

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 February 2010

Public Authority: Commissioner of the Metropolitan Police Service
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Summary

The complainant requested all information compiled by Special Branch relating to the BBC during the 1980s. The public authority refused to confirm or deny (NCND) whether it held the information requested, citing the exemptions provided by sections 23(5) (information relating to, or supplied by, security bodies), 24(2) (national security), 31(3) (prejudice to law enforcement), 38(2) (endangerment to health and safety) and 40(5) (personal information). The Commissioner concludes that none of these exemptions are engaged. The public authority is required to provide the complainant with confirmation or denial as to whether the requested information is held. In relation to any information that is held, the public authority is required to either disclose this to the complainant, or provide him with a refusal notice which is valid for the purposes of section 17(1). The Commissioner also finds that the public authority did not comply with the requirements of section 10(1) by failing to provide confirmation or denial within 20 working days of receipt, and of sections 17(1), 17(1)(c) and 17(3)(a) by issuing an inadequate and late refusal notice.

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 16 June 2008:

"I would like to request complete copies of any and all documents compiled

and held by the Special Branch of the Metropolitan Police Service on the British Broadcasting Corporation (BBC) between January 1 1980 and December 31 1989.”

3. The public authority responded to this on 11 August 2008, outside the twenty working days time period required by the Act. This response stated that it did hold information about an investigation of the BBC that took place in 1987. Information about this investigation, in the form of newspaper extracts, was disclosed to the complainant. It was not clear on the basis of this response what the stance of the public authority was in relation to any further information relating to the 1987 investigation.
4. The public authority went on to refuse to confirm or deny whether it held any further information falling within the scope of the request, citing the exemptions provided by sections 23(5) (information relating to, or supplied by, security bodies), 24(2) (national security), 31(3) (law enforcement), 38(2) (endangerment to health and safety) and 40(5) (personal information). The public authority provided no explanation as to why it believed that these exemptions were engaged. In connection with sections 24(2), 31(3) and 38(2), the public interest was addressed in a generalised fashion, rather than separately in connection with each of these qualified exemptions.
5. The complainant responded on 6 October 2008 and asked that the public authority carry out an internal review of its handling of his request. The complainant referred to a number of instances where information related to Special Branch had been disclosed by the public authority and suggested that the refusal in this case was not consistent with these previous disclosures.
6. The public authority responded with the outcome of this review on 28 November 2008. The refusal was upheld. The public authority at this stage stated specifically that it neither confirmed nor denied whether it held any information within the scope of the request other than the newspaper extracts disclosed previously. Again the public authority did not provide any reasoning as to why the exemptions cited were believed to be engaged and did not adequately address the balance of the public interest.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner initially on 21 January 2009. The complainant stated that he believed that disclosure of the information requested would be in the public interest and referred to the previous disclosures of Special Branch information mentioned in his request for internal review.
8. As noted above, the refusal notice both confirmed that some information was held that fell within the scope of the request and disclosed this to the complainant and went on to neither confirm nor deny whether any further information was held.

When in correspondence with the Commissioner, the public authority altered its stance about the 1987 investigation in relation to which information had been disclosed to the complainant, stating that this had in fact been an investigation of a freelance journalist who happened to be operating from BBC premises at the time of the investigation and that the BBC was not the subject of this investigation. For this reason, the public authority believed that the information it held and had provided did not fall within the scope of the request.

9. Having considered whether information relating to this 1987 investigation would fall within an objective reading of the request, the Commissioner concludes that it would. The freelance journalist in question was not only based at a BBC location at the time of the investigation, it appears that the trigger for this investigation was a documentary film that this journalist was working on for the BBC. Given this, the Commissioner does not consider that the freelance status of this journalist is sufficient basis on which to suggest that any information that the public authority holds that relates to this investigation would not fall within an objective reading of this request.

