



Neutral citation number: [2024] UKFTT 00476 (GRC)

Case Reference: EA/2023/0380

**First-tier Tribunal  
General Regulatory Chamber  
Information Rights**

**Heard: by CVP**

**Heard on: date 1 March 2024  
Decision given on: 11 June 2024**

**Before**

**TRIBUNAL JUDGE LIZ ORD  
TRIBUNAL MIRIAM SCOTT  
TRIBUNAL DR PHEBE MANN**

**Between**

**ALASTAIR LOGAN**

Appellant

**and**

**(1) THE INFORMATION COMMISSIONER**

Respondent

**Representation:**

For the Appellant: Kate O'Raghallaigh (Counsel) and Jessie Smith (Counsel)  
For the Respondent: Will Perry (Counsel)

**Decision:** The Home Office was not entitled to rely on s.31(1)(a)-(c) of the Freedom of Information Act 2000 (FOIA). In the alternative, the public interest in maintaining the exemption does not outweigh the public interest in disclosing the information.

The hearing will resume, on a date to be fixed, to consider submissions on the engagement of sections 40(2) and 38(1) of FOIA. Separate Case Management Directions have been made in this regard.

**REASONS**

## **Preliminary matters**

1. References to sections within our reasons are to the Freedom of Information Act 2000 (FOIA).
2. This is an appeal against the Information Commissioner's (IC) decision notice (DN) IC-142181-G0Q8 dated 17 August 2022, which found that the Home Office (HO) was entitled to rely on ss.31(1)(a), (b) and (c) and 40(2) to withhold the requested information.
3. The HO's reasons for refusal only referred to s.31(1)(a)(b) and (c). However, in its submissions to the IC in response to the Appellant's complaint, it introduced ss.40(2) (personal information) and 38(1) (health and safety).
4. The IC found that most of the requested information was covered by s.31(1)(a)-(c), apart from two documents. His findings on s.40(2) relate to those two documents only. As the IC had found that the HO were entitled to rely on s.31(1) for the rest of the information, he did not go on to consider whether ss.40(2) or s.38(1) applied to it.
5. The Appellant appealed the DN so far as it relates to the information covered by s.31(1)(a)-(c). He did not appeal the DN with respect to the s.40(2) documents. At the hearing the parties agreed that the Tribunal should first consider whether s.31(1)(a)-(c) was engaged for the rest of the requested information and, only if we found that it was not, should we go on to deal with ss.40(2) and 38(1). In that case, they suggested that the hearing go part-heard to allow the parties to make full submissions on ss.40(2) and 38(1), and to join the HO as a party to proceedings. We agreed to this course of action.
6. The notice of appeal was lodged out of time. However, having considered the reasons for the delay, and the IC taking a neutral stance, we used our discretion to extend time. This is recorded in separate case management directions

## **Background**

7. On 5 October 1974, bombs were detonated at the Horse and Groom and Seven Stars public houses in Guildford. The bombs killed five young people, four military personnel and one civilian. On 7 November 1974, a bomb was thrown through the Kings Arms pub at Woolwich, with two fatalities.
8. Four people were arrested, charged with the bombings and tried at the Central Criminal Court. On 22 October 1975, they were convicted of conspiracy to cause the explosions, and of the five murders in Guildford, and with respect to the Woolwich bomb, of causing an explosion likely to endanger life. Two of the four were convicted of murder of the two deceased victims in Woolwich, and one of them was convicted of conspiracy to murder.
9. Thereafter, the Provisional IRA claimed responsibility for the bombings.
10. The four convicted people, who became known as "the Guildford Four", continued to protest their innocence. The Appellant is a solicitor who represented them and campaigned on their behalf.
11. Prior to and during their trial, evidence emerged, which suggested that the Guildford Four were not responsible for the bombing. It came from scientists at the Royal Armament Research and Development Establishment and demonstrated a forensic correlation between

the bombings and Provisional IRA activities. This evidence was not disclosed to the Guildford Four at the time.

