

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 3 August 2009

Public Authority: West Yorkshire Police
Address: PO Box 9
Laburnum Road
Wakefield
West Yorkshire
WF1 3QP

Summary

The complainant requested copies of all documents prepared by West Yorkshire Police in relation to a risk assessment carried out as part of a missing person enquiry for his son. This was refused by the public authority as they considered it exempt from disclosure under sections 31, 40 and 41 of the Freedom of Information Act. During the Commissioner's investigation, the public authority changed its position on the refusal under section 31 to section 30 of the Act and introduced section 23 for some of the information. The Commissioner found that section 30(1) applied to the information. He concluded that the public interest in maintaining the exemption in section 30(1) outweighs the public interest in disclosure for some of the information. For the remainder he concluded that the public interest favours disclosure. He also found that section 23 did not apply. It was not necessary to consider sections 40(2) and 41 as the Commissioner concluded that all the material withheld under those exemptions was correctly withheld by the public authority under section 30(1). The Commissioner has ordered the public authority to disclose redacted copies of the information to the complainant. He has also found breaches of sections 1(1)(b), 10(1), 17(1)(a) (b) and 17(1)(c) of the Act.

The Commissioner's Role

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

The Request

2. The complainant's son was reported missing in December 2005 and an investigation was conducted by West Yorkshire Police. Subsequently, the body of the complainant's son was found and it is the complainant's view that, had the missing person enquiry been conducted with greater urgency by the public authority, he might have been discovered before he died.
3. The complainant requested the following information on 28 January 2008:

"all documents prepared by West Yorkshire Police in relation to the risk assessment carried out for my son [named]."
4. This request was refused on 4 February 2008. It appears that it was misinterpreted as a request for the complainant's own personal data and therefore it was refused in its entirety under section 40 of the Act, although the relevant subsection of the Act was not specified. The complainant was advised to make a Subject Access Request under the Data Protection Act 1998, and informed of the appropriate fee for this.
5. An internal review was requested on 25 February 2008 and the outcome of this was communicated to the complainant in a letter dated 10 March 2008. It upheld the decision in respect of the section 40 application although, again, the relevant subsections of the Act were not stated or explained. The internal review further refused the requested information, citing two further exemptions from disclosure contained in sections 31 and 41 of the Act, in respect of the request for the risk assessment information. It did not specify which part of section 31 was being relied on, although a prejudice-based public interest test was applied. No explanation was offered in respect of section 41, though "*Tortuous Duty*" [sic] was cited as part of the public interest test against disclosure and the Commissioner has considered whether this was intended to refer to the section 41 exemption.

The Investigation

Scope of the case

6. On 12 March 2008 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 whether the public authority had correctly withheld the requested information on the basis of the exemptions cited.
7. The complainant is aware that the Data Protection Act 1998 only applies to living persons and therefore questions the validity of the refusal under section 40 of the Act as the material was prepared in relation to his deceased son. He has clarified that his complaint relates to the non-disclosure of information other than his own personal data.

8. West Yorkshire Police indicated to the Commissioner that it was prepared to allow the complainant sight of the requested information through its family liaison team, by way of informal resolution of the complaint. This was put to the complainant, who declined as he wanted to pursue the request under the Act.
9. The Commissioner notes that personal data of the complainant is contained within the requested information. As indicated above the complainant specified he did not wish to complain about access to his own information. Therefore the Commissioner has not given further consideration to the withheld information to the extent that it constitutes the complainant's personal data and such information would need to be omitted from any document that the public authority may be ordered to disclose.
10. 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

11. On 10 October 2008 the Commissioner wrote to West Yorkshire Police, requesting copies of the withheld information, suitably marked to indicate which sections of the Act were being applied.
12. The withheld information was received from the public authority on 10 November 2008, together with copies of the authority's refusal notice and the outcome of the internal review which stated the exemptions that applied to the information. The information was not marked by the public authority to indicate how and why the exemptions were applied.
13. On 6 February 2009 the Commissioner telephoned West Yorkshire Police and, having considered the nature of the information submitted by the public authority, asked them to reconsider their decision against disclosure. The public authority indicated that it might be possible to allow the complainant to view the information on police premises, via the authority's family liaison unit.
14. On 11 February 2009 West Yorkshire Police contacted the Commissioner by email to confirm their willingness to allow the complainant an informal viewing of the documents with the assistance of a family liaison officer. This would constitute an informal disclosure outside of the Act. The Commissioner contacted the complainant, who indicated that he required copies of the documentation for his own use and as this would not be possible under the proposal as described, he would prefer to continue with the complaint.
15. On 12 February 2009 the Commissioner wrote to West Yorkshire Police to request further clarification in respect of the public authority's application of the exemptions cited in their refusal notice and internal review, specifically:

whether they had intended to cite the exemption contained in section 30(1)(a)(i) as this appeared to be more applicable to the information than the exemption contained in section 31.

