

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 March 2011

Public Authority: Cornwall Council
Address: County Hall
Treyew Road
Truro
TR1 3AY

Summary

The complainant requested information relating to a fire at the Penhallow Hotel, Newquay, Cornwall in August 2007. The Council refused to disclose the information by virtue of section 30(1) of the Act. The Commissioner has investigated and finds that section 30(1) was correctly applied to all of the requested information and that the public interest in maintaining the exemption outweighs the public interest in favour of disclosure. The Commissioner has identified a number of procedural breaches in relation to the Council's handling of the request but he does not require any steps to be taken.

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.

Background

2. In August 2007, there was a fire at the Penhallow Hotel ('the Hotel') in which three people died and a number of others were injured. In June 2009 an inquest into the deaths recorded an open verdict. Following an investigation into the fire precautions at the Hotel, on 29 September 2010 Cornwall Council ('the Council') and Cornwall Fire and Rescue Service ('CFRS') confirmed they were bringing charges against the owners of the Hotel under the Regulatory Reform Order (Fire Safety)

2005 ('the FSO') for breaches of fire precautions. The first hearing took place at Bodmin Magistrates' Court on 15 December 2010.

3. The request in this case is for a copy of a Fire Certificate ('the Certificate') for the Hotel, which was first issued on 22 September 1976 under the Fire Precautions Act 1971. The Certificate was subsequently amended and re-issued on 20 November 1991 and again on 6 March 1995.
4. The complainant has requested a copy of the Certificate on three separate occasions, on 3 October 2008, 22 June 2009 and 7 June 2010. It is the latter request which is the subject of this notice.
5. CFRS is the statutory fire and rescue service covering Cornwall and is a service provided by Cornwall Council. The public authority for the purpose of this notice is therefore the Council.

The Request

6. On 7 June 2010 the complainant contacted the Council and requested:

"A copy of the last Fire Certificate that was issued to the Penhallow Hotel, Newquay, and

The costs of the investigation that was made following the fire. This to include:

- a. Legal Costs
 - b. Other professional costs
 - c. Fire Service Costs"
7. The Council responded on 27 July 2010 and provided information relating to the various costs of the investigation but refused to disclose a copy of the Certificate. The Council advised the complainant that "*As we have previously stated, the Fire Certificate will not be released until the ongoing investigation is completed*". The Council did not cite any specific exemptions in this response, nor did it provide details of any public interest test considerations. As noted in paragraph 4 above, the complainant had made previous requests for a copy of the Certificate. In response to the earlier requests, the Council had issued refusal notices stating that the information was exempt under section 30(1) of the Act.
 8. On 24 August 2010, the complainant wrote to the Council regarding its refusal to provide a copy of the Certificate. The complainant stated that, in his view, the document in question had no statutory standing in any possible legal proceedings and disclosure would provide the public with a

clearer understanding of the causes of the fire at the property. The complainant also stated that he was aware that the Certificate had been used in the report which CFRS had circulated at the inquest into the deaths, which he claimed to have viewed at that time. The complainant pointed out that parts of the Certificate had therefore been seen by the public as well as the jury at the inquest.

9. The Council provided the outcome of its internal review on 9 September 2010. It confirmed that it considered the requested information to be exempt under section 30(1) of the Act and the public interest to favour non disclosure. The Council provided limited representations in respect of why it considered the public interest favoured non-disclosure of the information requested.

The Investigation

Scope of the case

10. On 16 September 2010 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 information he had requested should be disclosed.

