one that contained information pertinent to the request. However, it did consider that section 30 would apply to certain of the information. It acknowledged that it would be subject to adverse comment for the way it had handled this request but asserted that it had improved its processes since the date of this request.
44. On the same day, the Commissioner wrote back with a series of further questions regarding its application of section 30 in relation to the document which had been disclosed. Noting that sections 30 and 31 were mutually exclusive, the Commissioner asked for clarification as to how the two exemptions were being applied to the remaining withheld information. He recommended that a representative of the public authority call him to run through the detail over the telephone.
45. The representative did so on the same day. During the telephone conversation both parties noted that some of the information that the public authority had submitted to the Commissioner on 9 April 2008 appeared, in fact, to fall outside the scope of the complainant's specific request although it related more generally to policing of the march. The representative commented that the complainant's request had initially been read very widely, in all likelihood too widely, to include anything which related to the policing of the march. It continued this approach

when the Commissioner's office first became involved in the matter. Symptomatic of its approach was its inclusion of matters relating to counter-terrorism (see paragraph 15).

46. There was further discussion of the Event Strategy Document which had been disclosed in full to the complainant. The representative explained that ambiguities in the protective marking had now been rectified and that the information contained in such a document would not routinely be made available in full because it may prejudice law enforcement to do so. However, in the circumstances of this case, the public authority had reached the view that the information contained in it could be made available in full to the complainant.

### Findings of fact

47. In September 2005, a series of cartoons, some of which depicted the Prophet Mohammed as a terrorist, were published by a Danish newspaper. This caused considerable offence to many Muslims worldwide. This publication was widely reported and the cartoons were reproduced in national newspapers in a number of countries. There were a series of protests around the world. In a number of instances the protests involved acts of violence. The matter prompted a widespread debate about freedom of speech where the views freely expressed caused offence. On Friday, 3 February 2006, protests took place outside the Danish Embassy in London. There was also a march by protesters to other embassies which had not been authorised in advance by the appropriate authorities. Some of the protesters carried banners which many onlookers construed as incitement to violence and acts of terrorism. Concern was raised in a number of quarters about the limited number of arrests which took place on the day. The protest was videoed by the police and a number of individuals were subsequently identified, arrested and charged with a range of offences including soliciting to murder and inciting racial hatred. A series of prosecutions followed. An individual was also fined for failing to give proper notice of the intention to protest.
48. Throughout correspondence on this case, repeated reference has been made to the Gold Commander responsible for the policing of the 3 February 2006 protests. According to a manual of guidance available on the Association of Chief Police Officers' (ACPO) website entitled "Keeping the Peace", a Gold Commander fits a command structure in the following way.

*"There is a long established and nationally accepted structure within the police service and amongst our partner agencies for the effective command of incidents and events.*

*The structure has three levels: strategic, tactical and operational. The command functions of these are commonly referred to as Gold, Silver and Bronze respectively. These commanders need to be carefully*

*selected, trained and updated.*

*This structure is widely used for both pre-planned and spontaneous events and can offer the degree of flexibility required to cope with a varied and developing range of incidents. The decision to implement the command structure should be taken with regard to the threat and risk assessment available for an event or incident.*

*The command structure relies on the paramount principle of flexibility and as such is role specific and not rank-related. It requires all commanders to recognise the parameters of their own role, whilst accepting their relationship with others in the command team. Officers of a senior rank to the commander whether that be Gold, Silver or Bronze cannot assume primacy, solely on the basis of rank or territorial responsibility, without taking up the appropriate role within the command structure. This type of change should be consulted upon and must be documented for the audit trail".*

49. In a section entitled Strategy and Tactics, the manual goes on to describe the Gold Commander's role more specifically as follows:

**“Strategy - definition**

*Is the overall intention(s) to combine resources towards managing and resolving an event or incident.*