12. In September 1975, whilst the Guildford Four were on trial, Commander Roy Habershon of the Metropolitan Police produced a report dealing with investigative material concerning the activities of the Provisional IRA. It focused on Brendan Dowd and his associates, and analysed evidence and links between multiple IRA crimes. It threw doubt on the Guildford Four convictions. The report was never disclosed to the Guildford Four.
13. In December 1975 members of the Balcombe Street Active Service Unit (ASU) and Brendan Dowd were arrested, interviewed and charged by the Metropolitan Police in relation to a siege on Balcombe Street. During questioning, admissions were made about the involvement of the ASU in the Woolwich bombing. One of the scientists who provided correlation statements for the trial, gave evidence that the Metropolitan Police had asked him to remove references in these statements to Woolwich.
14. Following correspondence with the DPP, the Appellant interviewed members of the Balcombe Street ASU and Brendan Dowd in November 1976. Two of them, including Dowd, gave accounts of involvement in the Guildford bombings and four of them, including Dowd, provided accounts of involvement in the Woolwich bombings. The Appellant gave these confessions to the DPP shortly before the trial of the Balcombe Street ASU began.
15. The bombings at Woolwich and Guildford were not included in the indictments. The defence submitted that the correlation evidence demonstrated that the Guildford and Woolwich bombings were the work of the Provisional IRA and responsibility lay with the Balcombe Street ASU and members of other ASUs. Dowd and others were convicted of the Balcombe Street siege in 1976.
16. The Guildford Four appealed their convictions to the Criminal Division of the Court of Appeal in 1977 on the basis of the admissions made by the Balcombe Street ASU and Dowd. The appeals were dismissed.
17. By 1989, fresh evidence emerged demonstrating that Surrey police officers had seriously misled the original jury at the Guildford Four trial. On 19 October 1989, the Guildford Four had their convictions quashed by the Criminal Division of the Court of Appeal. When quashing the convictions, the Lord Chief Justice stated: “the Police must have lied”.
18. A week later, on 26 October 1989, Sir John May was appointed by the government to conduct a public inquiry into the bombings, and a copy of the Habershon Report was made available to him. May’s report was published in June 1994. His inquiry considered certain evidence in private, which neither the Guildford Four nor their representatives were allowed access to. In his report he dealt with the Habershon Report saying:  
  
“14.25 In his report Commander Habershon mentioned the apparent problem that persons had already been indicted for the Guildford and Woolwich bombings who did not appear to be connected with the Fairholm Road ASU, with which the various Phase 1 and early Phase 2 bombings could be seen to be linked.”
19. He then quoted certain passages of the Habershon Report, including:

“Various persons have been charged in connection with these events, none of whom, so far as we have been able to establish, would seem to have had any direct connection with Fairhome Road or its so-far-identified inhabitants.”

20. With respect to the forensic correlation evidence referenced above, Sir John May wrote:

“14.3 The importance of the correlation work to those who have campaigned on the Guildford Four’s behalf is that they would interpret the work as meaning that all the bombings referred to were carried out by the same people. Hence, since the bombings continued after the Guildford Four’s arrest, the correlation work on this interpretation must indicate the Guildford Four’s innocence.”

21. With respect to removal of references to Woolwich at the Balcombe ASU trial, he said:

“15.50 In my view, had anyone in the DPP’s office applied their mind to this matter after the Guildford Four trial, then it should have been obvious that there was a need to disclose the entirety of the statements in all their versions since (as in fact happened) the defence might wish to argue that the process of making the amendments in itself cast doubt on the validity of the Guildford Four’s convictions”.

22. In 1993, three Surrey Police officers were tried and acquitted of offences of perverting the course of justice in relation to their investigation of the Guildford Four, and their evidence at trial. Much of the evidence was heard in closed session to which neither the Guildford Four nor their legal team were allowed to attend.

23. On 31 January 2019 the Surrey Coroner decided to resume the inquests into the deaths of the five people killed by the Guildford bomb attacks. The inquests had been opened immediately after the bombings and adjourned to give primacy to the Surrey Police homicide investigation. The then Surrey Coroner concluded that the murder trial and convictions of the Guildford Four rendered inquests unnecessary and certified the result of the criminal proceedings to the Register of Deaths. On the resumption of the inquest, the Coroner was given a copy of the Habershon Report, although he declined to consider it and indicated it was irrelevant to his investigations.

