

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 20 August 2008

**Public Authority:** Metropolitan Police Service  
**Address:** Empress State Building  
Lillie Road  
London  
SW6 1TR

### Summary

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The complainant sought access to information recorded in ledgers from the late 19<sup>th</sup> and early 20<sup>th</sup> centuries held in the Metropolitan Police Service Special Branch Office (the “public authority”).

Access was originally agreed for the complainant, outside of the terms of the Freedom of Information Act (“the Act”), but only on the proviso that he would not “*publish or communicate to any other person or agency any details contained in these records...*” Access was denied under the Act on the grounds that it was exempt under sections 21 (information accessible to applicant by other means), 31 (law enforcement) and 38 (health and safety). In subsequent correspondence the public authority added section 12 (fees) and section 24 (national security) to their reasons for withholding the information. The Commissioner also considered section 30 (investigations).

The Commissioner’s decision is that the fees limit did not apply. He finds that section 21 was appropriately applied to the limited information which is already available. He also finds that the exemptions at sections 24, 31 and 38 were not engaged and, whilst section 30(2) was engaged, that the public interest in disclosing the information was not outweighed by the public interest in maintaining it. Additionally, he finds under section 11, that the public authority can give effect to the complainant’s request for inspection of the ledgers. Consequently, the complaint is partly upheld.

## The Commissioner's Role

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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

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2. On 25 July 2005 the complainant made a request to the public authority for access to view ledgers held in its Specialist Operations Retained Library which relate to Special Branch's activities against 'non-Fenian' subversives between 1884 and 1905. He volunteered the fact that the information was required for research he was conducting into the international anarchist movement between 1871 and 1905. He was specifically interested in eight major anarchist figures, one of whom was British. Other research the complainant has conducted has allowed him access to police archives in France, Belgium and Russia, with no restrictions for information of this vintage.
3. The original request stated that the information required comprised the following:
  - Metropolitan Police Ledgers, headed "Special Account" Vols 1-3 (1888-1894, 1894-1901, 1901-1912)
  - Chief Constable's CID Register, "Special Branch", 1888-1892
  - Metropolitan Police, "Special Branch, Record of Postings and Promotions 1886-1917"
4. It was acknowledged by the public authority on 1 August 2005. The complainant telephoned the public authority on the 30 August 2005 to enquire about a substantive response.
5. On 31 August 2005 the public authority wrote to the complainant apologising for the delay and advising that it had been deciding how to provide access to the documents. It was prepared to allow access but only under certain conditions. A Form of Undertaking was drawn up which stated that the complainant would not be permitted to take copies or to publish or communicate the contents of the information to any other person or agency.
6. The complainant had been advised there would be limited restrictions to his access in an earlier telephone conversation but the subsequent 'Form of Undertaking' had vastly exceeded what he had expected. The complainant was also informed, in a telephone conversation with the

public authority, that the ledgers had recently been accessed by someone else.

7. On the 22 September 2005 the complainant wrote to the public authority expressing his disappointment regarding the prohibitions on use of the documents. He was further concerned because he felt that signing such an agreement may legally inhibit the inclusion of information which he had already retrieved from other sources.

8. The complainant further qualified his concerns by saying:

*“The position in which I now find myself forces me to question the necessity of such terms in general, and even in relation to the naming of informants, which you indicated was the basis for Special Branch’s concern. Dr Clutterbuck\* states in his doctoral thesis (that must be considered to be ‘published’ though not commercially) that in light of the individuals in question having been dead for at least many decades, along with the importance of their identity to a historical understanding of the early Special Branch, it was considered legitimate for him to cite the names of informants from the records. The same considerations apply to my interest in the files and I hope that you will ... arrange for me to have access to them, for their serious and responsible use, on these terms.”* (\*see paragraph 31).

9. The complainant’s letter was acknowledged by the public authority on 29 September 2005 and he was informed that a substantive reply would follow. Having heard nothing further the complainant chased a response, by email, on 1 November 2005. This was acknowledged on 18 November 2005 when he was advised that, *“the issue of access to these records has raised a number of wider issues that are currently being addressed”*.