**The Gold Commander**

- *is the officer in overall command and has responsibility and accountability for the incident or event*
- *is required to resource the event*
- *chairs the strategic co-ordinating group in the event of a multi-agency response to an incident*
- *is required to set, review and update the strategy [and] must be so located as to be able to maintain effective strategic command of the operation*
- *is required to consult with partners when determining strategy*
- *must maintain objectivity and as such should not become drawn into tactical level decisions*
- *must remain available to the Silver Commander(s) [and] if required must ensure that the strategy for the event is documented in order to provide a clear audit trail, including any changes to that strategy*
- *needs to approve the Silver Commander(s) tactical plan and ensure that it meets the strategic intention for the event or incident*
- *is responsible for ensuring the resilience of the command structure and the effectiveness of the Silver Commander(s)".*

[http://www.acpo.police.uk/asp/policies/Data/keeping\\_the\\_peace.pdf](http://www.acpo.police.uk/asp/policies/Data/keeping_the_peace.pdf)  
(Chapter 3 - Strategic Considerations – Command (Pages 35-36)).

50. Further details as to the role of the Silver Commander in relation to tactical matters and the Bronze Commander in relation to operational matters is set out in the rest of the chapter.
51. Given that this manual is available on the Policies section of ACPO's website at the time this notice was drafted, the Commissioner assumes that this is a current document. Unfortunately, the document does not appear to be dated and therefore the Commissioner took steps to establish whether it was in use at the time of the protests (February 2006).
52. The foreword to the document was written by Sir Ronnie Flanagan, OBE, who is described as being the Chief Constable of Royal Ulster Constabulary. Noting that the Royal Ulster Constabulary was renamed the Police Service of Northern Ireland in November 2001 and Sir Ronnie Flanagan retired in 2002, the Commissioner therefore assumes that the above extract represents an accurate description of the role of a Gold Commander as at February 2006. The manual appears to have been published at some point before November 2001 and appears to be still in use as at the date of this Notice.

## Analysis

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53. As outlined in paragraph 8 above, the Commissioner's investigation has focussed on two areas:
  - a. whether the public authority holds a record of instructions given to the Gold Commander by a more senior officer; and
  - b. whether information caught by the scope of the complainant's request has been properly withheld under the Act.
54. However, during the course of the Commissioner's investigation a number of procedural failings on the part of the public authority have come to light. In the Commissioner's view, many of the difficulties experienced by all parties in the progress of this case may have been alleviated had these failings not arisen.

## Procedural matters

### *Delayed response*

55. Section 10(1) of the Act requires public authorities to respond to a request made under the Act within 20 working days. As noted in paragraph 3 above, the public authority failed to do so. This failure constitutes a contravention of section 17(1). This section is set out in a Legal Annex to this Notice. It also failed to provide certain information contained within the Event Strategy Document within 20 working days which it subsequently accepted fell within the scope of the request and could have been provided. Failure to provide this information within the

statutory period constitutes a contravention of section 10(1) and failure to correct the error at internal review constitutes a breach of section 1(1)(b). These sections are also set out in a Legal Annex to this Notice. The public authority's failure to consider this information as being within the scope of the complainant's request is addressed in "Other Matters" later in this Notice.

*Failure to quote precise exemption*

56. In its response dated 26 April 2006, the public authority failed to cite the specific exemptions it eventually sought rely on. In failing to do so, or to correct the error at internal review, it contravened the requirements of section 17(1)(a) and (b) which are set out in a Legal Annex to this Notice.

*Failure to explain why the exemption applies*

57. In addition, the Commissioner notes that its refusal notice set out a blanket application of various exemptions. It conflated its arguments as to harm and as to the balance of public interest in relation to the qualified exemptions it sought to rely on. In failing to explain with specific reference to each exemption, how the envisaged prejudice would be likely to arise and why the public interest in maintaining that exemption outweighed the public interest in disclosure, it contravened the requirements of section 17(1)(c) and section 17(3)(b). These sections are set out in a Legal Annex to this Notice.
58. Having set out the Commissioner's decision with regard to the public authority's compliance with its procedural obligations under the Act, this Notice will now consider the substantive issues raised by the complainant.