Chronology

10. The Commissioner contacted the public authority on 8 May 2009 and set out the background to this case. The public authority was asked to respond addressing why each exemption cited was believed to be engaged and, in connection with the qualified exemptions, why the public interest favoured the maintenance of those exemptions.
11. The public authority responded to this on 18 June 2009. In connection with sections 23(5) and 24(2), the public authority stated that its stance was that both of these exemptions were actually engaged and had not been cited together merely in accordance with the convention arising from the Information Tribunal case of *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045). The public authority did not, however, provide any explanation as to how confirmation or denial would involve the disclosure of any information relating to or supplied by any of the bodies specified in section 23(3).
12. The argument of the public authority in connection with sections 24(2), 31(3) and 38(2) was based on the precedent that it believed would be set through confirmation or denial in this case. This argument suggested that if, for example, it confirmed that information was held in this case, but neither confirmed nor denied in response to a future request, this would suggest that in the second case no relevant information was held. The public authority believed that this would reveal whether or not the organisation specified in the request had been the subject of an investigation and that, where a request is made for Special Branch related information, revealing this would lead to an increased likelihood of terrorism.
13. In connection with section 40(5), the public authority provided no explanation as to how confirmation or denial would involve the disclosure of personal data, nor to whom this personal data would relate.

Analysis

Exemptions

Section 23

14. The public authority cited section 23(5). This provides an exemption from the duty imposed by section 1(1)(a) where to confirm or deny would involve the disclosure of information supplied to the public authority by, or that relates to, any of the security bodies specified in section 23(3). Special Branch is not amongst the bodies specified in section 23(3). This section is set out in full in the attached legal annex, as are all other sections of the Act referred to in this notice.
15. The Commissioner has accepted that citing 23(5) and 24(2) in conjunction where either of these exemptions is engaged may be an appropriate approach in order to obscure the involvement (or non involvement) of any security body. The Information Tribunal supported this approach in *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045).
16. When in correspondence with the public authority the Commissioner referred to the convention of citing 23(5) and 24(2) in conjunction and asked the public authority to be specific as to which of these exemptions were engaged. The response from the public authority was that both of these exemptions were engaged. However, no argument was advanced as to how confirmation or denial would disclose information within the class specified in section 23(5). Neither was it argued that the relevance of section 23(5) was self evident. Where sections 23(5) and 24(2) have been cited in conjunction, rather than because each of these exemptions are believed to be engaged separately, they would be addressed in conjunction in a Decision Notice in order to avoid disclosing through the Notice which of these exemptions the public authority believes to be engaged. In this case, however, as the public authority believes that both of these exemptions are engaged, they are covered separately.
17. The stance of the public authority here appears to be that the exemption provided by section 23(5) is engaged as a consequence of section 24(2) being engaged, rather than because confirmation or denial would lead to disclosure of information covered by this class based exemption. On this point the public authority should note that the implication of the convention of citing 23(5) and 24(2) in conjunction is not that the engagement of one automatically engages the other. Rather it is that where either 23(5) or 24(2) is engaged, the other exemption should consistently also be cited, not because the other exemption is also engaged, but in order to obscure the involvement or otherwise of any security body.
18. The Commissioner has concluded that he is unable to accept that the exemption provided by section 23(5) is engaged. This conclusion is based on the absence of an explanation from the public authority as to how compliance with section 1(1)(a) would involve the disclosure of information falling within the class specified in section 23(5).

Section 24

19. Section 24(2) provides an exemption from the duty to confirm or deny imposed by section 1(1)(a) where this is required for the purpose of safeguarding national security. This exemption is also qualified by the public interest. This means that confirmation or denial should be provided if the public interest test favours this despite the requirements of safeguarding national security.
20. The first step in considering whether this exemption is engaged is to establish what the wording of the exemption is referring to. The exemption will only be engaged where it is *required* for the purpose of safeguarding national security. The approach of the Commissioner is that *required* in this context means reasonably necessary. This sets a high threshold for the use of this exemption. It is not sufficient for the information sought simply to relate to national security, there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged.
21. On the issue of the meaning of *national security*, the Commissioner has followed the approach taken by the Information Tribunal in the case *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045). The Tribunal noted that it had been unable to find an exhaustive definition of national security, but referred to a House of Lords decision (*Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153), which made the following observations on this issue:
 - (i) '*national security*' means the '*security of the United Kingdom and its people*' (para 50 per Lord Hoffman);
 - (ii) the interests of national security are not limited to action by an individual which can be said to be '*targeted at*' the UK, its system of government or its people (para 15 per Lord Slynn);
 - (iii) the protection of democracy and the legal and constitutional systems of the state is part of national security as well as military defence (para 16 per Lord Slynn);
 - (iv) '*action against a foreign state may be capable indirectly of affecting the security of the United Kingdom*' (para 16-17 Lord Slynn); and
 - (v) '*reciprocal co-operation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom's national security*' (para 17 Lord Slynn)."
22. The argument advanced by the public authority is essentially that confirmation or denial would increase the risk of terrorist attacks. The public authority suggests that this would result through setting a precedent in this case for confirmation or denial of whether Special Branch investigations in relation to a specific organisation have taken place. The public authority believes that this would mean that future use of NCND would be rendered ineffective in obscuring Special Branch involvement.