10. The complainant chased his response again on 21 December 2005, reiterating that as access had already been afforded to Dr Clutterbuck this was all he also required. He also mentioned that it is only in Britain where he has been denied access to such information.

11. On 30 January 2006 the public authority sent out a refusal notice citing exemptions under sections 21 (information accessible to applicant by other means), 31 (law enforcement) and 38 (health and safety).

12. On 21 February 2006 the complainant contacted the Commissioner to complain about the use of these exemptions.

13. During a telephone conversation on 20 October 2006 the complainant was advised by the Commissioner’s office to contact the public authority and seek an internal review as one had not been undertaken; he did so on the same day (the Commissioner has confirmed with the public authority that this was received by it on 21 October 2006). This review remains outstanding, despite the public authority assuring the

Commissioner that one has been done and his requests for a copy. In order to forego any further delay, and in light of the time that has already passed since the initial request was made, the Commissioner has exercised his discretion and has investigated this complaint in the absence of a copy of the internal review that the public authority claims has been completed.

14. The Commissioner notes that the request for an internal review does not appear to have ever been acknowledged, although the public authority has confirmed to him that it was received. As part of his request for an internal review the complainant also asked three further questions which should have been considered as new requests by the public authority. These three further requests were for the following:

- “• Have the ledgers in question been made available to any researchers since the introduction of the FOI Act (my records show that I was told ... in June of 2005 that they had been viewed in the Empress State Building the previous week and were being held there for possible further viewing by the same researcher)? If so, what restrictions were placed on access?”*
- Since their “rediscovery” in the course of Dr Clutterbuck’s researches in around 2000/1, have the ledgers (as public historical records) been referred to the Lord Chancellor’s advisory committee to have their retention approved, and the use of exemptions validated? If so, what was the date of the Lord Chancellor’s decision?”*
- Have any other requests to view Special Branch documents – or, to your knowledge, any other Metropolitan Police documents - that had previously been available to researchers, been refused since the introduction of the FOIA, by citing the new exemptions, as you state is the case with these documents?”*

15. No response or acknowledgement has been sent to the complainant regarding these requests.

## **The Investigation**

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### **Scope of the case**

16. During the course of the investigation the public authority confirmed that it had altered its position about disclosure of the Metropolitan Police, “Special Branch, Record of Postings and Promotions 1886-1917”. On 20 June 2007, the complainant was informed by the public authority that this information had been selected for permanent preservation at The National Archives (TNA). It would therefore be accessible to the general public. The complainant was further advised that, as the process of transferring the records could take some time,

he could view the records at one of the public authority's offices in the meantime.

17. The Commissioner understands that the complainant has now viewed the ledger mentioned above. In view of this, the Commissioner has not given further consideration to the disclosure of the "Special Branch, Record of Postings and Promotions 1886-1917" in this Decision Notice. Therefore, the remainder of this Decision Notice is concerned only with the other information which is relevant to the request and which has not been disclosed.
18. The complainant has clarified to the Commissioner that the additional three information requests, as mentioned at paragraph 14 above, remain unanswered and that he still requires a response.
19. In a submission to the Commissioner dated 20 June 2007 the public authority included the following as one of its arguments against disclosure:

*"Therefore [our earlier arguments against disclosure] together with our duty to protect the right to life of individuals as in article 2 and to protect the right to respect for private and family life in accordance with article 8 of the Human Rights Act, the MPS are firmly of the opinion that informants' identities must not and cannot be disclosed even after a long period of time has elapsed."*
20. The Commissioner notes that this could infer the introduction of the exemption at section 44 which provides that information is exempt if its disclosure is prohibited under any enactment, i.e. The Human Rights Act 1998 (HRA).
21. In the Tribunal case EA/2006/0090 the Tribunal indicated that it "*would not be in favour of translating the general principles laid down in Article 8 into the form of specific legal prohibition to which we believe section 44 is intended to apply.*" The Tribunal's approach was to use Article 8 only as a guide when interpreting the law of confidence when citing section 41. The Commissioner is of the view that in this particular case the Tribunal would take a similar view that Article 2 considerations would be used as a guide when citing section 38, which he has considered below.
22. The public authority has not cited either section 44 or 41 and did not offer any further arguments to support its statement. Therefore, in light of the Tribunal's previous determination the Commissioner has not further considered any potential breach of the Human Rights Act.