*Instructions to the Gold Commander*

59. The complainant did not specifically request instructions given to the Gold Commander although such instructions, if they were to exist, would clearly fall within the scope of the request. Because the request did not specify such instructions, the public authority was not obliged to provide confirmation or denial as to whether it held information of that specific description when it responded to the complainant. However, the complainant continues to assert that such information is held (and should be disclosed) and has asked the Commissioner to consider this matter as part of his investigation.
60. The Commissioner also notes that the complainant's request includes "verbal" instructions. The Commissioner has made it clear to the complainant on a number of occasions that the Act imposes a duty to disclose recorded information. Section 84 of the Act sets out the interpretation of words and phrases widely used throughout the Act. The word 'information' is interpreted as follows: "*information recorded*

*in any form*". In other words, the Act would not facilitate access to verbal instructions unless such instructions were recorded in any form.

61. This interpretation is subject to two caveats, namely section 51(8) and section 75(2). These relate to two unique situations where unrecorded information is relevant to the matters set out elsewhere in these sections respectively. The Commissioner does not consider that they are relevant to this case. However, for completeness, the relevant provisions of section 51 and section 75 are set out in a Legal Annex to this Notice.
62. The Commissioner specifically asked the public authority whether instructions were given to the Gold Commander by a more senior officer. He also asked, if such instructions were given, is there a record of them? In its response, the public authority provided a copy of an express denial by the Gold Commander in question that such instructions were ever given to him.
63. Given that the individual in question is a serving officer of the public authority and is of relatively senior rank, the Commissioner considers that considerable weight should be attached to this statement in its own right.
64. The Commissioner has also taken into account ACPO's published guidance "Keeping the Peace" referred to in paragraph 48 above. The Commissioner notes in particular the extract reproduced above regarding the command structure:

*"The command structure relies on the paramount principle of flexibility and as such is **role specific and not rank-related** [emphasis added]. It requires all commanders to recognise the parameters of their own role, whilst accepting their relationship with others in the command team. Officers of a senior rank to the commander whether that be Gold, Silver or Bronze cannot assume primacy, solely on the basis of rank or territorial responsibility, without taking up the appropriate role within the command structure. This type of change should be consulted upon and must be documented for the audit trail."*
65. The complainant has drawn attention to what he considers to be the relatively junior rank of the Gold Commander (the individual was a Superintendent). Based on his experience as a former serving officer, the complainant is convinced that an officer of a higher rank must have been involved in the strategic decision making process.
66. In the Commissioner's view, there is no compelling evidence to contradict the word of a senior serving officer and to indicate that the process for command transferral to another more senior officer (as outlined in paragraphs 48 and 64) took place in relation to the policing of this event. Even if, as the complainant is convinced, verbal instructions were given to the Gold Commander by an officer of a more



senior rank, disclosure of such instructions could only be considered under the Act where there was record of them or where a record is held which shows they were given.

67. Having considered all the above, the Commissioner is satisfied that, on the balance of probabilities, no information is held by the public authority which reflects a verbal instruction given to the Gold Commander by a more senior officer.
68. This Notice will shortly focus on the application of exemptions to that information which remains withheld from disclosure. However, before doing so, the Commissioner will address matters arising from two sets of information which were submitted to him as "withheld information" by the public authority.

#### *Information outside the scope of the request*

69. The Commissioner notes that the public authority included in its submission of "withheld information" certain information which could not be described as "*instructions to officers*". The Commissioner therefore considered whether such instructions could be extrapolated from that information such that it could be considered as falling within the scope of the request albeit somewhat tangentially. On reflection, the Commissioner concluded that it could not. The inclusion of this information in the bundle submitted by the public authority as "withheld information" is, in the Commissioner's view, symptomatic of the public authority's excessively broad reading of the complainant's request which has been addressed elsewhere in this Notice.

