

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 May 2009

Public Authority: Chief Constable of Hampshire Constabulary
Address: Police Headquarters
West Hill
Romsey Road
Winchester
Hampshire
SO22 5DB

Summary

The complainant requested the number and nature of crimes committed at all Home Office Approved Premises within the area covered by the public authority for the financial year 2005/06. The public authority refused the request, citing the exemptions provided by sections 31(1)(a) (prejudice to the prevention or detection of crime), 31(1)(b) (prejudice to the apprehension or prosecution of offenders), 38(1)(a) & (b) (endangerment to health and safety) and 40(2) (personal information). The Commissioner finds that none of these exemptions are engaged and the public authority is required to disclose the information requested. The Commissioner also finds that the public authority failed to comply with the procedural requirements of sections 1(1)(b), 17(1)(b), 17(1)(c) and 17(3)(b) in its handling of the request.

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 complainant made the following information request on 23 August 2006:

"For the last financial year (05/06) please provide a table showing the number and nature of crimes that have been committed at Home Office Approved Premises within your area. If you have more than one within

your area please provide a separate table for each building/complex.

By approved premises I mean a Home Office approved probation and bail hostel managed by the National Probation Service for England and Wales."

3. The public authority responded to this on 21 September 2006. The request was refused, with the public authority citing sections 31(1) (law enforcement), 38(1) (health and safety) and 40(2) (personal information). The refusal notice provided little explanation of the reasoning for why each exemption was believed to be engaged. The reasoning for the citing of the exemptions was included as a generalised 'harm test' and the balance of the public interest in connection with sections 31(1) and 38(1) was addressed jointly for both these exemptions, rather than in connection with each individual exemption. The refusal notice also specified that it should not be taken as a confirmation or denial of whether the requested information was held.
4. The complainant responded on 5 October 2006 and asked the public authority to carry out an internal review of its handling of the request. The public authority responded with the outcome to the review on 1 December 2006. This upheld the initial refusal of the request, but gave no explanation as to why.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner initially on 11 December 2006. The complainant specified that he did not agree with the exemptions cited by the public authority. The complainant also stated that he had received similar information to that requested in this case from other police forces. To illustrate this point the complainant enclosed a copy of a response he had received from Cambridgeshire Constabulary in which similar information to that requested in this case had been disclosed, in response to an identical request.

Chronology

6. The Commissioner contacted the public authority initially on 21 October 2008. The background to this case was set out and the public authority was asked to respond with further clarification about its reasoning for the exemptions cited. Specifically, the public authority was asked to address the following:
 - Section 31
 - Confirm which subsection(s) of 31(1) are believed to be engaged.
 - State in detail how disclosure of the information in question would, or would be likely to prejudice the function(s) specified in the relevant subsection(s). The public authority was asked to be specific as to whether its stance was that prejudice would result, or whether it was that prejudice

would be likely to result. The public authority was advised that its response should address what prejudice would occur, e.g. disruption of the flow of information to the police, and why this prejudice would, or would be likely, to occur as a result of disclosure of the information in question here, e.g. the information is sufficiently detailed that it could be linked to an individual and individuals may in future be dissuaded from providing information to the police if they believe that information that could be linked to them may be disclosed via the Act.

- Noting that the public authority had intimated in the refusal notice that it did not wish to confirm or deny whether the information requested was held, the Commissioner asked the public authority to be specific as to whether it believed that section 31(3) was engaged and, if so, to explain why it believed prejudice would, or would be likely to, occur through confirmation or denial.
 - The public authority was asked to give any further arguments it wished as to why it believed that the public interest favoured maintenance of the exemption to those given in the refusal notice.
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- Section 38
 - Confirm which subsection(s) of section 38(1) are believed to apply.
 - Explain how disclosure of the information in question would, or would be likely, to endanger health and/or safety, including in respect to whom the endangerment would arise and being specific as to whether endangerment would arise, or whether it would be likely to arise. The public authority was advised that its response should address what form the endangerment would take, e.g. the information is sufficiently detailed to enable it to be linked to individuals and these individuals may be subject to reprisals, and why this endangerment would or would be likely to occur as a result of disclosure of the information in question here, e.g. the perpetrators of the crimes to which the information relates have previously targeted individuals who have provided information to the police.
 - The public authority was advised that if its response was that subsection 38(2) was engaged it should tailor its arguments to explain specifically why exemption from the duty to confirm or deny was necessary in order to prevent endangerment to health and/or safety.
 - The public authority was asked to give any further arguments about why it believed that the public interest favoured maintenance of the exemption to those given in the refusal notice.
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- Section 40
 - The public authority was asked to explain how the information in question constitutes personal data, being specific about to which individuals this personal data relates.
 - State which of the data protection principles it believed would be contravened through disclosure and explain its reasoning for this.
 - If the stance of the public authority was that section 40(5) was engaged, it

was advised to respond addressing specifically why exemption from the duty to confirm or deny was necessary in order to prevent a breach of the data protection principles.