Chronology

11. On 12 October 2010, the Commissioner wrote to the Council to confirm that the complaint had been deemed eligible for formal consideration and to ask for a copy of the withheld information.
12. The Council wrote to the Commissioner on 18 November 2010 and provided a copy of the withheld information. On 19 November 2010 the Council provided the Commissioner with further representations to support its view that the information requested was exempt from disclosure, together with copies of correspondence between the Council and the complainant in relation to his previous requests for the Certificate. The Council indicated that it would additionally, or in the alternative, wish to rely on section 31(1) of the Act.
13. On 22 November 2010 the Commissioner wrote a further letter to the Council asking for more detailed information in relation to its application of section 30(1), including clarification of the subsection it was relying on. The Commissioner also requested more information about the Council's application of the public interest test. The Commissioner pointed out that section 31 of the Act could only apply to the extent that the information does not fall within the definition of section 30. He

therefore asked for the Council to confirm whether it was relying on section 30 or section 31 of the Act.

14. The Council responded on 21 December 2010 and confirmed that it had originally relied on section 30(1)(a)(i) but, now that proceedings had commenced, it believed sections 30(1)(a)(ii) and 30(1)(c) to be relevant. The Council provided further information about its application of the exemption and the public interest test. The Council also confirmed that it was not seeking to rely on section 31 of the Act.
15. The Commissioner telephoned the Council on 10 January 2011 to ascertain the stage of the investigation at the time of the request. The Council confirmed that the investigation was ongoing at the time of the request and provided brief details about the status of the investigation.
16. On 13 January 2011, the Commissioner wrote to the complainant to try to agree an informal resolution of his complaint. The Commissioner set out his preliminary view that section 30(1) was engaged, that the public interest in maintaining the exemption outweighed the public interest in disclosure and the Council was therefore correct to withhold the requested information.
17. The complainant wrote to the Commissioner on 12 January 2011 to raise some additional points he believed relevant to the case. The Commissioner responded on 13 January 2011 and advised that his preliminary assessment of the case remained the same.
18. The complainant advised the Commissioner on 13 January 2011 that he did not wish to withdraw his complaint. The complainant requested that the Commissioner proceed to a formal decision in the case.

Findings of fact

19. The FSO came into force on 1 October 2006, and replaced over 70 separate pieces of fire safety legislation. The purpose of the FSO was to simplify fire safety legislation and reduce the number of enforcing authorities that businesses have to deal with. The FSO abolished the requirement for businesses to have a Fire Certificate and replaced it with a duty on a 'responsible person' (usually the owner, occupier or employer) to carry out a risk assessment and implement appropriate measures to minimise the risk to life and property from fire; and to keep the assessment up to date.
20. The FSO places a duty on Fire and Rescue Authorities and other bodies ('enforcing authorities') to enforce fire safety in non-domestic premises. The main enforcing authority for the FSO is normally the local Fire and Rescue Authority for the area in which the premises are, or are to be, situated. However there are some special areas where others have

been appointed as the enforcing authority. These are listed in detail in article 25 of the FSO. For the property in this case, the enforcing authority is the local Fire and Rescue Authority, ie CFRS.

21. The withheld information in this case is a Fire Certificate issued under the Fire Precautions Act 1971 with various appendices, including a floor plan of various parts of the Hotel annotated with symbols showing where relevant fire safety measures are in place.

Analysis

Section 30

22. The Council stated that the exemption at section 30(1)(a)(i) applied to the requested information at the time of the request. This provides an exemption for information that was at any time held by the public authority for the purposes of an investigation that the public authority has a duty to carry out with a view to it being ascertained whether a person should be charged with an offence. All sections of the legislation are reproduced in the attached legal annex.
23. The first task for the Commissioner in considering whether this exemption is engaged is to reach a conclusion on whether the information in question conforms to the class specified in section 30(1)(a)(i); that is whether it was held by the public authority at any time for the purposes of an investigation that it had a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.
24. In order to engage the exemption at section 30(1)(a)(i) the information in question must relate to a specific investigation; not to investigations in general. The Act is also clear in that the exemption will be engaged in relation to information held *at any time* for the purposes of an investigation. Information can therefore be exempt under section 30(1)(a)(i) if it relates to an ongoing, closed or abandoned investigation.
25. As stated in paragraph 19 above, current fire safety legislation (the FSO) does not require businesses to have a Fire Certificate. As such, the Council state that the Certificate, which is the subject of this request, represents the last official agreed point at which the Hotel could be deemed to be in a particular state in relation to installed fire safety precautions. From this starting point, the Council state that witness testimony is needed to update the information contained within the Certificate. Through this overlaying of witness testimony a full picture of the Hotel at the time of the fire will be constructed and consideration of any liability will be determined. The Council considers the Certificate to

form a base line on which evidence will be built and therefore constitutes an intrinsic part of the investigation.