#### *Event Strategy Document*

70. The public authority eventually disclosed this document in full to the complainant in an effort to resolve informally his information access dispute. As outlined above, it commented to the Commissioner that some of the information would ordinarily be considered exempt from disclosure and would not be disclosed upon request under the Act. However, it decided that it was appropriate to make a full disclosure of the information in this document to the complainant in the circumstances of this case. It did not specify for the Commissioner exactly which sections of the document were, in its view, disclosable upon request under the Act and which sections were only suitable to disclose in the unique circumstances of this case and outside the Act. However, given the relative brevity of the document and the fact that the information in it has now been made available to the complainant, the Commissioner has taken the pragmatic view that there is little practical value in analysing the application of exemptions in relation to this particular set of information. This accords with his published policy "A Robust Approach to FOI Complaint Cases" which is available from his office's website.

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/forms/a\\_%20robust\\_%20approach\\_%20to\\_%20foi\\_%20complaint\\_%20cases001.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/forms/a_%20robust_%20approach_%20to_%20foi_%20complaint_%20cases001.pdf)

71. The Commissioner's concerns arising from the contradictory protective marking of this document are the subject of further comment in the Other Matters section of this Notice.

### **Exemptions – Sections 31(1)(a) and 31(1)(b) – Law enforcement**

72. The public authority provided the Commissioner with a copy of recorded information (other than that mentioned in paragraphs 69 and 70) which falls within the scope of the complainant's request. This information is contained in a briefing document which was articulated to officers in a late morning briefing on 3 February 2006.
73. The public authority has argued in its letter to the Commissioner dated 17 April 2008 that this information is exempt by virtue of section 31 (Law Enforcement). It did not specify which subsection of section 31 it sought to rely on but the Commissioner has concluded from its arguments that it is seeking to rely on sections 31(1)(a) and (b) (Prevention and Detection of Crime/Apprehension or Prosecution of Offenders). Full details of sections 31(1)(a) and (b) are set out in a Legal Annex to this Notice.
74. Similarly, it did not specify whether it believed this prejudicial outcome *would arise* or *would be likely* to arise. As can be seen by a careful reading of the legislation, the exemptions in section 31 are engaged where either of these two scenarios applies. The Commissioner normally expects the public authority to specify which scenario is applicable. In the absence of an explanation from the public authority, the Commissioner has decided to consider whether such a prejudicial outcome *would be likely* to arise rather than whether such a prejudicial outcome *would* arise. This is because the threshold for establishing the former is lower than the threshold for establishing the latter.
75. This approach accords with the Commissioner's general approach based on the decision of the Information Tribunal in *McIntyre v The Information Commissioner and the Ministry of Defence* at paragraph 45.

[http://www.informationtribunal.gov.uk/Documents/decisions/McIntyreDecision04\\_11\\_02\\_08.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/McIntyreDecision04_11_02_08.pdf)

76. Having examined the information, the Commissioner notes that the document includes information which was set out in the Event Strategy Document and which was disclosed to the complainant, albeit after considerable delay. The remainder clearly sets out perceived risks to public order and specific strategies for dealing with those risks as well as the staff that is being deployed on those issues. It is this remaining

and more detailed tactical information which is being considered in this section of this Notice.

77. The public authority argued that the briefing document goes into far greater detail in respect of police tactics and methodology than is provided by the Event Strategy Document which it disclosed to the complainant. It said that section 31 applied to this information *“particularly in the light of future public order events and the more detailed tactics employed by police”*.