## The Investigation

23. On 2 February 2007 the Commissioner wrote to the public authority seeking further information about its use of the exemptions under sections 21, 31 and 38. A copy of the withheld information was also requested along with a copy of Dr Clutterbuck's thesis. This was acknowledged on 8 February 2007.
24. A response was received dated 27 February 2007. Further information was included about the application of the exemptions and the public authority also advised that trying to copy the ledgers for the Commissioner would probably damage them but that they could be viewed *in situ*. In particular the public authority accepted that it could not apply section 31 to information that was over 100 years old by virtue of section 63(4). Therefore section 31 could not be claimed for a significant amount of the information requested by the complainant.
25. On receipt of the public authority's response the Commissioner identified several outstanding queries that had not been answered. He discussed the outstanding queries with the public authority on 7 March 2007 and requested a further written reply. A reply was chased on 21 March 2007. On 26 March 2007 contact was made by a new member of staff from the public authority who indicated that she had been trying to get familiar with the case.
26. The public authority responded to the queries substantively on 2 April 2007. This response included further arguments about the exemptions that had been relied upon. The public authority also introduced a further exemption that it claimed should have been cited at the time of the request, section 24(1). This section provides an exemption to section 1(1)(b) of the Act where this is required for the purposes of safeguarding national security. It also stated that it considered that it was not in fact obliged to comply with the request by virtue of section 12. This was on the basis that reading, redacting and copying the information would exceed the appropriate limit of £450.
27. The request for a copy of Dr Clutterbuck's thesis was not acknowledged. The Commissioner therefore sought this from a different section within the public authority on 19 April 2007. Due to the size of the thesis, the public authority only provided some relevant extracts which were sent through on 24 April 2007.
28. The thesis is held by the public authority and the University of Portsmouth. Copies are also available, on payment of a fee, via the British Library's thesis service. Following the partial disclosure, the Commissioner obtained a full copy of the thesis from the British Library thesis service to assist with his investigation.
29. The issue of access to the ledgers was also raised again. The Commissioner was initially advised that due to the sensitivity of the

material the ledgers could only be viewed *in situ*. It was also suggested that trying to provide copies would potentially damage the information due to its age. The public authority then stated that a representative from the Commissioner's Office, with appropriate vetting, would be required to visit its office and that they would have to sign an undertaking prior to viewing the information. The Commissioner eventually negotiated the provision of photocopies of a sample of the information. On 19 April 2007 he was posted a selection of photocopies from each of the withheld ledgers.

30. On 18 June 2008 the Commissioner visited the public authority and inspected the withheld information *in situ*.

### **Findings of Fact**

31. It was believed by the complainant that the material requested had been lost, however, he then discovered the doctoral thesis "An Accident of History? – The Evolution of Counter Terrorism in the Metropolitan Police, 1829 to 1901, With Particular Reference to the Influence of Extreme Irish Nationalist Activity" by Dr Lindsay Clutterbuck. (This is available as mentioned in paragraph 28 above).
32. The thesis revealed that information had come to light in the form of five ledgers held in the public authority's Specialist Operations Retained Library - these ledgers are those which are the subject of this request. This thesis focussed on 'Fenianism' in the 1880s and provided details of a small number of informants, and their relatives, who were associated with the anarchist movement. It indicated that there was further extensive information available beyond that mentioned in the thesis.
33. Contact with The National Archives (TNA) has revealed that they had been fully consulted over their potential ownership of the ledgers. The Commissioner was advised that, according to TNA, the ledgers came to light during a survey of non-current records done at the public authority in 2003. They were not selected for permanent preservation at this point and they would therefore have normally been destroyed. However, the public authority made an application to the Advisory Council to retain them and this was approved. This application is due for review in 2011 when preservation of the ledgers may be re-assessed, although TNA do not currently think the records are worthy of permanent preservation. As mentioned in paragraph 16 above, one ledger has since been selected for permanent preservation by TNA.