16. On 11 March 2009 West Yorkshire Police wrote to the Commissioner confirming that they wished to cite section 30 instead of section 31 for the entire information and giving their reasons for believing section 41 was engaged for certain aspects of the information.
17. On 16 March 2009 the Commissioner received a copy of the withheld information, marked to indicate the sections considered by the public authority to be exempt from disclosure, and the exemptions that they had applied to them. The Commissioner noted that one short section had been marked as exempt under section 23(1) of the Act (information supplied by, or relating to, bodies dealing with security matters) where this exemption had not been previously mentioned by the public authority.
18. Also on 16 March 2009 the complainant contacted the Commissioner by telephone to request an update on progress. The Commissioner contacted West Yorkshire Police to request clarification of the public authority's position regarding informal viewing of the information under family liaison, subsequent to any adjudication by the Commissioner involving release of any part of the information. The public authority confirmed its position that it considered any informal viewing would not be appropriate in those circumstances because possession of a redacted version would allow the complainant to 'fill in the gaps' of any redactions of particular interest to him if he subsequently had access to the un-redacted copies.

Findings of fact

19. The withheld information consists of two documents which consist of reviews by senior officers of procedures and risk-assessments undertaken during a missing person enquiry. It contains references to, and quotations from, various witnesses who assisted the police during the investigation.
20. Together, the documents give some insight into the procedures and decision-making processes undertaken by West Yorkshire Police in conducting a missing person enquiry.
21. Information relating to the conduct of missing person enquiries is available on the internet, including a 133-page PDF document issued by the Association of Chief Police Officers (ACPO) in 2005, "*Guidance on the management recording and investigation of missing persons*", published on the ACPO website; and the 10-page document, "*07501 Procedure – the Recording, Investigation and Management of Missing Persons*" published by Hampshire Police on their website.

Analysis

Procedural matters

22. In addition to the refusal under section 40 of the Act, the internal review also applied two further exemptions to the requested information, section 31 (Law enforcement) and section 41 (Information provided in confidence). In failing to identify the subsections of sections 40 and 31 that applied by the time the internal review was completed or to explain why the exemption applied the public authority breached sections 17(1)(b) and (c). During the Commissioner's investigation the public authority also suggested that section 23 applied to some information and also changed its reliance on section 31 to section 30(1). In failing to cite these exemptions within the statutory time scale the public authority breached sections 17(1)(a), (b) and (c).
23. The Commissioner has concluded that some of the withheld information was not exempt by virtue of sections 23 and 30(1) and West Yorkshire Police therefore breached section 1(1)(b) in failing to disclose that information, and section 10(1) by failing to provide it within the statutory time limit.

Exemption - Section 30(1)

24. Following correspondence with the Commissioner, the public authority indicated that it wished to rely on the exemption provided by section 30 (investigations) of the Act, in place of their previous reliance on section 31 (law enforcement) agreeing that section 30(1) is the more appropriate exemption to consider in the context as the information was held for the purposes of an investigation.

25. 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-

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,

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

any criminal proceedings which the authority has power to conduct.'

26. The background to this complaint relates to a missing person investigation conducted by the public authority. A missing person investigation inevitably falls into section 30(1)(b) due to the possibility that the person is missing as a result of

some unlawful action. The Commissioner is satisfied that the information in the reports is held by the public authority for the purposes of an investigation particularly as they contain direct quotes from information obtained during the investigation and the opinions and views expressed quote that evidence. Section 30 is a class-based exemption, so that where the information is found to be of the class described then the section is applicable and consequently section 30(1)(b) is engaged.

27. Having concluded that the exemption is engaged it is necessary to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. There is an assumption in favour of disclosure and therefore if the public interest arguments for maintaining the exemption are equal to those for disclose the information will need to be disclosed.