#### **Appellant’s request for information**

24. On 9 August 2021, the Appellant wrote to the HO requesting information as follows:

“Please may I have access to the following files:

BS 27/365

BS 27/366

BS 27/367”

25. The requested files are from a collection of evidence files compiled by the Sir John May inquiry. They are copy papers obtained in 1994 from the solicitors of the Metropolitan Police, which include a partial reconstruction of the Habershon Report and its appendices.

26. The HO has clarified that the full titles of the requested files are:

BS 27/365 – Documents supplied by the Metropolitan Police: the Habershon Report (1975) on Provisional IRA campaign of bombings and shootings in London and the Home Counties, October 1974 – February 1975.

BS 27/366 – Documents supplied by the Metropolitan Police: the Habershon Report (1975) on Provisional IRA campaign of bombings and shootings in London and the Home Counties, October 1974 – February 1975; reports and appendices, documents 1-12.

BS 27/367 - Documents supplied by the Metropolitan Police: the Habershon Report (1975) on Provisional IRA campaign of bombings and shootings in London and the Home Counties, October 1974 – February 1975; appendices 8, 17, 18.

27. The HO responded on 7 September 2021 stating it held the information but that it was exempt from disclosure under s.31(1)(a-c), and that the balance of the public interest fell in favour of maintaining the exemption. In brief, the reasons were:

- (1) Given the gravity of the offences and the number of casualties, there would be an expectation that the authorities would exploit any and every opportunity to identify those responsible and bring them to justice. There is no statute of limitations for murder and the case remains open.
- (2) As the crimes remain unresolved, to release the information into the public domain would allow those who should be brought to justice to continue to evade detection by identifying what level of police activity had taken place and assessing the evidence/information. This could undermine any future prosecution.
- (3) Some of the information is of interest to the ongoing Coroner’s inquest into the Guildford and Woolwich bombings. Disclosure would prejudice the impartiality of the inquest.

28. On 10 September 2021, the Appellant requested an independent internal review, and on 8 November 2021 the HO responded by upholding the original decision.

### **Complaint to IC and DN**

29. The Appellant complained to the IC on 9 November 2021. He wrote:

“The HO refuses me access on the grounds that the release has the potential to cause considerable harm to any future police investigations into the bombings. There are no current investigations and there have been none in the last 44 years. They claim that the crime remains unsolved when the perpetrators, who were in custody when they made full confessions, did so in 1976 and the Crown failed to lay charges against them. They also claim release would jeopardise the Inquest currently being undertaken by the Surrey Coroner when he has considered the files and determined that they are of no relevance to his inquiry.”

30. In response to questions from the IC, the HO wrote a letter dated 12 July 2022 to the IC, which included confidential details on why disclosure of the files would be prejudicial. It dealt with the public interest test in the open part of the letter. After providing arguments in favour of disclosure, it set out arguments for maintaining the exemption as follows:

“These records contain information concerning multiple murders by means of explosive devices and shootings carried out by the Provisional IRA in the 1970s. The Habershon report analyses the evidence found at various crime scenes, incidents involving vehicles, ballistic and fingerprint evidence and evidence found at several “safe houses”. ...These files discuss, in detail, the links between multiple events ...

Given the gravity of the offences which include unsolved shootings, unsolved bombings and the hostage taking of a child, in addition to the number of casualties and the families forever affected, there would be an expectation that the authorities would exploit any and every opportunity to identify those responsible and bring them to justice. There is no Statute of Limitations for murder and many of these cases remain “open”.

There is no way of identifying which pieces of evidence may be relevant to a future investigation or prosecution. Disclosure would allow those who are guilty to continue to evade justice by identifying what evidence the police have, what level of knowledge of events, what events were seen by witnesses and the descriptions of those involved. This could allow these individuals to destroy further evidence which would link them to these crimes or to evidence recovered.”

31. In carrying out the public interest balance, the HO wrote:

“There is a complexity to the information contained in these files (and the wider series that they belong to) that makes them as relevant today as when the documents were originally written in the 1970s and then later compiled and revisited in the 1990s for the inquiry.