23. The first issue to consider, therefore, is whether an increase in the risk of terrorist attacks would constitute prejudice to the safeguarding of national security. The Commissioner obviously accepts that any terrorist attack on the people of the UK would be counter to national security and that this argument from the public authority is relevant to this exemption.
24. The next step to consider is whether the arguments advanced by the public authority suggest that confirmation or denial would lead to a specific and real threat to national security and, therefore, that the exemption is required in order to safeguard national security. It is important to note here that the issue is not whether terrorism already represents a specific and real threat to national security; rather it is whether a further threat would arise through the confirmation or denial in question. This could include worsening the existing threat from terrorism.
25. The Commissioner is not satisfied that the threshold for this exemption to be engaged imposed by the word *required* is met. The reasons for this are as follows. First, the time period specified in the request; at the time of the request any information falling within the scope of the request would have been recorded a minimum of more than 18 years previously. The public authority has not at any stage addressed what impact the age of the information may have on the likelihood of confirmation or denial prejudicing national security. The view of the Commissioner on this point is that this passage of time would have a significant reductive effect on the likelihood of such prejudice occurring. The Commissioner believes that the concern of the public authority about setting a precedent for confirmation or denial of whether Special Branch related information is held could have been alleviated through the simple expedient of the public authority being clear that it was willing to comply with section 1(1)(a) in this case due to the age of the information, but that this should not be taken as setting a precedent for confirmation or denial in relation to more recently recorded information.
26. Secondly, as noted previously the Commissioner considers that any information relating to the 1987 investigation referred to in the newspaper articles disclosed to the complainant would fall within the scope of the request. It is clear from the existence of these newspaper articles that information relating to investigations carried out by the public authority during the 1980s involving the BBC has previously been disclosed into the public domain. The public authority has not made any representations that the existence of this information in the public domain has prejudiced national security. In the absence of any such representations, the Commissioner concludes that the existence in the public domain of this information that confirms that a Special Branch investigation into someone working at the BBC did take place during the 1980s did not result in prejudice to national security.
27. Thirdly, in other cases where information related to Special Branch has been requested, the public authority has not only confirmed that relevant information is held, but has also disclosed this information. This is evidenced by newspaper articles provided to the Commissioner by the complainant that show that the public authority has disclosed information relating to Special Branch monitoring of

the Anti Apartheid Movement and the Campaign for Nuclear Disarmament during the 1980s. That the public authority disclosed this information, and has not made any representations about prejudice caused to national security as a result of these disclosures, undermines any suggestion that an NCND stance should be maintained where Special Branch information is requested, regardless of either the time period specified in the request or the nature of the information requested.

28. Fourthly, the nature of the organisation specified in the request is of significance. The position of the public authority may have been stronger were it arguing that it should maintain an NCND stance in relation to a known terrorist organisation, or a known criminal organisation of any other nature. Such an argument could clearly not be made in this case. Again the Commissioner believes that the concern of the public authority around setting a precedent for confirmation or denial could have been easily alleviated, in this context by making clear that confirming or denying whether it holds information relating to the BBC should not be taken as setting a precedent that would apply where information relating to a known criminal organisation is requested.
29. The conclusion of the Commissioner is that the exemption provided by section 24(2) is not engaged. The basis for this conclusion is that, for the reasons given above, the Commissioner does not accept that confirmation or denial of whether the information requested by the complainant is held would lead to a specific and real threat to national security; exemption from the duty to confirm or deny is not, therefore, required for the purpose of safeguarding national security. As this conclusion has been reached, it has not been necessary to go on to consider the balance of the public interest.