*Likelihood of prejudice*

78. The Commissioner is satisfied that the tactical detail as to policing strategy provided in the withheld information would be sufficient for individuals to develop counter-strategies and to act upon them in contravention of the law, should they chose to do so. For obvious reasons, the Commissioner does not propose to set out on the face of this notice what details are provided in the withheld information which would allow individuals to develop counter-strategies. The Commissioner therefore went on to consider whether such information would be likely to be used in this way.
79. The Commissioner recognises that most individuals with cause to protest would seek to do so through peaceful, if vociferous, protest rather than through disruptive or violent means. However, the Commissioner does not believe it is far fetched to conclude that some individuals, with sight of this information, would be likely to develop counter-strategies and to act upon them in contravention of the law.
80. Where an individual chooses to deploy such a counter-strategy and to contravene the law, the Commissioner is also satisfied that they would be able to reduce the likelihood of being apprehended based on what they could determine from the withheld information.
81. The Commissioner is therefore satisfied that disclosure would be likely to give rise to prejudice to the prevention and detection of crime and the apprehension and prosecution of offenders. In consequence, the Commissioner is satisfied that the exemptions at section 31(1)(a) and section 31(1)(b) are engaged.
82. Where the Commissioner is satisfied that an exemption provided by section 31 is engaged, he must consider whether the public interest in maintaining that exemption outweighs the public interest in disclosure. This is widely referred to as the “public interest test”.

*The public interest test*

83. In *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2007/0060 etc) at paragraph 82, the Information Tribunal commented that

*“the ‘default setting’ in the Act is in favour of disclosure”.*

In *DWP v The Information Commissioner* (EA/2006/0040), the Tribunal stated:

*“It can be said ... that there is an assumption built into FOIA, that the disclosure of information by public authorities on request is in itself of value and in the public interest, in order to promote transparency and accountability in relation to the activities of public authorities. What this means is that there is always likely to be some public interest in favour of the disclosure of information under the Act. The strength of that interest, and the strength of the competing interest in maintaining any relevant exemption, must be assessed on a case by case basis: section 2(2)(b) requires the balance to be considered ‘in all the circumstances of the case’.”*

84. The Commissioner has therefore examined the arguments of the public authority and the complainant in relation to the balance of public interest and has considered what weight should be given to each factor that has been drawn to his attention by both parties in the circumstances of this case. He has also taken into account the public interest in transparency and accountability that disclosure of information upon request would serve.

*Factors in favour of maintaining the exemptions*

85. Regrettably, the public authority did not set out any specific public interest arguments in favour of maintaining either of the exemptions at section 31 which it sought to rely on in its correspondence with the complainant. As set out above, this is, of itself, a contravention of the Act. It also failed to do so in its correspondence with the Commissioner. However, the Commissioner has sought to extrapolate its position from elsewhere in the case correspondence and has identified the following arguments in favour of maintaining the exemption.

- There is a public interest in avoiding likely compromise to future police operations and activity.
- There is a public interest in avoiding likely compromise to the police’s ability to apprehend offenders and prevent crime.

*Factors in favour of disclosure*

86. The public authority set out generic public interest arguments in favour of disclosure as follows.
- Disclosure would assist public understanding of the workings of the public authority ensuring informed public debate
  - Disclosure would show the public authority to be open, honest and transparent in its activities
87. The complainant, however, put forward a number of specific arguments as to the public interest in disclosure.
88. The complainant has put to the Commissioner his suspicions that officers of the public authority were ordered to treat the protestors leniently for reasons of political correctness. By this, the Commissioner believes that the complainant is asserting that the public authority's officers were instructed to make limited arrests on the day of the protest because the public authority felt obliged to be more indulgent of the sensibilities of the protestors on the basis of their religious identity and right to freedom of expression, at the expense of the sensibilities of others who were likely to be extremely offended by some of the protestors' chants and placards. The complainant referred in particular to placards which appeared to incite the murder of Jews and "non-believers". The complainant further argued that other groups, for example, students and trade unionists, would be treated differently for a protest of a similar nature. He also referred to a recent march where, to his knowledge, officers of the public authority penned protestors in at Oxford Circus for a number of hours. He commented that those protestors had not incited murder but yet appeared to have been treated less leniently. He argued that the public authority appeared not to be treating all the members of the community that it served in an equal manner. He argued that there was powerful public interest in finding out whether this was, in fact, the case. He asserted a considerable likelihood that the withheld information would prove his suspicions to be true.