26. The Council confirmed that the Certificate was held in relation to a specific investigation into fire safety precautions at the Hotel, which was ongoing at the time of the request. The investigation has subsequently led to proceedings being brought by the Council.
27. The Commissioner acknowledges that Fire and Rescue Authorities are the enforcing authorities for the FSO and, as such, can ask to inspect premises and view Fire Risk Assessments. If there are found to be serious risks that are not being managed, they have a statutory duty to enforce the FSO. This can include issuing Enforcement Orders, and if necessary, pursuing any breaches through the Courts. The Commissioner is therefore satisfied that the Council's Fire and Rescue service has a duty and power to carry out an investigation of the sort described in sections 30(1)(a)(i) with a view to it being ascertained whether or not someone should be charged with an offence.
28. Section 30(1)(a)(i) is a class-based exemption. This means that it is not necessary to identify some prejudice that may arise as a result of disclosure in order to engage the exemption. All that is required is for the information to fall under the class in question. The Commissioner is satisfied that the withheld information in this case is held for the purposes of the Council's investigation into fire safety precautions at the Hotel. Therefore, the Commissioner finds that the exemption at section 30(1)(a)(i) of the Act is engaged in relation to the withheld information.
29. As section 30 is a qualified exemption the Commissioner has gone on to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

30. The Council believes there are limited arguments relating to the public interest in disclosure in this case as it strongly believes that disclosure has the "potential to adversely affect the equitable progress of the prosecution and subsequent fair trial". However, the Council acknowledges that disclosure might result in a greater understanding of investigations and fire precaution work undertaken under the previous statutory fire regime.
31. The Council agrees that there is a public interest in transparency and accountability that would allow members of the public to assess and challenge actions and decisions that it takes. However, the Council feels strongly that timing is an important factor in disclosure of information

regarded as important in the context of a prosecution. It believes premature disclosure could be misleading to the public and potentially influence a jury, and therefore prejudice ongoing investigations and proceedings.

32. The Council also accepts that in cases where there are public concerns about the integrity of an investigation, there may be a greater public interest to support disclosure. In this case, the Council is unaware of any such legitimate claims in respect of this particular investigation.
33. The complainant has argued that the Certificate contains important information about the competency of CFRS which will allow the public to assess whether the Certificate conformed to the national fire standards that were in place at the time it was issued. The complainant is of the opinion that there were serious defects in the structure of the Hotel that were a major contribution to the outcome of the fire and believes that disclosure will verify this. The complainant also stated that some of the features within the Hotel that allowed the fire to spread so rapidly are in place in other buildings. In his view public safety could be at risk in these buildings and he believes it is in the public interest that the information is disclosed.
34. The Commissioner considers that there is a significant legitimate public interest in disclosure given the facts and severity of this case, particularly in relation to matters which may affect public safety.
35. The Commissioner also considers that there is a public interest in increasing the public's understanding of how the Council conducts its investigations. There is also a public interest in ensuring that the Council is accountable for its actions in relation to the investigation and transparent about the way that it is conducted.