## Analysis

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### Procedural matters

34. Section 17 of the Act sets out the obligations on public authorities when refusing information requests. The relevant text of the legislation can be found in the Legal Annex to this Notice.
35. This section provides that a refusal notice must be issued within the time allowed under the Act, namely as soon as possible after receipt of the request or in any event no later than 20 working days. In this case, the public authority did not issue a refusal notice until 30 January 2006, which is more than 20 working days after the request was received and therefore in breach of section 17(1).
36. This initial refusal notice did not refer to the sub-section of each the exemptions claimed. This is in breach of section 17(1)(b).
37. The public authority also sought to rely upon different exemptions to those originally cited during the course of the Commissioner's investigation. In failing to cite the exemption at section 24 in its refusal notice the public authority breached section 17(1)(a), (b) and (c). In failing to cite section 12 it breached section 17(5).
38. As the Commissioner finds that the public authority did not make the requested information available to the complainant it breached section 1(1)(b) and 10(1).
39. As part of his request for an internal review the complainant also asked three further questions which should have been considered as new requests by the public authority. The requests were never acknowledged nor was a response provided. This is a breach of section 1(1)(a) and (b) of the Act and also section 10(1).

### Section 11 – Means by which communication to be made

40. The Commissioner understands that the public authority did not consider the complainant's preferred method of access to the information, namely viewing the ledgers, as it believed the information to be exempt. However, as he does not find the information to be exempt he is necessarily moving on to consider section 11.
41. Section 11(1) of the Act provides that an applicant can express a preference for communication of information by one or more means. Subsection (b) allows for "the provision to the applicant of a reasonable opportunity to inspect a record containing the information".

42. Where an applicant expresses a preference for communication in a particular form, the public authority is required to give effect to that preference as far as reasonably practicable.
43. The public authority has indicated that the ledgers are delicate and that photocopying them could damage them. Therefore allowing physical access to them, as originally requested by the complainant, seems a reasonable option to the Commissioner. The Commissioner also notes that other individuals have been afforded an opportunity to inspect the withheld information from which he infers that this is a practicable option.
44. The Commissioner has specified any steps that must be taken in the Steps Required section of this notice below.

## **Section 12 - Fees**

45. As mentioned above, the public authority introduced the fees limit in its letter to the Commissioner dated 2 April 2007. It stated that,  
  
*“Due to the age and size of the ledgers as well as the condition, it would require a great deal of care when handling, this would make the job of copying almost impossible due to the impact of time and resources – bringing us into the fees consideration. To read, redact and copy an estimated 550 pages working on the figure of inspection time alone without preparation ... would take us to an estimated cost of £2,364.”*
46. It is unclear to the Commissioner why fees have been introduced. The original request was for access to the ledgers rather than a copy of them. In any event, it should be borne in mind by the public authority that the appropriate limit can only be applied in respect of:
  - determining whether it holds the information;
  - locating the information, or a document which may contain the information;
  - retrieving the information, or a document which may contain the information;
  - extracting the information from a document containing it.
47. It is clear that the public authority holds the information, knows its location, can retrieve it and that the request is for access to the entire information. Therefore it is not necessary to read through the information to extract material relevant to the request from the remainder. The public authority cannot include the cost of redacting any exempt information when estimating whether complying with the request would exceed the appropriate limit.
48. The public authority could however include photocopying charges if it were to reproduce the ledgers for the complainant. Section 6(3)(b) of

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 allows public authorities to make charges for, “reproducing any document containing the information” although it may not take into account any costs which are attributable to the time during which persons undertake the activity. This charge may be recovered from the complainant but it cannot be taken into account when calculating the appropriate limit.

49. The Commissioner considers that the estimated cost of £2,364 is inaccurate and that the appropriate limit is not applicable.

## The Exemptions

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### Section 21 – Information accessible by other means

50. The Commissioner has considered whether the public authority has correctly applied section 21 of the Act.
51. Section 21(1) provides that –
- “Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”
52. Section 21 was cited based on the following criteria:-
- “S21 applies because some of the information from the ledgers has been published in a thesis called ‘An Accident of History?’ written by Dr Clutterbuck. A copy of this thesis has been placed in the British Library.”*
53. It is apparent from the complainant’s correspondence that he has accessed Dr Clutterbuck’s thesis. Further, the Commissioner notes that copies of the thesis can be obtained from the British Library thesis service on payment of the applicable fee or can be viewed *in situ* for free. The Commissioner has obtained the thesis to assist his deliberations. He notes that the focus of the thesis is ‘Fenian’ activities as opposed to anarchist and non-Fenian ones during the period in question. Whilst wholesale sections of the Special Account Ledgers and CID Register are not reproduced in the thesis, limited information from them is cited in the document. To the limited extent that information from the Ledgers and the Register is cited in the thesis and, where it is clear that they are from that source, the Commissioner is satisfied that that material is reasonably accessible to the complainant by other means. Therefore in relation to that material the exemption was appropriately claimed.