The sheer number of IRA terrorist incidents in mainland Britain in the 1970s and the many different strands of investigations and intelligence, makes it virtually impossible to identify and predict which pieces of evidence could become relevant to future investigations or prosecutions.

We have taken advice from the creators of this information (Metropolitan Police) and subject matter experts from within the HO’s Homeland Security Group in our decision to withhold this information in its entirety. The release of this information “would” have a prejudicial effect.”

32. The DN was issued on 17 August 2022 upholding the HO’s decision to withhold the requested information.

33. In summary, with respect to s.31(1)(a)-(c) the IC concluded:

- (1) The likely prejudice caused by disclosure was relevant to the interests that s.31(1)(a)-(c) is designed to protect;
- (2) The HO had demonstrated a causal relationship between disclosure of the requested information and the functions which s.31(1)(a)-(c) are designed to protect, including because crimes which the files relate to could still be investigated in future, and because disclosure might prejudice the Coroner’s ongoing investigation into the 1974 Guildford bombings.

- (3) Prejudice to law enforcement functions “would” occur as a result of disclosure of the withheld information;
- (4) The public interest favoured maintaining the s.31(1) exemptions in relation to all but two of the documents contained in the requested files, in that the public interest in transparency and accountability was outweighed by the public interest in ensuring the police and judiciary are able to conduct their law enforcement functions effectively.

34. The Appellant appealed to this Tribunal.

### **Law**

35. The Tribunal’s remit is governed by s.58. This requires the Tribunal to consider whether the decision made by the IC is in accordance with the law or, where the IC’s decision involved exercising discretion, whether he should have exercised it differently. The Tribunal may receive evidence that was not before the IC and may make different findings of fact from the IC.

### **General right of access to information**

36. There is a general duty to disclose information.

37. The relevant parts of section 1 FOIA provide:

- (1) 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.
- (2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
- (3) [...]
- (4) The information –
  - (a) In respect of which the applicant is to be informed under subsection (1)(a), or
  - (b) Which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, [...]

### **Effect of exemptions in Part II**

38. The general duty to disclose does not arise where the information is exempt.

39. The relevant parts of section 2 of FOIA provide:

- (2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that -

- (a) the information is exempt information by virtue of any provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Section 31 – Law enforcement**

40. The relevant sections provide:

- (1) 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,

...

41. Section 31 is not an absolute exemption and therefore it is subject to the balance of public interest in s.2(2)(b) above.

### **Caselaw and guidance**

42. The Information Commissioner’s Office (ICO) guidance says:

“In broad terms, the exemption will apply where disclosing information would harm the ability to enforce the law.”

“The more likely the harm, the greater weight it will carry when you consider the public interest. In this context, the term “would prejudice” means that it has to be more probable than not that the harm would occur. “Would be likely to prejudice” is a lower test: even if the risk of harm occurring is less than 50 per cent, it must still be a real and significant risk.”

43. The matters that must be considered to establish whether s.31(1) is engaged were summarised in **Public Law Project v Information Commissioner** [2023] UKFTT 00102 (GRC) §12. They are:

- (i) the interest that is protected by the exemption;
- (ii) the nature of the prejudice to that interest; and
- (iii) the chance of prejudice being suffered.

In relation to the nature of the prejudice, it is necessary to demonstrate a causal link between the disclosure and the harm claimed.

44. As to the chance of prejudice, it is not necessary to show that the prejudice would be significant (although the extent of the prejudice is relevant to the public interest balance). However, disclosing the information must have a very significant and weighty chance of causing prejudice that is real, actual and of substance – **Public Law Project v Information Commissioner** (supra) §15; **Department for Work and Pensions v Information Commissioner and FZ** [2014] UKUT 0334 (AAC); **R (Lord) v Secretary of State for the Home Department** [2003] EWHC 2073 (Admin).



45. In this context, the term “would prejudice” means that it must be more probable than not that the prejudice would occur. “Would be likely to prejudice” is a lower test – here, the chance of prejudice must be more than a hypothetical possibility: there must be a “real and significant risk” of prejudice - **Public Law Project v Information Commissioner** (supra) §16; **Hogan and Oxford City Council v Information Commissioner** EA/2005/0026.
46. The time for assessing the public interest balance is the date of the initial refusal of the information – **Montague v Information Commissioner and Department for International Trade** [2022] UKUT 104 (ACC) at §63.