Public interest arguments in favour of maintaining the exemption

36. The Council provided information to the Commissioner about the context and history of the fire at the Hotel, and details of media coverage. The Council acknowledges that the Act is applicant and motive blind but it is aware that the applicant in this case has indicated that he intends to use the information requested for a book and a television programme. The Council advised that the fire at the Hotel was featured on a BBC Inside Out television programme shown in September 2007. The Council advised that it asked the BBC to postpone publication of this programme until at least the conclusion of the investigation, pending its decision about whether or not to instigate Court proceedings. The BBC refused and the programme was broadcast.
37. There has also been significant media attention generally about the fire at the Hotel. Based on this, the Council believes there is a strong

possibility that if the Certificate is disclosed, it will generate further extensive media coverage. As detailed in paragraph 25 above, the Certificate was issued under a previous statutory fire regime and does not represent an accurate reflection of the fire precautions in place at the Hotel at the time of the fire. Without the testimony of relevant witnesses also being disclosed - which the Council would not release due to the ongoing proceedings - it believes that disclosure could mislead the public and could potentially influence the jury in the forthcoming trial because any decisions or opinions formed would be based on 'incomplete' data. The Council is therefore of the opinion that disclosure would adversely affect the ability of the accused to receive a fair trial due to a 'trial' in the local media.

38. The Council believes there is a strong public interest in "protecting the integrity of an investigation and prosecution, particularly when the public interest arguments for and against taking those proceedings are considered prior to their commencement". The Council does not consider it to be in the public interest to disclose evidence that forms an intrinsic part of the prosecution case and which could prejudice the administration of justice and the prosecution of offenders.
39. The Council advised that representatives for the defendants expressed concerns about a trial being fairly heard in a local court. If, as a result of any further media coverage the trial had to be moved to a different location, significant expense would be incurred by all parties involved. The Council believes it is in the public interest to ensure effective and efficient use of resources.
40. The Council has confirmed that it would be happy to reconsider the position regarding disclosure following the conclusion of the ongoing trial and associated appeals.

Balance of the public interest arguments

41. In the case of *Digby-Cameron v ICO and Bedfordshire Police and Hertfordshire Police*, the Tribunal stated that in considering the public interest test, the starting point is to focus on the purpose of the relevant exemption. The Tribunal asserted that the general public interest served by section 30(1) is the effective investigation and prosecution of crime, which inherently requires, in particular:
 - the protection of witnesses and informers to ensure people are not deterred from making statements or reports by fear it might be publicised;
 - the maintenance of independence of the judicial and prosecution processes; and

- preservation of the criminal court as the sole forum for determining guilt.
42. Whilst section 30(1)(a)(i) is a class-based exemption and so prejudice is not relevant when considering whether it is engaged, consideration should be given when analysing the balance of the public interest to protecting the ability of public authorities to carry out investigations of the kind specified in this exemption. To this end the Commissioner has taken into account the following factors when considering whether the investigatory process may be harmed through disclosure:
- the stage of the investigation at the time of the request;
 - whether and to what extent the information has already been released into the public domain;
 - the significance of the information to the investigation; and
 - the age of the information.

The stage of the investigation

43. The Council confirmed that, at the time of the request, the investigation was ongoing; it was still gathering evidence, taking witness statements, issuing letters under caution to defendants, securing expert witness statements, and undertaking case conferences involving a Barrister and a specialist fire safety legal advisor. Since the request was made, the investigation has progressed and a decision has been made to instigate legal proceedings.
44. The Commissioner considers that where investigations are 'live' there is a strong public interest in preserving the public authority's ability to determine the direction of the investigation and to pursue new leads and different evidence, as and when it arises and as far as it deems necessary. Where the matter has gone to Court, the Commissioner believes there is a similarly strong public interest in supporting the presiding judge or magistrate's authority regarding the flow of information to both parties and to the public at large. This also ensures that principles surrounding the administration of justice are protected.
45. Turning to the Council's view that disclosure could mislead members of the public and could potentially influence the jury in the forthcoming trial, in general the Commissioner is usually sceptical about arguments which suggest that disclosure of information could mislead or cause confusion. In the Commissioner's opinion, in many cases any information disclosed under the Act can be set into some sort of context in order to alleviate these effects. However, the Commissioner accepts, in this case, there is a potential for disclosure to influence the public (and the jury) or inform opinions, which could in turn prejudice the ongoing investigation and proceedings.