## Section 30 and 31 –Investigations and Law enforcement

54. Section 30 of the Act provides an exemption for information which has been held for the purpose of a criminal investigation or which relates to the obtaining of information from confidential sources. Information withheld by virtue of section 30(1) becomes an historical record at the end of the period of 30 years, beginning with the year following that in which it was created, as provided by section 63(1). By contrast, information withheld under section 30(2) does not become an historic record.
55. Section 31 provides an exemption for information which would prejudice law enforcement. Information withheld by virtue of section 31 becomes an historical record at the end of the period of 100 years, beginning with the year following that in which it was created, as provided by section 63(4).
56. Sections 30 and 31 are mutually exclusive and therefore cannot both apply to the same information. Furthermore, section 30 is a class based exemption rather than a prejudice based one. Therefore, provided that the material is of the nature specified in the exemption it will fall within it. The public interest test will then determine whether or not the public authority must disclose the information.
57. In this case the public authority initially claimed that section 31 applied to the requested information. It stated that:
- “... the ledgers contain sensitive information that, if disclosed, would compromise the prevention and detective [sic] of crime.”*
- During the early stages of his investigation the Commissioner highlighted the provisions of section 63(4) to the public authority.
58. In response to the Commissioner on this point the public authority added the following:
- “I agree that at over 100 years old Section 31 would not apply. The key sensitivity here is that there are references in the ledgers to informant names and it is the MPS and Security Service Policy that these names are never released. To do so, even at 100 years old, could prevent or inhibit individuals from agreeing to act as informants for the police service either in the world of counter terrorism or general policing including violent and organised crime.”*
59. The Commissioner notes that in fact section 63(4) would not in principle prevent section 31 from applying to the Special Account Ledger Volume 3 (1901-1912). This is because section 62(2) states that,

*“Where records created at different dates are for administrative purposes kept together in one file or other assembly, all the records in that file or other assembly are to be treated for the purposes of this Part as having been created when the latest of those records was created”.*

60. In this case he considers each of the three volumes of Special Account Ledgers to constitute an individual file or other assembly for these purposes. As the final record in the third volume is dated from 1912 section 31 could therefore be considered until 2013.
61. The Commissioner also recognises that the public authority has not in fact cited section 30(2) at any point. However, given the complexity of the interaction between the two sections, the implications of section 63 and the nature of the material requested, he considers it appropriate for him to do so.
62. In contrast to sections 31 and 30(1), section 63 does not prevent 30(2) from applying to historical records, i.e. it can still be considered to be exempt after 100 years. The Commissioner understands that information provided by, or recorded in relation to, informants would have been recorded for the purpose of investigations to determine whether or not someone should have been charged with an offence or a person charged with an offence was guilty of it. In the Commissioners view section 30(2) therefore applies to that information which:
- Identifies an informant
  - Details information obtained from that informant
  - Details payments made to an informant
  - Details the way in which an operation or police officer managed or handled an informant
63. As explained in paragraph 55 above, section 31 cannot apply to information if it is exempt by virtue of section 30. It is therefore appropriate to consider whether the latter applies in the first instance.
64. The information that the complainant has requested which is contained within the three volumes of Special Account Ledgers relates largely to informants historically used by the Metropolitan Police. It includes names, details of payments made and some of the information obtained as well as information about police officers and how they handled particular individuals in connection with investigations. In the Commissioner’s opinion the majority of the information would therefore fall within section 30(2) of the Act. This states 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”.