### **Issues**

47. The issues for the Tribunal are:

- Whether it is more probable than not that disclosure of the files would prejudice any future investigation or prosecution of the crimes to which the files relate (higher test), or alternatively whether there is a real and significant risk that disclosure would cause such prejudice (lower test).
  - Whether it is more probable than not that disclosure of the files would prejudice the Surrey Coroner’s inquest into the Guildford bombings (higher test); or alternatively whether there is a real and significant risk that disclosure would cause such prejudice (lower test).
48. If sufficient risk of harm is identified, the Tribunal must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Submissions**

#### **Appellant’s submissions**

49. The statutory exemptions under s.31(1)(a)-(c) do not rationally apply to the facts, and a number of the factual premises for those exemptions no longer apply. Therefore, the IC erred in upholding the HO’s decision.
50. The IC has not articulated the basis in law for relying on closed reasons. This is procedurally irregular.

#### **Arguments in favour of disclosure**

51. The Habershon Report was produced at an absolutely critical juncture of the Guildford Four’s prosecution, it being dated some nine days after the trial began. The report and its appendices constitute material which is critical to the issue of non-disclosure during the Guildford Four prosecutions. Disclosure would allow members of the public to understand fully the Metropolitan Police’s own review of the correlation evidence and its own views about the many and various links between Provisional IRA bombings. The documents would potentially illuminate the extent of non-disclosure.

#### **Appellant’s response to arguments against disclosure**

52. The IC’s DN can be reduced to the following propositions:

- a. The investigations into the Guildford and Woolwich bombings remains open.
- b. The resumed inquest into Guildford is ongoing.
- c. The law enforcement activities protected by s.31(1)(a)-(c) would be prejudiced by the Habershon Report and its files being released.

53. The higher evidential standard of “would” prejudice, cannot rationally have been satisfied because:

- a. The inquest has concluded and will not be jeopardised. In his January 2019 ruling on the resumption of the inquest, the Surrey Coroner at §12, in dealing with the scope of the inquest stated:

“In my view, the above restrictions mean that the resumed inquests cannot investigate the identities of the Provisional IRA terrorists who carried out the attack, any evidence pointing towards or away from any particular perpetrators or any questions relating to the conduct of the original police investigation or prosecution.”

The Habershon Report falls squarely within the classes of information referred to. Therefore, there is no causal or rational connection between disclosure and the integrity of the inquest.

- b. The HO accepts there is no current police investigation into the Guildford and Woolwich bombings. It is wholly unrealistic to describe the investigation as “open” simply because it has not formally closed. The bombings occurred 46 years prior to the Appellant’s request. The HO has not cited a single arrest or development since 1989 to support the exemption.
- c. At §16 of his ruling, the Coroner records that the chances of Surrey Police reopening the Guildford bombings investigation is remote:

“It is also of relevance ... that Surrey Police have made clear that ... they are not reviewing their original investigation, nor have they opened any reinvestigation of the bombings and they consider the prospects of this happening to be remote. ...”

- d. Although the Habershon Report deals with wider IRA incidents across the country, it is about the Dowd ASU. Another name for it is the Balcombe Street gang. Chapter 15 of Sir John May’s report deals with it. Dowd confessed to various offences and his associates were implicated. There is no secret about this ASU and the bombings in 1974 and 1975. The Provisional IRA bombings are well documented. The Habershon Report was written 48 years ago. Most of the bombers have been tried in this country.
- e. In July 2021, the UK government published a Command Paper entitled “Addressing the Legacy of Northern Ireland’s Past”, which proposed bringing forward legislation to end legacy-related prosecutions. This was followed by The Northern Ireland Troubles (Legacy and Reconciliation) Bill, and then The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, which introduced a statute bar to the continuation or instigation of any troubles-related criminal investigation concerning conduct in England between 1966 and 1998. Therefore, the legislation embraces the Guildford and Woolwich bombings. The investigation will be brought to an end by

operation of statute. Whilst the Bill and the Act post date the HO's response to the Appellant's request, the legislation was making its way through Parliament at the time of the HO's review. Therefore, the HO's decision to invoke s.31(1) is inconsistent with the state of intention of the government.