Section 31

30. Section 31(3) provides an exemption from the duty to confirm or deny where to do so *would*, or *would be likely* to, prejudice any of the matters mentioned in section 31(1). This exemption is also qualified by the public interest test, meaning that confirmation or denial should be provided if the public interest favours this despite the prejudice that would, or would be likely to, result.
31. The public authority did not specify whether its stance was that prejudice would result, or 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.
32. The test that the Commissioner applies when considering whether prejudice would be likely is that the possibility of this must be real and significant and more than hypothetical or remote. This is in line with the approach taken by the Information Tribunal in *John Connor Press Associates Limited v the Information Commissioner* (EA/2005/0005) in which it stated:

“Likely connotes a degree of probability that there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there ‘may very well’ be prejudice to those interests, even if the risk falls short of being more probable than not.” (paragraph 15)

33. The public authority has specified sections 31(1)(a) (the prevention or detection of crime), 31(1)(b) (the apprehension or prosecution of offenders) and 31(1)(c) (the administration of justice) as those matters it believes would be likely to be prejudiced through confirmation or denial. It has employed the same arguments here as when arguing that section 24(2) is engaged.
34. The Commissioner would accept that some of these arguments are relevant to section 31(1)(a), in that if the outcome the public authority suggests would result through confirmation or denial did come about this would be likely to prejudice the prevention and detection of crime. These arguments are also relevant to section 31(1)(b) in that the results predicted by the public authority would be likely to prejudice the apprehension and prosecution of offenders.
35. However, it is not clear how these arguments are relevant to section 31(1)(c). The Commissioner's guidance on this exemption states the following:
- "This covers a wide variety of matters that surround any type of judicial body and its administrative support. It will include the administrative arrangements of the courts and tribunals, the appointment of magistrates and judges and the requirement to conduct proceedings fairly. It will cover arrangements for the care of witnesses, the transport of defendants in custody and the service and execution of process and orders in civil cases. Consideration of the many Administration of Justice Acts gives an indication of the size of the area this covers."*
36. The suggestion of the public authority appears to be that this exemption is significantly wider than this in that it covers the entire process from the commission of a crime to conviction of the perpetrator. The Commissioner considers that the key word in this exemption is the *administration* of justice. This exemption relates to the administrative processes of the judicial system, not the detection or investigation of criminal activity. The exemption is not applicable in this case.
37. Turning to the merits of these arguments, without repeating the analysis given above in connection with section 24(2), the Commissioner does not accept that the consequences of confirmation or denial suggested by the public authority would be likely to occur. The Commissioner reaches the same conclusion in respect of the deployment of these arguments in support of the application of the exemptions under section 31(1)(a) and (b) and does not believe that the likelihood of confirmation or denial resulting in prejudice to the prevention or detection of crime or the apprehension or prosecution of offenders is real and significant.
38. The conclusion of the Commissioner is that the exemption provided by section 31(3) is not engaged. This conclusion has been reached on the basis that the arguments advanced by the public authority as to why confirmation or denial would be likely to cause prejudice to the matters mentioned in sections 31(1)(a) and (b) are not sufficiently strong for the same reasons as set out in the section 24(2) analysis and on the basis that these arguments are not relevant to section

31(1)(c). As this conclusion has been reached it has not been necessary to go on to consider the balance of the public interest.