65. By contrast, although some of the information within the CID Register relates to informants there is a significant amount of other unrelated information - for example correspondence concerning staffing issues such as sickness leave and proposed promotions. The Commissioner has concluded that section 30(2) does not apply to any information within the CID Register falling outside of the criteria listed at paragraph 62 above. Furthermore, as previously explained, section 31 cannot be applied because all the information in the CID Register is over 100 years old.
66. For clarification the Commissioner would like to confirm that he considers:
- The Metropolitan Police Special Account Ledgers Volumes 1-3, all engage the exemption at section 30(2) in their entirety and, in light of this, that section 31 applies to none of the information
  - The Chief Constable's CID Register 1888-1892 engages section 30(2) in part, the remaining parts not engaging section 31 as they are over 100 years old and therefore exempt by section 63(4)

### **The public interest test**

67. Where the Commissioner has concluded that section 30(2) applies he must go on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure. Whilst there is no need to demonstrate prejudice in order to engage the exemption, the Commissioner considers that the following are relevant when deciding where the public interest balance lies:
- The severity of any harm identified and the likelihood of it arising
  - The frequency of any harm arising
  - Information that is already in the public domain
  - The content of the information
  - The age of the information
68. Although the public authority did not specifically rely upon section 30(2), it did explain to the Commissioner that it was its policy never to release names of informants. This is on the basis that to do so, even

after 100 years, could dissuade people from acting as informants. This in turn would harm the ability of the police to obtain important information which enables enforcement agencies to prevent and detect crime and to apprehend offenders where crimes are under investigation. It noted the particular importance of recruiting and retaining Covert Human Intelligence Sources (CHIS) in light of the global threat of terrorism and the high level of violent and organised crime.

69. The approach adopted by the public authority, as already cited in paragraph 58, suggests that it would never release names of informants. The Commissioner notes that it did not consider anonymising the ledgers to remove any information that it believed to be exempt instead opting to refuse to disclose any informant-related information at all. However, this exemption is subject to a public interest test and must be considered with reference to the specific information being requested and the particular circumstances of this case.
70. It is also relevant to note that in the case of the *DWP v Information Commissioner (EA/2006/0040)* the Information Tribunal made the following comments about the public interest test, “it can be said, however, that there is an *assumption* built into FOIA that the disclosure of information by public authorities on request is in itself of value and in the public interest, in order to promote transparency and accountability in relation to the activities of public authorities. What this means is that there is always likely to be some public interest in favour of the disclosure of information under the Act. The strength of that interest, and the strength of the competing interest in maintaining any relevant exemption, must be assessed on a case by case basis: section 2(2)(b) requires the balance to be considered “in all the circumstances of the case””.
71. The Commissioner recognises the real and significant threat currently posed by terrorism and by increasingly sophisticated and violent criminals. Furthermore, he understands the significance of the information that the police are able to obtain from confidential sources to investigations carried out into people suspected of related crimes. This is relevant to a significant number of investigations carried out by police forces and other investigatory authorities. He also understands that anonymity and protection is critical to the police if they are to be able to continue to recruit informants. There is therefore clearly a strong public interest in preserving the public authority’s ability to recruit and manage informants and to retain those currently operating.
72. In principle the Commissioner accepts that revealing information about informants could have the effect of dissuading informants from working with the police and similar authorities. Given that information provided by informants is often key evidence central to investigations the harm would potentially be severe.

73. However, in this case the Commissioner has given less weight to the above argument than he may have done if the information was more current and therefore there was a greater likelihood of the harm it had identified arising. When reaching this conclusion the Commissioner has taken into account the fact that some information has been accessed by other individuals and published on the internet. Whilst the public authority has attempted to restrict and remove the information from the internet, the fact remains that it was published and was widely available for some time. Furthermore some of the information was reproduced within Dr Clutterbuck's thesis, as noted previously, and is readily available from the British Library.
74. The public authority has not presented any evidence to illustrate that as a result of these disclosures it has experienced problems with either the recruitment of informants or the retention or management of existing ones. Neither has it indicated that there has been any detriment to the flow of information to the force from those sources.
75. The Commissioner has also noted that other countries have made very similar information about informants from the same period available to the complainant. Arguably the same concerns that the public authority raised about dissuading people from acting as informants would apply in other jurisdictions and yet the complainant was not denied access in those countries.
76. Moreover, given the age of the information the Commissioner considers that anyone acting as an informant or considering doing so, would distinguish between the disclosure of historical information such as the material relevant to this complaint and more current information. If the information related to active and or living informants or even to recently deceased individuals the Commissioner may have given greater weight to the arguments put forward by the public authority which favour maintaining the exemption.
77. In addition the age of the information is such that it is very unlikely that any of the information relates to open investigations which are being actively investigated. The Commissioner notes that the public authority did not put this forward as an argument in favour of maintaining the exemption.
78. The Commissioner also considered whether releasing the information would reveal any handling techniques or payment details which remain relevant. Having viewed the information he notes that it is limited in detail in this regard. Bearing this in mind, as well as the age of the material, he does not consider this argument to be relevant. Furthermore this was not an argument put forward by the public authority.