*The balance of public interest*

89. When considering the balance of public interest, the Commissioner has had regard for the Information Tribunal's comments in the case of *Department for Business, Enterprise and Regulatory Reform (DBERR) vs Information Commissioner (EA/2007/0072)*. At paragraph 110, the Tribunal said:

*"the timing of the application of the [public interest] test is at the date of the request or at least by the time of the compliance with ss.10 and 17 FOIA".*

90. The time for compliance is within 20 working days of the date of the

request. In this case, the request was made 4 days after the events in question and therefore the time for compliance was just over a month after the events in question. In line with the DBERR decision, the Commissioner has therefore considered the weight of competing public interests as at the beginning of March 2006, the date by which the public authority should have responded.

91. The Commissioner acknowledges that there is a clear public interest in understanding the decisions the public authority made in relation to policing such a controversial march. The march took place in London a matter of months after the July 2005 terrorist attacks which killed over 50 people in that city. Some of the protestors glorified those attacks and the 11 September 2001 terrorist attack on New York which killed over 2,500 people. Few arrests were made on the day of the march and there was widespread concern that the public authority had been too lenient in its policing of the event. The public authority has an obligation to facilitate lawful protest and, at the same time, to protect public order. The Commissioner notes that there was considerable criticism made about how it struck a balance between these twin obligations on the day in question, particularly in the time between the complainant's request and the public authority's refusal.
92. The withheld information sets out detail which would, in the Commissioner's view, assist the public in understanding the tactics and methodology adopted by the public authority in the policing of this event. The Commissioner believes that the withheld information could be characterised as "real time" information. It provides a snapshot of the public authority's strategic thinking at a particular point in time. It therefore has particular value as historical evidence where the quality of the public authority's decision making is subsequently called into question.
93. In the Commissioner's view, there is significant public interest in informing public debate about the quality of the public authority's policing decisions on the day in question. He also believes there is a significant public interest in increasing the public's understanding in more general terms as to how the public authority strikes a balance between facilitating lawful protest and protecting public order. He believes that disclosure of the withheld information would serve this public interest.
94. However, while the disclosure of "real time" tactical information would be of particular value in informing public debate, the Commissioner also believes that it has a particular value to those seeking to develop counter-strategies. In the Commissioner's view, there is a very strong public interest in ensuring that the public authority is not hampered in its efforts to facilitate lawful protest while at the same time maintaining public order. This information relates to the policing of a mass demonstration about a subject which had caused particular offence to the demonstrators. The manner in which those demonstrators



conducted themselves and the views they expressed caused particular offence to many onlookers and to many members of the wider public who followed live coverage of events. It was, self-evidently, a volatile situation which required careful handling by the public authority.

95. In mid-March 2006, the Commissioner notes that there were a number of significant arrests.  
[http://news.bbc.co.uk/1/hi/england/west\\_midlands/4814774.stm](http://news.bbc.co.uk/1/hi/england/west_midlands/4814774.stm)
96. The Commissioner also notes that on 11 February 2006, there was a large-scale and more peaceful demonstration organised by the Muslim Council of Britain and the Muslim Association of Britain which protested against the publication of the cartoons but which sought to distance itself from the actions and words of extremists, such as those who protested 8 days earlier.  
<http://news.bbc.co.uk/1/hi/england/london/4700482.stm>
97. In the Commissioner's view, the demonstration of 11 February 2006 would appear to reflect a groundswell of opinion in favour of peaceful and lawful protest against the offence caused by the Danish cartoons. However, the Commissioner believes that it was far from clear in the weeks immediately following the request that a more volatile protest, such as the one that arose on 3 February 2006, would not arise again. Recent "real time" tactical information would have been likely to have been of particular value to anyone seeking to develop a counter-strategy as described above. The Commissioner believes that the public authority should not have been fettered in its tactical decision making in Spring 2006 by having to take into account what had been made public in response to this request.
98. Whether the public authority has made the correct policing decisions in volatile situations is, in the Commissioner's view, rightly a matter for subsequent public debate. Such a debate must be well-informed by factual detail and clearly the public authority should be one of the primary sources of factual detail. However, the Commissioner recognises that there is a strong public interest in allowing the public authority to retain a tactical advantage over those seeking to undermine its efforts to maintain public order in volatile situations. In the Commissioner's view, this was particularly the case in the aftermath of the events of 3 February 2006.
99. It is extremely unfortunate that delays on the part of the public authority and in the Commissioner's own handling of this complaint have meant that a considerable amount of time has passed since the events in question. If a request for the same information were to be made today and if any refusal of such a request were to be brought to him as a complaint under section 50 of the Act, the Commissioner would take into account whether the passage of time had tilted the balance of public interest in favour of disclosure.