7. Finally, it was stressed that the arguments as to why the exemptions cited were believed to be engaged should be detailed and specific to the information in question. The public authority was advised that the Commissioner would be unlikely to conclude that the exemptions cited were engaged on the basis of the arguments given by the public authority in the refusal notice.
8. The public authority responded to this on 13 November 2008. On the issue of which subsection(s) of section 31(1) were believed to be engaged, the public authority specified 31(1)(a) (the prevention or detection of crime) and 31(1)(b) (the apprehension or prosecution of offenders).
9. In response to the question of how and why the prejudice would, or would be likely, to occur, the public authority stated the following:

"We believe our original response to the applicant provides sufficient information to outline our concerns surrounding disclosure."

The public authority did not address the public interest in connection with sections 31(1)(a) and (b).

10. The public authority stated that the reference to neither confirming nor denying made in the refusal notice was an error and that the position of the public authority was not that subsections 31(3), 38(2) or 40(5) were engaged.
11. In connection with section 38(1), the public authority specified "38(a) (b)". The Commissioner assumes that the intention of the public authority is to cite both sections 38(1)(a) and 38(1)(b). On the issue of why this exemption was believed to be engaged, the public authority stated the following:

"Please see original response to the applicant."

12. On the issue of the public interest the public authority stated the following:

"There are no further arguments we would wish to raise, over and above the public interest test originally conducted."

13. In connection with section 40(2), on the issue of how the requested information constitutes personal data, the public authority stated the following:

"This argument is outlined in Hampshire Constabulary's original response."

14. The public authority specified the first data protection principle, which states that personal data shall be processed fairly and lawfully, and gave the following as its explanation for how this would be breached through disclosure:

"The information held may result in the locations and individuals residing at

these premises being targeted. These individuals are trying to be rehabilitated back into society and any disclosure would impact heavy [sic] this managed process.”

15. The public authority also provided to the Commissioner a copy of the information withheld from the complainant.

Findings of fact

16. The public authority holds recorded information showing the number and nature of crimes committed in Home Office Approved Premises within its area.
17. Information giving the names of Home Office Approved Premises, including those within the area covered by the public authority, is available online at:

www.probation.homeoffice.gov.uk/files/pdf/Approved%20Premises%20Resources%20Review.pdf

Analysis

Procedural matters

Section 1

18. The refusal notice stated that it should not be taken as a confirmation that the information requested was held. Following the intervention of the Commissioner, the public authority confirmed that it did hold the information specified in the request and that its position was not that it wished to neither confirm nor deny whether the requested information was held. In failing to confirm or deny whether the information requested was held at either the refusal notice or internal review stage, the public authority breached section 1(1)(a). This section, along with all others covered in this notice, is set out in full in the legal annex.

Section 17

19. The public authority failed to specify the relevant full subsections of sections 31 (31(1)(a) & (b)) and 38 (38(1)(a) & (b)) at either the refusal notice or internal review stage and in so doing breached section 17(1)(b).
20. The public authority failed to provide adequate explanations for why the exemptions provided by sections 31(1)(a) & (b), 38(1)(a) & (b) and 40(2) were engaged at either the refusal notice or internal review stage. In so doing the public authority failed to comply with the requirement of section 17(1)(c).
21. The public authority failed to adequately address why it believed that the public interest favoured the maintenance of the exemptions provided by sections 31(1)(a) & (b) and 38(1)(a) & (b) at either the refusal notice or internal review stage and in so doing breached section 17(3)(b).

Exemption

Section 31

22. Consideration of this exemption is a two stage process. Firstly, the exemption must be engaged through it being at least likely that prejudice would occur to the process specified in the relevant subsection(s). Secondly, the exemption is subject to the public interest. The effect of this is that the information should be disclosed if the public interest favours this, regardless of how clear it is that the exemption is engaged.

Prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders?

23. The public authority has specified subsections 31(1)(a) and (b), indicating that it believes that disclosure would, or would be likely to, result in prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders. The public authority has not specified whether its stance is that prejudice *would* result through disclosure, or whether it is that prejudice *would be likely* to result. Where a public authority does not specify would or would be likely, the Commissioner will consider whether prejudice would be likely to result through disclosure. In order for the Commissioner to conclude that prejudice would be likely to result, the possibility of this must be real and significant and more than hypothetical or remote.
24. The first argument advanced by the public authority is that disclosure in this case may discourage the provision of information to the police. The public authority has not, however, developed its argument here. No reference is made to the information in question and no explanation has been given as to how this prejudice would result, or why this would be likely through disclosure of this information.
25. In the absence of detailed argument from the public authority, the Commissioner has considered what the content of the information in question suggests as to the likelihood of this prejudice. The argument that prejudice would be likely to result through a disruption to the flow of information to the police would ordinarily be based on the notion that some individuals would be discouraged from reporting information to the police if information that they perceived could be linked to them was subsequently disclosed. Whilst the Commissioner accepts the basic premise of this argument, for it to carry weight there must be some realistic possibility of the perception being held by potential sources of intelligence for the public authority that the information in question could be linked to individuals.
26. The public authority has not been specific that its argument is based on the possibility of linking the information to individuals who have provided information to the police, but the Commissioner has taken this as the suggestion inherent in the brief argument made by the public authority. There appears to be no realistic possibility of linking the information in question here to any individual who has provided information to the police, or of anyone perceiving that it could be. The

information makes no reference to individuals and provides little detail; the crimes committed are described only in general terms.

27. The Commissioner also considers it notable that the information shows crimes according to categories defined by the public authority. The crimes are not recorded on the basis of any initial complaint made to the police. For example, amongst the record of crimes committed at one premises are offences described as “public order”. This description gives no indication of the detail of the initial complaint made to the public authority.
28. The Commissioner further notes that the information gives no indication if the crimes recorded were detected through action taken by the public authority following a complaint having been made to it by a member of the public. Where these crimes were detected through other means, as a result of surveillance conducted by the public authority for example, this prejudice argument would not be relevant.
29. The Commissioner concludes that prejudice relevant to either 31(1)(a) or (b) through the disruption to the flow of information to the public authority is not likely to occur as a result of disclosure of the information in question. This conclusion is based on the absence of a description from the public authority as to how and why this prejudice would be likely to occur, nor anything within the content of the information in question that suggests that this prejudice would be likely.
30. The second argument advanced by the public authority was that disclosure of the information in question may make the premises to which the information relates a more attractive target to criminals. Again, no explanation of the reasoning for this argument has been given at any stage, despite the Commissioner’s invitation. In the absence of such an explanation, the Commissioner has considered whether the content of the information in question indicates why the public authority believed this prejudice may be likely to occur.
31. This argument would carry weight only if the information in question included content that could conceivably be interpreted as increasing the attractiveness of the premises specified as a target for crime. An example of this would be if the information disclosed detail about the security of access, or lack thereof, to the premises specified. The information consists of a list of crimes committed at the premises during the dates specified in the request. Nothing within the content of this information sheds light on the suggestion of the public authority that disclosure of this information would be likely to make these premises a more attractive target for criminals.
32. The Commissioner concludes that prejudice relevant to either 31(1)(a) or (b) through making the premises specified in the request a more attractive target to criminals is not likely to result through disclosure. This conclusion is based on the absence of a description from the public authority as to how and why this prejudice would be likely to occur or anything within the content of the information in question suggesting that this prejudice would be likely.
33. As noted above, the public authority has given no arguments beyond those given

in the refusal notice. The arguments given in the refusal notice are not detailed or thorough and make no reference to the content of the information in question. Having considered the content of the information both in terms of the brief arguments given by the public authority in the refusal notice and more widely in terms of whether any prejudice relevant to 31(1)(a) and (b) not identified by the public authority may be likely to result through disclosure, the Commissioner has found that this content does not support the stance of the public authority that this exemption is engaged.

34. The overall conclusion of the Commissioner is that the public authority has demonstrated no real or significant likelihood of prejudice resulting to either the prevention or detection of crime, or the apprehension or prosecution of offenders, through the disclosure of the information in question; and the exemption provided by sections 31(1)(a) and (b) is not, therefore, engaged. Having reached this conclusion it has not been necessary to go on to consider where the balance of the public interest lies.