Information in the public domain

46. The complainant has argued that some of the information requested is essentially in the public domain as the Certificate was used in a report that CFRS circulated at the inquest referred to previously.
47. The Council has been unable to confirm whether the Certificate was in fact shown to the jury and members of the public during the inquest. However, the Council has argued that the inquest did not focus on the fire precautions in place at the Hotel and it therefore considers it unlikely that the Certificate was circulated. In any case, the Council advised that any documents that were circulated at the inquest would not have left the Court and are therefore not in the public domain.
48. The Commissioner's general approach is that information is in the public domain if it is realistically accessible to the general public at the time of the request. Previous disclosures, especially to a limited audience, will not automatically mean information has entered (or remains in) the public domain. What matters is whether a hypothetical interested member of the public could access the information at the time of the request. Even if information has entered the public domain some time before the date of the request, it may not remain there indefinitely. For example, information disclosed in court may, in theory, briefly enter the public domain but its availability is likely to be limited to a small number of persons present and short-lived unless it passes into other more permanently available sources (eg online newspaper reports).
49. In summary, if information is not in practice available to the public at the time of the request, the Commissioner does not consider that it is "in the public domain". This is because if, at the time of the request, a member of the public can no longer access the information, any disclosure under the Act would in practice be revealing "new" information over and above what is currently public knowledge.
50. In reaching a view on this case, the Commissioner has considered the findings of the Tribunal in the case of *Armstrong v Information Commissioner and HRMC (EA2008/0026)*. In this case the Tribunal were clear that even if the information "had entered the public domain by virtue of having been referred to during the Siddiqui trial in 2001, it does not necessarily follow that it remains in the public domain" (paragraph 85). The Tribunal in this case went on to say that:

"..... even if the information had previously entered the public domain, that is not in itself conclusive of whether the public interest weighs in favour of disclosure, it is merely one consideration to be weighed in the public interest balance" (paragraph 86)

51. In this case, the Commissioner notes that there is some uncertainty concerning whether any information contained within the Certificate was viewed by persons at the inquest. However, for the reasons set out above, even if the Certificate was viewed in full or in part, the Commissioner attributes little weight to the argument that the requested information had already been released into the public domain.

Significance or sensitivity of the information

52. The complainant has argued that the Certificate is akin to an MOT vehicle certificate in that if a serious accident occurred an interested party would have the right to check the MOT certificate.
53. Whilst the Commissioner accepts that a Fire Certificate may not be a particularly sensitive document in certain circumstances, he gives weight to the background and context of this case. The Commissioner acknowledges the fact that the Certificate is to be used as a baseline on which an accurate picture of the fire safety measures in place at the time of the fire will be built.
54. The Commissioner notes that there has been significant media coverage of the fire at the Hotel and it is a particularly sensitive local matter. He acknowledges the Council's argument that there is a strong likelihood that any further information it were to disclose would attract further media coverage, which could prejudice the ongoing investigation and proceedings as detailed in paragraphs 37 and 45 of this notice.
55. The Commissioner accepts that, if the information were to be disclosed whilst the investigation is ongoing, it would be likely to be detrimental to that investigation and any prosecution because it may lead to those who are provided with the information, including any members of the jury involved in the forthcoming Court case to form conclusions about the guilt or otherwise of individuals involved in the incident. This may in turn undermine the ability of the courts to reach an objective view in the matter.
56. The Commissioner considers that in some cases the public interest may favour disclosure of certain information held for the purposes of an investigation if that information is not particularly significant to the investigation and where the harm that might arise as a result of disclosure would be low and/or is particularly unlikely. However, the more significant the information is to the investigation, arguably the more harm is likely to arise if it were disclosed and the stronger the public interest in maintaining the exemption. In this case the Council has confirmed that the Certificate requested by the complainant, despite its age, is an intrinsic piece of evidence in the investigation. The Commissioner accepts that argument.