Arguments in favour of maintaining the exemption

28. In this case, the public authority considered the following factors in favour of maintaining the exemption.
- The general presumption that details of an investigation will not be released due to the likelihood of the release of personal information and the risk that information related to police tactics and procedures will be revealed and of use to criminals.
 - The risk of the detrimental effect on the public coming forward to assist investigations if they thought their details might be revealed.
 - The moral argument that disclosure breaches the European Convention on Human Rights (ECHR), particularly the right to privacy which still applies to deceased individuals.
 - The risk that release of information might jeopardise individuals or third parties, particularly in relation to the personal affairs of individuals.
29. In the Commissioner's view there is no general presumption against disclosure of details of an investigation. The fact that section 30(1) is a class based exemption simply means that public authorities are not required to carry out a prejudice test in order to engage the exemption. Where the exemption applies the weight that should be attached to arguments both for and against disclosure must be determined on the basis of the circumstances of the particular case. Having carried out this balancing exercise if the scales are equal then the assumption in favour of disclosure, as mentioned above, means that the information should be released.
30. The arguments against disclosure of the documents as a whole centre on the need to preserve the confidential nature of police enquiries. The Commissioner notes that the starting point in a consideration of the exemption provided by section 30(1) is the general public interest served by the effective investigation and prosecution of crime. He accepts that the impact on police tactics and procedures and the protection of witnesses are factors that are inherent are likely to be relevant in the majority of cases involving section 30(1). Moreover he accepts that they are relevant in this instance.

31. When determining what weight to attribute to public interests arguments the content of the withheld information and the context of the case are key considerations.
32. The procedural aspects of missing person investigations are already in the public domain, including the factors for consideration in conducting a risk-assessment of the missing person. West Yorkshire Police has not provided any evidence that the withheld information reveals anything of particular sensitivity or significance concerning this investigation and the way that the techniques associated with missing persons cases were employed. As the techniques that are detailed appear to be available in the public domain the Commissioner has not attributed much weight to this argument.
33. The Commissioner accepts that the protection of witnesses and informers, to ensure that people are not deterred from making statements or reports for fear it might be publicised, is a key factor inherent in the exemption at section 30(1). This has been upheld by the Information Tribunal in the cases of *Digby-Cameron v ICO and Bedfordshire Police and Hertfordshire Police*, EA/2008/0023 and EA/2008/0025, and also *Kelway v ICO and Northumbria Police* EA/2008/0037.
34. In the *Kelway* case mentioned above the Information Tribunal distinguished between private individuals who acted as witnesses and experts who provided statements and information as a matter of routine. For the latter category the Tribunal was not persuaded that they would likely be dissuaded from providing information in future because this is part of their job.
35. The reports in this case contain a substantial amount of information provided by private individuals and some from medical professionals. The Commissioner is satisfied that if material that identified these individuals and/or detailed the information they supplied were released, this would dissuade people from providing information to the police in future. This in turn would harm the ability of the force to carry out those investigations. In the case of medical professionals and details of the deceased's medical history the Commissioner accepts that given the duty of confidence a medical professional owes their patient they would be reluctant to share information with the police in future, if details they had supplied for the purposes of an investigation were disclosed to the general public. Given the importance of witness information to the majority of police investigations the Commissioner considers that this argument has substantial weight in this case. He does not think that redacting the names of witnesses would be sufficient to mitigate this harm as it would still be possible to identify people on the basis of the information they provided. Moreover in giving this argument particular weight he has had regard for the public authority's concerns about the privacy rights of the deceased. He considers that the material that may infringe that privacy is contained within the information supplied to the police by the witnesses.
36. The argument that the police need to be able to conduct their investigations unhindered by external considerations is an important factor. The weight attributable to this factor is likely to differ depending on the stage of the

investigation. The investigation relevant to this case had been completed at the time of the request. The Commissioner notes that there may be circumstances in which an investigation has been completed but releasing details about it would hinder a different ongoing case. This is likely to depend on the similarity between the cases. However the public authority has not made this argument in this case. In view of this the Commissioner does not consider this argument to have much weight in this instance.

37. The Commissioner considers that the public authority's concerns about privacy of living individuals are provided for in section 40 of the Freedom of Information Act 2000 and are more properly considered under that section.
38. The Commissioner notes that, in its submissions to him, the public authority has not sought to argue that the withheld information contains anything which will place individuals in jeopardy and therefore considers that this is a generalised argument which has not been applied appropriately to the circumstances of the case. It is therefore given no further consideration here.
39. West Yorkshire Police have also offered their view that release of this information may have a detrimental effect on members of the subject's family and friends, by revisiting matters which have otherwise been put to rest. The Commissioner does not consider that this is relevant as it is not inherent within section 30(1). This approach has been supported by the Information Tribunal in *Guardian v ICO and Avon and Somerset Police*, EA/2006/0017 at paragraph 36(vii):

"We are not persuaded that distress to surviving participants in the trial is an interest which this particular exemption is designed to protect."