Section 38

35. The public authority has specified both 38(1)(a) and (b), indicating that it believes that disclosure would or would be likely to result in endangerment to physical and/or mental health and to safety. The public authority has not specified whether its stance is that endangerment *would* result, or whether it is that it *would be likely* to result. In the absence of clarification on this point from the public authority, the Commissioner will consider whether endangerment is likely. The same test described above also applies to this exemption, that is, that in order for the Commissioner to conclude that endangerment is likely the possibility of this must be real and significant and more than hypothetical or remote. Section 38 is also subject to the public interest, meaning that the information should be disclosed if the public interest favours this, regardless of how clear it is that endangerment to health or safety would be likely to result through disclosure.

Endangerment to health and safety?

36. The public authority advanced one argument relevant to section 38, stating the following:

“Community tensions may be raised following the release of information without a suitable contextual framework, leading to possible vigilante action or public order issues.”

37. Although the public authority has not been specific as to whom the endangerment to health or safety would be likely to occur, it appears to be suggesting here that health and safety could be endangered through violence directed towards those resident at the premises specified in the request. No description of how or why this endangerment would be likely to result through disclosure of the information in question has been given by the public authority.
38. In the absence of an explanation by the public authority, the Commissioner has considered what likelihood of the endangerment suggested by the public

authority, as well as any other endangerment, is suggested by the contents of the information in question here. The information includes the addresses of the premises specified in the request. Had the public authority argued that these addresses were confidential and that endangerment to health and safety would be likely to result through disclosure of these addresses, this argument may have carried weight. However, the public authority has made no such argument. The Commissioner also notes that information disclosing the names of Home Office Approved Premises is available in the public domain, as referred to above at paragraph 17.

39. The information also records, by broad category, the nature of crime committed at the premises specified. The Commissioner recognises that an argument could be made that where crimes are recorded in categories that may be commonly held to be of particular sensitivity, sexual offences for example, any disclosure that such crimes have been committed would indeed lead to a likelihood of violence directed towards the residents of the premises specified in the request. However, the Commissioner does not believe that sufficient detail is included within the information to make likelihood of violence directed towards the residents of these premises real or significant. The information does not go beyond identifying crimes by broad category and there is nothing within the information that would enable crimes to be linked to individuals.
40. The Commissioner concludes that the likelihood of endangerment to health and safety through the disclosure of the information in question here is less than real and significant and that the exemption is not, therefore, engaged. This conclusion is based on the absence of an explanation from the public authority as to how, why or to whom the endangerment would be likely to result, and that the content of the information does not suggest that the likelihood of endangerment would be sufficiently real or significant to engage the exemption. As this conclusion has been reached, it has not been necessary to go on to consider the balance of the public interest.

Section 40

41. In order for the exemption provided by section 40(2) to be engaged, the information must first constitute the personal data of an individual other than the applicant. Secondly, the processing of personal data inherent in the disclosure of this information must be in breach of at least one of the data protection principles.

Personal data?

42. The arguments advanced by the public authority on this issue are as follows:

“The potential disclosure of site specific information will almost always have data protection implications for third parties.”

“...since you are requesting information specific to a premises, this may inadvertently disclose the identity of individuals and therefore compromise the privacy of residents at this location.”

43. The public authority has not been specific about whose personal data the information in question would constitute, but it appears to be suggesting here that the data subjects would be the residents of the premises.

Section 1(1) of the DPA defines personal data as follows:

“personal data’ means 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.”

44. The information in this case does not relate directly to any individual; the information records the number and type of crimes committed at the premises specified in the request. In considering whether personal data can be said to ‘relate to’ a living individual, the Commissioner’s guidance on the issue of what is personal data gives the following tests for determining whether information that is not ‘obviously about’ a particular individual constitutes personal data.

Is the data being processed, or could it easily be processed to:

- learn;
- record; or
- decide

something about an identifiable individual, or;

as an incidental consequence of the processing, either:

- could you learn or record something about an identifiable individual; or
- could the processing have an impact on, or affect, an identifiable individual?

45. The public authority has advanced no argument about how the information in this case relates to living individuals, despite not being ‘obviously about’ an individual. In the absence of arguments from the public authority, the Commissioner has referred to the following questions suggested in his guidance to be considered when attempting to define whether information conforms to the above tests.