- f. The Habershon Report is a document which, to some extent, is already "out in the open". It was summarised by Sir John May, with several paragraphs having been quoted. The BBC referred to it in an article, and it was disclosed to the prosecution in the Balcombe Street siege trial.

### **Public interest balance**

54. Against the above background, there is limited public interest in maintaining the exemptions. It is known that the prosecution of the Guildford Four was a miscarriage of justice. What is not known is the full extent of the police's analysis which was not disclosed to the defendants at the time. The public interest arguments for maintaining the exemption are heavily outweighed by the public interest in disclosing the information.

### **IC's submissions**

55. The Habershon Report and the remainder of the withheld information has never been published or officially placed in the public domain, save for certain paragraph that were cited in the Sir John May report.
56. The IC refers to the summarised reasons in the DN for withholding the information.

### **Response to the grounds of appeal**

57. First, the Appellant contends that it is wholly unrealistic to describe the investigation into the Guildford and Woolwich bombings as open. It was appropriate for the IC to rely on the HO's submissions, which focussed on (a) the gravity of the offences, (b) the fact the information discusses in detail the links between multiple events, and (c) the sheer number of IRA terrorist incidents in mainland Britain in the 1970s and associated number of strands of investigation and intelligence. Those explanations were credible when considered alongside the withheld information itself (as summarised in the confidential version of the HO's letter to the IC of 12 July 2022).
58. A consideration of whether any crimes may be investigated in the future is not limited to the Surrey Police force or the Guildford and Woolwich bombings. It is much wider, as the information covers multiple events, and links together multiple strands of evidence. The complexity of these files makes it difficult to predict what evidence might be relevant to future investigations. The IC is entitled to consider the cumulative effect and interrelationship of the wider evidence.
59. With respect to the Northern Ireland Troubles (Legacy and Reconciliation) Bill and Act, they had not been introduced into Parliament at the time of the HO's initial refusal and therefore can carry no weight. The Bill's first reading was on 17 May 2022, eight months after the response. The Act was given Royal Assent on 18 September 2023, three years later and came into effect in May 2024. Whilst it might be said that the legislation was being contemplated at the time of refusal, it cannot legitimately be given weight as courts cannot pre-empt Parliament before it has made a final decision.

60. Second, regarding the Habershon Report being in the public domain, FOIA applies to information not documents and it does not follow that, because Sir John May quoted certain passages of the report, the remainder of the withheld information should be disclosed. It is not a large proportion of the report that was quoted and Sir John May's summary was a high level explanation of what the police thought. He did not consider the nitty gritty of the evidential strands. Furthermore, the argument does not advance the Appellant's case with respect to documents other than the report.
61. With respect to the BBC article, it is generalised and high level. If the BBC saw the report, it was unofficial and not public. The same argument applies to the Balcombe Street siege trial. Something disclosed to the prosecution or defence is not the same as being public.
62. Third, the fact the inquest concluded prior to the IC's DN is irrelevant as it was ongoing at the time of the HO's initial refusal. The fact the Metropolitan Police and the Surrey Police disclosed the Habershon Report to the Coroner shows they thought it was relevant. Some weight can be given to this, although it is not the keystone to the IC's explanations.
63. Fourth, the suggestion that withholding the basis for relying on closed reasons is procedurally irregular, is misplaced. The IC regularly avoids referring to confidential matters publicly in DNs to prevent the release of sensitive information.

#### **Discussion and conclusions**

64. We have considered the circumstances at the time of the HO's response to the request in accordance with the case of Montague.
65. With respect to the argument over procedural irregularity, it is proper for the IC not to disclose the basis for relying on closed reasons, as to do so is likely to give rise to confidential information.
66. We turn now to the issues of prejudice and public interest balance.