Arguments in favour of disclosing the information

40. Factors considered by the public authority in favour of disclosure of the information include the following.
 - A greater public understanding of how the public authority and individuals concerned reacted to the situation, how policy decisions were taken and the steps taken to resolve the matter.
 - Public scrutiny of the quality of the decisions made may lead to greater public confidence in those decisions. If poor decisions have been made, the possibility of embarrassment is not a factor to be considered.
 - Disclosure of information can help dispel rumour, speculation and falsehoods in the public arena.
 - It is important to show how effectively public funds are being spent in policing functions.
41. In the Commissioner's view, having looked at the withheld information, it would add considerably to the public's understanding of the way the investigation was conducted and decisions at various stages taken and ensure transparency on the part of the public authority. He considers that there is significant weight to this argument.

42. In this particular instance, the Commissioner also considers that the information would enable the public to better understand how the police force ensures its own operational standards are upheld. This is also likely to increase public confidence and provide reassurance to interested parties that the police have conducted themselves with appropriate thoroughness.
43. He further considers that greater public scrutiny as a result of disclosure of the withheld information would ensure accountability on the part of the public authority and would likely improve the quality of its decision making about the allocation of resources and the way in which similar cases are managed. Therefore he has attributed considerable weight to this argument. In reaching this conclusion he notes the details in the withheld information about responsibility for the investigation of the missing individual.
44. The Commissioner is aware that the complainant's concerns are focused on his doubt that the missing person enquiry in respect of his son was conducted with appropriate thoroughness and, had matters been more diligently undertaken, the outcome might have been different. This is precisely the sort of circumstance which the public authority's third factor in favour of disclosure may help to address. Again considering the detail within the withheld material, the Commissioner is of the opinion that disclosure would demonstrate the thoroughness of the investigations and subsequent review and that the weight of this argument is therefore considerable.
45. There is a general principle that the actions of those charged with the use of public funds should be as open and accountable as possible. There is little in the requested information which would shed light on the costs incurred by the public authority in the course of its duties. However it would shed some light on the way in which resources were allocated during the investigation. In this case the Commissioner considers that the argument that disclosure would ensure greater openness in relation to allocation of resources funded by the public purse has some weight.

Balancing the public interest

46. When determining the balance of the public interest factors on either side of the scale outlined above, the Commissioner has taken into account the following :
 - The stage of the investigation;
 - Whether information is in the public domain;
 - The significance or sensitivity of the information;
 - Any independent evidence which raises questions which disclosure might help to address; and
 - The age of the information.
47. The Act contains an assumption in favour of disclosure and therefore in order for information to be withheld it is necessary for the factors in favour of maintaining the exemption to outweigh those in favour of disclosure. In this case the Commissioner considers that the argument that disclosure of the withheld information would dissuade witnesses from providing information to the police in

future has substantial weight as far as the information relates to private witnesses and medical information that has been supplied and that it outweighs the counter arguments in favour of disclosure. However for the remainder of the information that the public authority has claimed is exempt under section 30(1) he considers that the public interest arguments in favour of maintaining the exemption do not have significant weight and therefore they are not sufficient to outweigh those in favour of disclosure.

48. In reaching this conclusion he notes that although the case is comparatively recent it is nevertheless complete due to the discovery of the body of the missing person. Therefore there is no risk of prejudice to this specific investigation. Furthermore as the techniques detailed are largely available in the public domain the Commissioner does not consider that it likely that disclosure of the majority of the disputed information would harm other ongoing investigations of a similar nature.
49. Furthermore, he considers the most sensitive information to be that which has been provided by witnesses that he has concluded has been appropriately withheld. He does not consider the remaining information to be particularly sensitive.
50. On the other hand whilst the Commissioner is aware of some media reports relating to the missing person and the investigation, details in the public domain appear to be limited. Moreover there is no evidence to suggest that this case has been subject to independent review. In view of this absence of information in the public domain and the contents of the withheld material, he is satisfied that it would add significantly to the public's understanding of the way this case was investigated. This is the case even where those aspects of the information that pertain to witnesses have been removed.
51. The Commissioner has enclosed copies of the withheld information with the decision notice served on the public authority indicating the sections that have, in his view, been appropriately withheld under section 30(1).