### *Conclusion*

100. The Commissioner has considered the arguments for and against maintaining the exemption as set out above. In his view, the arguments for maintaining the exemption carry greater weight in the circumstances of this case. He has had particular regard to the level of harm that would have been likely to arise to the enforcement of public order and to apprehension of offenders at the time of the request and the refusal. He recognises that the passage of time might affect the likelihood of prejudice and the balance of public interest. However, in the light of the DBERR decision, he must consider whether the public authority struck an appropriate balance of public interests at the time of its initial refusal.
101. The Commissioner has therefore concluded that the information in the briefing document that has not already been provided to the requester is exempt by virtue of sections 31(1)(a) and 31(1)(b) and that the public interest in maintaining both of these exemptions outweighs the public interest in disclosure.

### *Other exemptions*

102. The public authority had sought to argue that other exemptions, specifically those in sections 30 (Investigations Information) and 40 (Unfair Disclosure of Personal Data), would apply in the alternative.
103. Given that the Commissioner is satisfied that this information is exempt by virtue of exemptions at section 31 and that the public interest in maintaining these exemptions outweighs the public interest in disclosure, he does not propose to consider the application of section 30 or section 40 any further.

### **The Decision**

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104. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- It was entitled to rely on the exemptions at section 31(1)(a) and section 31(1)(b) in relation to the information in the briefing document which it withheld from disclosure.
105. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The public authority failed to respond within the statutory period. This failure constitutes a contravention of section 10(1) and section 17(1).

- The public authority failed to cite in its refusal notice the specific exemptions it eventually sought rely on and failed to rectify this at internal review. In failing to do so, it contravened the requirements of section 17(1)(a) and (b).
- The public authority failed to set out why it believed the various exemptions it sought to rely on applied. In failing to do so, it contravened the requirements of section 17(1)(c).
- The public authority failed to explain why, in the case of the qualified exemptions it sought to rely on, the public interest in maintaining those exemption outweighed the public interest in disclosure. In failing to do so, it contravened the requirements of section 17(3)(b).

## Steps Required

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106. The Commissioner requires no steps to be taken.

## Other matters

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107. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

### *Clarification of the complainant's request*

108. At various stages in the Commissioner's investigation of this case, it became clear that the public authority had not given sufficient focus to the specifics of the complainant's request. By its own admission, it read the complainant too widely. It included information which related in general terms to the policing of the event but not to the specifics of the request. It failed to identify certain information as falling within the scope of the request, namely the Event Strategy Document and a related briefing document. It also shifted focus onto information which would be exempt by virtue of section 23 and section 24 but did not communicate with the complainant to establish whether this information was of interest to him.
109. In the Commissioner's view the public authority should have focussed on the specifics of the complainant's request from the outset. Where it was uncertain as to what information the complainant was seeking it should have sought clarification from him at the outset. The need to narrow its focus with regard to the scope of the request was not identified until the Commissioner began his investigation. In the Commissioner's opinion, clarification should have been sought in response to the initial request.

110. The Commissioner recognises that the request dates back to 2006 and that, since then, the authority has sought to improve its overall approach in this regard.