- Is the data linked to an individual so that it provides particular information about that individual?

No; the data gives the number and broad categories of crimes committed at the premises specified. It provides no information about crimes committed by individuals.

- Is the data used, or is it to be used, to inform or influence actions or decisions affecting an identifiable individual?

No; were the public authority to take action in connection with crimes committed

at the premises specified in the request, it appears reasonable to assume that this would be informed and influenced by the information held by it relating specifically to these crimes, rather than by information showing the number and broad categories of crimes committed.

- Does the data have any biographical significance in relation to an individual?

No. If this information recorded crimes committed by reference to individuals, it could have been fairly characterised as having biographical significance to an individual. This information is, however, recorded by reference to location rather than individuals.

- Does the data focus or concentrate on an individual as its central theme rather than on some person, or some object, transaction or event?

No; the focus of the information is on the event of crimes at the premises during the time period specified.

- Does the data impact or have the potential to impact on an individual, whether in a personal, family, business or professional capacity?

This question goes to the key issue here; whilst the information clearly does not directly impact upon an individual, had the public authority given a full argument it may have suggested that the numbers of residents at the premises were sufficiently low that it would have been possible to link the crimes to specific individuals. Alternatively, it may have suggested that the information in question here when combined with other information (knowledge of previous crimes committed by residents of the premises, for example) would have had the potential to impact on an individual. Such an argument would have carried particular weight had it been supported by evidence. The public authority made no such argument, however, and the Commissioner does not believe that there is a strong suggestion based on the content and nature of the information in question that it would have the potential to impact on an individual.

46. The conclusion of the Commissioner is that the information in question does not constitute personal data. The exemption provided by section 40(2) is not, therefore, engaged. This conclusion is based on the absence of arguments advanced by the public authority and on the criteria suggested in the Commissioner's guidance on the issue of what constitutes personal data. As this conclusion has been reached, it has not been necessary to go on to consider whether the disclosure of this information would breach any of the data protection principles.

The Decision

47. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it concluded incorrectly that the exemptions provided by sections 31(1)(a) & (b), 38(1)(a) & (b) and 40(2)

were engaged. In failing to disclose information that the Commissioner now finds is not subject to an exemption, the public authority did not comply with the requirement of section 1(1)(b).

48. The Commissioner also finds that the public authority failed to comply with the procedural requirements of sections 1(1)(a), 17(1)(b), 17(1)(c) and 17(3)(b) as covered above at paragraphs 18 - 21.

Steps Required

49. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- disclose the information previously withheld as exempt.

50. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

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

52. During the course of his investigation, the Commissioner has met with resistance in his attempts to understand the public authority's reasons for invoking particular exemptions, and has simply been referred to the arguments in the original refusal notice. The Commissioner does not consider the public authority's approach to this case to be particularly co-operative, or within the spirit of the Act. As such he will be monitoring the public authority's future engagement with the ICO and would expect to see improvements in this regard.

53. In the refusal notice, the public authority included a generalised "harm test" after listing which exemptions were being claimed. Although arguments relating to potential harm or prejudice may be relevant to explaining why a prejudice-based exemption is engaged or where the balance of the public interest lies in relation to a particular qualified exemption, the Commissioner is concerned that the authority did not clearly link its "harm" arguments to the specific exemptions claimed. The refusal notice also listed public interest factors without specifying which factors applied to which exemption. The Commissioner emphasises that a refusal notice should clearly state, in relation to each exemption claimed, why it applies to the particular information in question and where the balance of the public interest lies.

54. As referred to above at paragraph 4, when giving the outcome to the internal review, the public authority gave no reasoning for concluding that the refusal of the request should be upheld. Paragraph 39 of the section 45 Code of Practice states the following:

“The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about the where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue.”

55. The internal review response from the public authority did not reflect that a reconsideration of the request conforming to the description above took place. The Commissioner would advise the public authority that a response giving the outcome to an internal review should state the reasoning for why the initial refusal was upheld and should reflect that there has been a genuine reconsideration of the request.
56. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Failure to comply

57. 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

58. 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

59. 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 12 day of May 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Section 1

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.”

Section 17

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.”

Section 31

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,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment."

Section 31(3) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)."

Section 38

Section 38(1) provides that –

"Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual."

Section 38(2) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1)."

Section 40

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(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”