Exemption - Section 23

52. One item in one of the documents has been marked by the public authority as exempt under section 23(1) of the Act, which relates to information provided by bodies dealing with security matters. This was not mentioned in the public authority's refusal notice, nor at internal review, but was brought to the Commissioner's attention in the public authority's submissions during his investigation. The Commissioner considers that the information so marked is not exempt under section 23(1) as it was not provided by an organisation listed in section 23(3) nor does it appear to relate to any of those bodies.

Exemption - Section 40

53. All of the information to which the public authority has applied section 40(2) falls within the category of material that the Commissioner has already deemed to be

exempt under section 30(1). Therefore it is not necessary for the Commissioner to address section 40(2) in this case.

Exemption – Section 41(1)

54. All of the information within the scope of the request which the public authority has claimed to be exempt under this exemption has been deemed by the Commissioner to be exempt by virtue of section 30(1). In view of this it has not been necessary to consider section 41 in this instance.

The Decision

55. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.
56. The Commissioner has decided that the public authority incorrectly withheld some of the information by virtue of sections 23 or 30(1). In failing to disclose that information within the statutory time limit the public authority breached sections 1(1)(b) and 10(1) of the Act.
57. However the Commissioner has also concluded that some of the withheld information was correctly withheld by virtue of section 30(1).
58. In failing to identify the subsections of sections 40 and 31 that applied by the completion of the internal review the public authority breached section 17(1)(b) and (c).
59. In failing cite sections 30(1) and 23 by the time the internal review was completed the public authority breached sections 17(1)(a) (b) and (c).

Steps Required

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

provide the withheld information, redacted to remove information that the Commissioner has agreed is exempt under section 30(1) of the Act. The Commissioner has enclosed copies of the withheld information in the decision notice served on the public authority indicating the sections that have been appropriately withheld under section 30(1) in yellow. These sections should be redacted from the copies disclosed to the complainant.

The complainant indicated that his complaint did not cover information within the reports about himself. Therefore information about the complainant is outside the scope of the Commissioner's investigation and decision. The copies of the reports enclosed with the public authority's decision notice show the sections that the

Commissioner has decided fall outside the scope of his investigation and decision highlighted in green. This information should also be redacted.

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

Failure to comply

62. 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.

Other matters

63. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
64. The complainant was advised that some of the requested information constituted his own personal data and it was therefore exempt under section 40(1). The Commissioner wishes to note that it is still open to the complainant to pursue a subject access request under the Data Protection Act 1998
65. The information provided by West Yorkshire Police on the reverse of the refusal notice gave details of its freedom of information complaints procedure, in which it stated that the public authority aimed to respond to complaints within three months. This is contrary to the Information Commissioner's guidance on the conduct of internal reviews, which expects these to be conducted within 20 working days or in exceptional circumstances within 40 working days.
66. A generalised public interest test was applied in the public authority's refusal notice. The Commissioner's guidance states that the public interest test should be applied separately to each exemption and that only the public interest considerations relevant to the individual exemption being claimed should be taken into account in relation to maintaining the particular exemption.

Right of Appeal

67. 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.
Website: www.informationtribunal.gov.uk

68. 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.
69. 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 3rd day of August 2009

Signed

**Jo Pedder
Senior Police Manager**

**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 30

Section 30(1) provides that –

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

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

Section 30(2) provides that –

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

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

Section 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(2) provides that –

'The purposes referred to in subsection (1)(g) to (i) are-

- (a) *the purpose of ascertaining whether any person has failed to comply with the law,*
- (b) *the purpose of ascertaining whether any person is responsible for any conduct which is improper,*
- (c) *the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,*
- (d) *the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,*
- (e) *the purpose of ascertaining the cause of an accident,*

- (f) *the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,*
- (g) *the purpose of protecting the property of charities from loss or misapplication,*
- (h) *the purpose of recovering the property of charities,*
- (i) *the purpose of securing the health, safety and welfare of persons at work, and*
- (j) *the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.'*

Section 40

Section 40(1) provides that –

'Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.'

Section 40(2) provides that –

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

- (a) *it constitutes personal data which do not fall within subsection (1),*
and
- (b) *either the first or the second condition below is satisfied.'*

Section 40(3) provides that –

'The first condition is-

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

Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.'

Section 40(4) provides that –

'The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).'

Section 41

Section 41(1) provides that –

'Information is exempt information if-

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'