Section 38

39. Section 38(2) provides an exemption from the duty to confirm or deny if to do so would, or would be likely to, endanger the health and / or safety of any individual. This exemption is also subject to the public interest test. This means that the information should be disclosed if the public interest favours this despite the endangerment to the health and / or safety of any individual that would, or would be likely to, result.
40. As was the case in relation to section 31, the public authority did not specify whether its stance was that prejudice would result, or that it would be likely to result from disclosure. The Commissioner will, therefore, consider whether endangerment would be likely to result. The test applied here by the Commissioner is as stated above at paragraph 32; that is that the possibility of endangerment occurring must be real and significant.
41. Prior to considering the merits of the arguments from the public authority it is necessary to establish whether its stance is that disclosure would be likely to result in endangerment to health, or safety, or both. It is also necessary to establish to whom endangerment would be likely to result. The public authority has specified that its stance is that both health and safety would be likely to be endangered through disclosure. In terms of to whom this endangerment would be likely to result, the stance of the public authority is essentially that confirmation or denial would increase the likelihood of terrorist attacks. The subject of the endangerment would, therefore, be any potential victim of a terrorist attack.
42. The argument advanced by the public authority in connection with this exemption is effectively the same as those advanced in connection with section 24(2), which is that confirmation or denial would be likely to lead to an increased likelihood of a terrorist attack. That endangerment to the health and safety of individuals would be likely to result through a successful terrorist attack cannot be disputed. The argument advanced by the public authority is, therefore, relevant to this exemption.
43. As to the merit of this argument, the Commissioner would refer again to the analysis given in connection with section 24(2). The prejudice arguments advanced by the public authority in connection with that exemption are not sufficiently strong. As the Commissioner has found those arguments insufficient, he does not accept the suggestion that the ultimate result of confirmation or denial would be an increased likelihood of terrorist attacks.
44. The Commissioner concludes that the likelihood of endangerment to health and safety resulting through confirmation or denial is not real and significant. The exemption provided by section 38(2) is not, therefore, engaged. The Commissioner's reasoning as to why the argument advanced by the public authority is insufficient is as set out above in the section 24(2) analysis. As this conclusion has been reached, it has not been necessary to go on to consider the

balance of the public interest.

Section 40

45. Section 40(5) provides an exemption from the duty to confirm or deny where to do so would involve the disclosure of personal data and this disclosure would be in breach of any of the data protection principles. As noted above at paragraph 13, the public authority provided no explanation as to how confirmation or denial would involve the disclosure of personal data, or to whom this personal data would relate. This exemption is not, therefore, engaged.

Procedural Requirements

Section 1

46. In refusing to confirm or deny on the basis of exemptions which the Commissioner concludes are not engaged, the public authority failed to comply with section 1(1)(a).

Section 10

47. In failing to provide confirmation or denial within 20 working days of receipt of the request, the public authority did not comply with the requirement of section 10(1).

Section 17

48. At neither the refusal notice nor internal review stage did the public authority provide any explanation as to why the exemptions were believed to be engaged, or any adequate explanation for why the public interest in the maintenance of the exemptions provided by sections 24(2), 31(3) and 38(2) outweighed the public interest in confirmation or denial. In so doing, the public authority failed to comply with the requirements of sections 17(1)(c) and 17(3)(a). In failing to provide these details within 20 working days of receipt of the request, the public authority breached section 17(1).

The Decision

49. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the requirements of sections 1(1)(a) and 10(1) on the basis of the exemptions provided by sections 23(5), 24(2), 31(3), 38(2) and 40(5), all of which the Commissioner has concluded are not engaged. The public authority also failed to comply with the requirement of section 10(1) in failing to provide confirmation or denial within 20 working days of receipt and sections 17(1), 17(1)(c) and 17(3)(a) in issuing an inadequate and late refusal notice.

Steps Required

50. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Provide to the complainant confirmation or denial as to whether information falling within the scope of the request is held;
 - In relation to any information that is held, either disclose this to the complainant, or provide him with a refusal notice which is valid for the purposes of section 17(1).
51. The public authority must take the steps required within 35 calendar days of the date of this notice.

Failure to comply

52. 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

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

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.

Right of Appeal

54. 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

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.

55. 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 15th day of February 2010

Signed

**Graham Smith
Deputy Commissioner and Director of Freedom of Information**

**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 10

Section 10(1) provides that –

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

Section 17

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 23

Section 23(3) provides that –

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

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the Security Service Act 1989,
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and
- (l) the Service Authority for the National Criminal Intelligence Service.”

Section 23(5) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”

Section 24

Section 24(2) provides that –

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

Section 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”

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(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) the 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).”