Age of the information

57. In the Information Tribunal case of *Guardian v The Information Commissioner and Avon and Somerset Police (EA/2006/0017)*, the Tribunal took into account the **age** of the information. It stated that, "The passage of time was a double-edged argument, whichever side wielded the sword. It probably reduced the risks of prejudice to future investigations but it similarly weakened the legitimate public interest in knowing more of the background facts." Although this argument has merit, the Commissioner does not believe that in all circumstances the passage of time lessens the risk of prejudice. This is because there is always the possibility that the status of an investigation can change over time and information has the potential of becoming relevant again.
58. In this case, the Commissioner notes that, although the investigation was ongoing at the time of the request, the Certificate was last updated in 1995 and was issued under a statutory fire regime which was superseded on October 2006. The Commissioner accepts that in certain circumstances, the passage of time may impact upon the strength of the public interest arguments but in this case he considers this factor to be of less relevance in considering the public interest.

Conclusion of the balance of the public interest test

59. Having carefully considered all the circumstances of this case, the Commissioner acknowledges there are strong arguments both in favour of disclosure and in favour of maintaining the exemption at section 30(1)(a)(i). In attributing weight to the factors in favour of maintaining the exemption the Commissioner has taken into account the sensitivity of the matter under investigation. The Commissioner considers that there is a strong public interest in matters such as this, which involved a number of deaths being investigated as thoroughly and efficiently as possible and ensuring that the best evidence is available to the Council to inform its decisions. The Commissioner has also taken into account the argument put forward by the complainant in favour of disclosure relating to public safety implications, as detailed in paragraph 33 of this notice. In balancing the arguments the Commissioner concludes that the factors in favour of maintaining the exemption outweigh those in favour of disclosing the information. Therefore the Commissioner finds that the information has been correctly withheld under section 30(1)(a)(i) of the Act.

Procedural Requirements

Section 10

60. Section 1(1)(a) of the Act states that any person making a request for information to a public authority is entitled to be informed in writing by

that public authority whether it holds any information of the description specified in the request.

61. Section 10(1) of the Act requires a public authority to respond to a request promptly and in any event no later than 20 working days after the date of receipt. The initial request was made on 7 June 2010 and the Council's response was issued on 27 July 2010. In failing to comply with section 1(1)(a) within 20 working days, the Council breached section 10(1) of the Act.

Section 17

62. Section 17(1) of the Act requires a public authority to provide an applicant with a refusal notice stating the basis upon which it has refused the information and issue this notice within the time for complying with section 1(1) of the Act.
63. As noted in paragraph 4 above, the complainant has made previous requests for the information that is the subject of this notice. The refusal issued by the Council in response to the previous requests stated that it was relying on section 30(1) and provided some details of the public interest test it had taken into account.
64. The refusal notice relevant to this case referred the complainant to the Council's responses to his previous requests. It did not specify any exemptions being relied on or provide details of any public interest test considerations. The refusal notice was not issued within 20 working days of receipt of the request. As such, the Council failed to comply with any of the requirements of sections 17(1) or 17(3)(b).

The Decision

65. The Commissioner's decision is that the Council dealt with the request for information in accordance with the Act in that the exemption provided by section 30(1)(a)(i) was applied correctly. However, the Commissioner also finds that the public authority failed to comply with the requirements of sections 10(1), 17(1) and 17(3)(b) in its handling of the request.

Steps Required

66. The Commissioner requires no steps to be taken.

Right of Appeal

67. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 22nd day of March 2011

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled

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- (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."

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."

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(2) states -

"Where-

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

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."

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

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

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

Section 30(2) provides that –

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

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

- (b) it relates to the obtaining of information from confidential sources.”

Section 30(3) provides that –

“The duty to confirm or deny 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) or (2).”