#### **s.31(1)(a-c) prejudice**

67. Whilst the Appellant submits that, to some extent, the Habershon Report is already out in the open, this can only be said of a small part of it. A high level summary of the Habershon Report and certain quotes from it were published within the May report. However, much of it remained confidential. With respect to the BBC, their article is high level and, if they did have access to a copy, it was unofficial. Similarly, anything disclosed to the Balcombe Street siege prosecution or defence cannot be said to be in the public domain. Therefore, we give this argument little weight.

#### **Prejudice to future investigations.**

68. It is argued that disclosure of the files would allow the perpetrators to continue to evade justice by identifying what evidence the police have obtained, and allowing them to destroy further evidence which would link them to these crimes.
69. However, there are no current police investigations into the Guildford and Woolwich bombings. At the time of the HO response, over 46 years had passed since the bombings

took place, and there have been no arrests since 1989. The Surrey Coroner reported that the Surrey Police made it clear that any future investigation into the bombings was remote.

70. Nonetheless, the files contain information, which is wider than the Guildford and Woolwich bombings. However, the information within them is related to the Habershon Report, which itself is concerned with the activities of Brendon Dowd and his associates. Brendon Dowd has already confessed to various bombings and other crimes, as have some of his associates.
71. With respect to the relevance of the Northern Ireland Troubles (Legacy and Reconciliation) Bill, it was published in July 2023 and the HO's response to the request was on 7 September 2021. Therefore, we have not taken it into account. However, The Command Paper, which sets out the government's plans to end legacy-related prosecutions, was presented to Parliament in July 2021. Therefore, the government's thinking and intentions were known at the time of the HO response.
72. In all the above circumstances, at the time of the HO response, the chance of any police investigation occurring in the future, with respect to the crimes documented within the files, was slim. Consequently, there was no real and significant risk that disclosure would prejudice any such future investigation or prosecution even by the lower test standards.

### **Inquest**

73. The Surrey Coroner's January 2019 ruling on the resumption of the Guildford bombing inquests makes it clear that his remit was restricted. He would not be investigating the identities of the Provisional IRA terrorists who carried out the attack or the conduct of the original police investigation or prosecution. Therefore, he declined to consider the Habershon Report.
74. Therefore, at the time of the HO response, the release of the requested files would not have caused prejudice to the inquest even by the lower test standards.

### **Conclusion on s.31(1)(a)-(c) prejudice**

75. Disclosure of the requested files would not be likely to prejudice the prevention or detection of crime, the apprehension or prosecution of offenders, or the administration of justice

### **Public interest balance**

76. In the event we are wrong, we have gone on to consider the public interest balance.

### **Arguments against disclosure**

77. The files contain information and analysis of evidence relating to serious crimes committed by the Provisional IRA, and the complexity of the files means that some evidence could still be relevant to any future prosecution, although it is impossible to predict which evidence this might be. Disclosure would not be in the public interest because it would assist the perpetrators in avoiding justice.

### **Arguments in favour of disclosure**

78. The information is relevant to the serious miscarriage of justice of the Guildford Four, and the substantial detriment they suffered by being imprisoned for so long.
79. There is significant public interest in allowing the public to examine and consider available information to help them understand what happened and how the miscarriage of justice occurred.
80. It is important that the public have confidence in the police, particularly with respect to such serious matters as terrorist activities. They need to understand what measures are being taken to keep people safe. In this regard, there is considerable public interest in openness, transparency and accountability of police actions, particularly when their integrity is in question. In the case of the Guildford Four, the Lord Chief Justice said, when quashing their convictions, that “the Police must have lied”.

### **Balance**

81. The more likely the harm, the greater the weight it will carry when considering the public interest.
82. The prospects of any further police investigations at the time of the HO response, was slim. Therefore, the weight we give to any harm to law enforcement from disclosure is not significant.
83. On the other hand, the benefits of disclosure are significant, given the seriousness of the miscarriage of justice.
84. Therefore, we find that, in all the circumstances of the case, the public interest in maintaining the exemption does not outweigh the public interest in disclosing the information.

### **Summary of decision**

85. For the above reasons, we conclude that s.31(1)(a)-(c) is not engaged. In the alternative, the public interest in maintaining the exemption does not outweigh the public interest in disclosing the information.

Signed

Judge Liz Ord

Date: 3 June 2024