*Use of protective marking*

111. During the course of the Commissioner's investigation, the complainant noted a number of apparent contradictions in the protective markings recorded on one of the documents he had been provided with as a result of his request – the Event Strategy Document. It later transpired that the document had been incorrectly labelled. In the Commissioner's opinion, this suggests non-conformity with paragraph 8.6 of the section 46 Code of Practice, which reads:

*“The record-keeping system, whether paper or electronic, should include a set of rules for referencing, titling, indexing and, if appropriate, security marking of records. These should be easily understood and should enable the efficient retrieval of information”.*

The section 46 Code of Practice can be accessed online via the following link:

<http://www.dca.gov.uk/foi/reference/imp/imp/codemanrec.htm>

112. The Commissioner understands that the authority's procedure for the protective marking of such material has since been reviewed.

## Right of Appeal

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113. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 30<sup>th</sup> day of June 2009**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### **S.1 General right of access**

**Section 1(1)** provides that -

*‘Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him.’*

...

### **S.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.’*

...

### **S.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, 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 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.'*

### **S.23 Information supplied by, or relating to, bodies dealing with security matters**

**Section 23(1)** provides that –

*'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'*

**Section 23(2)** provides that –

*'A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.'*

**Section 23(3)** provides that –

*'The bodies referred to in subsections (1) and (2) are-*

- (a) the Security Service,*
- (b) the Secret Intelligence Service,*
- (c) the Government Communications Headquarters,*
- (d) the special forces,*
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,*
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,*
- (g) the Tribunal established under section 5 of the Security Service Act 1989,*

- (h) *the Tribunal established under section 9 of the Intelligence Services Act 1994,*
- (i) *the Security Vetting Appeals Panel,*
- (j) *the Security Commission,*
- (k) *the National Criminal Intelligence Service, and*
- (l) *the Service Authority for the National Criminal Intelligence Service.'*

...

### **S24 National Security**

**Section 24(1)** provides that –

*'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.'*

**Section 24(2)** provides that –

*'The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.'*

**Section 24(3)** provides that –

*'A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact.'*

**Section 24(4)** provides that –

*'A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.'*

### **S25 Certificates under ss.23 and 24: supplementary provisions**

**Section 25(1)** provides that –

*'A document purporting to be a certificate under section 23(2) or 24(3) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.'*

**Section 25(2)** provides that –

*'A document which purports to be certified by or on behalf of a Minister of the Crown as a true copy of a certificate issued by that Minister under section 23(2) or 24(3) shall in any legal proceedings be evidence (or, in Scotland, sufficient evidence) of that certificate.'*

**Section 25(3)** provides that –

*'The power conferred by section 23(2) or 24(3) on a Minister of the Crown shall not be exercisable except by a Minister who is a member of the Cabinet or by the Attorney General, the Advocate General for Scotland or the Attorney General for Northern Ireland.'*

### **S.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.' ...*

### **S.31 Law enforcement**

**Section 31(1)** provides that –

*'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,*

...

### **S.51 Information notices**

**Section 50(1)** provides that -  
*If the Commissioner—*

(a) *has received an application under section 50, or*

(b) *reasonably requires any information—*

- (i) *for the purpose of determining whether a public authority has complied or is complying with any of the requirements of Part I,*  
*or*
- (ii) *for the purpose of determining whether the practice of a public authority in relation to the exercise of its functions under this Act conforms with that proposed in the codes of practice under sections 45 and 46,*

*he may serve the authority with a notice (in this Act referred to as “an information notice”) requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to*

*compliance with Part I or to conformity with the code of practice as is so specified.*

...

**Section 50(8)** provides that –

*In this section “information” includes unrecorded information.*

### **S.75 Power to amend or repeal enactments prohibiting disclosure of information**

**Section 75(1)** provides that –

*If, with respect to any enactment which prohibits the disclosure of information held by a public authority, it appears to the Secretary of State that by virtue of section 44(1)(a) the enactment is capable of preventing the disclosure of information under section 1, he may by order repeal or amend the enactment for the purpose of removing or relaxing the prohibition.*

**Section 75(2)** provides that –

*In subsection (1)—*

- *“enactment” means—*
  - (a) *any enactment contained in an Act passed before or in the same Session as this Act, or*
  - (b) *any enactment contained in Northern Ireland legislation or subordinate legislation passed or made before the passing of this Act;*
- *“information” includes unrecorded information*