79. In view of all of the above the Commissioner does not consider that the arguments in favour of maintaining the exemption in this case have significant weight. Nevertheless they must be weighed against the arguments in favour of disclosure.
80. Disclosing the requested information would ensure greater accountability and transparency on the part of the public authority. It would inform the public about the way in which informants have been used and give them a more detailed picture of the type of information they have been able to supply. Arguably it would also demonstrate the importance of such sources to the police and how they have assisted the investigation process.
81. The information which records details of payments to informants would also illustrate how public money has been spent. According to Dr Clutterbuck's thesis (see paragraph 31 above) *"They [the Special Account Books volumes 1-3] also show that, whatever the public protestations of senior police officers and politicians concerning their apparent distaste at the use of "spies", such individuals were actively recruited by the police who then paid them with the money provided for that purpose by the government."* This would not only facilitate debate about the public authority's accountability at this time but could also contribute to debates about the way in which funds are spent by police authorities today.
82. The requested information would also assist academic research into early Special Branch practices and policing methods. It would further the public's understanding of covert measures introduced to tackle terrorism and anarchy. The Commissioner notes that this is an active area of academic research around the world. He further notes that in his thesis Dr Clutterbuck comments on how the ledgers *"give a unique insight into the workings of the MPSB from shortly after its formal inception in February, 1887 ... until well beyond the turn of the century"* and that *"A better understanding has emerged of their operational methodology and in turn, broad conclusions can be reached concerning how "political policing" was actually carried out by "Special" Branch in its early, formative years."* The Commissioner considers that there is a significant public interest in furthering the public's understanding of the way in which policing techniques have developed. He also attaches considerable weight to disclosing information which would inform academic debate on the subject.
83. In view of the age and content of the requested information the Commissioner does not consider there to be a significant likelihood of the harm identified by the public authority arising. He has therefore given less weight to the arguments in favour of maintaining the exemption. Conversely he believes that the arguments in favour of disclosure are significant in this particular case. Bearing in mind the assumption in favour of disclosure, he has concluded that the arguments in favour of maintaining the exemption in this case are not

sufficient to outweigh the arguments in favour of releasing the information.

## **Section 24 – National security**

84. Section 24 provides that –

*“(1) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security...”*

*“(2)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.”*

85. Information is exempt under section 24 if exemption is required for the purposes of safeguarding national security. This exemption is again subject to the public interest test. Therefore, if it is engaged, section 1(1)(b) will not apply if the public interest arguments in favour of maintaining the exemption outweigh those in favour of disclosure.

86. In contrast to other prejudice based exemptions in the Act, section 24 does not contain the ‘would or would be likely to prejudice’ test. The test in relation to section 24 is whether exemption is required for the purposes of safeguarding national security. In the Commissioner’s view the word ‘required’ in this context means reasonably necessary and 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 evidence of specific and real threats to national security before the exemption is engaged.

87. The Commissioner has also considered the term national security and his approach in this case has been guided by comments made in the House of Lords decision in the case of *Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153. In that case the following observations were made,

“(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).”
88. The public authority cited this exemption at a late stage on 2 April 2007. Many of the arguments put forward by the public authority in relation to section 24 have already been considered as part of the Commissioner’s consideration of section 30(2). However, the Commissioner has also considered those arguments in the context of the section 24(1) exemption.
89. The public authority argued that disclosure of the withheld information would harm its ability to recruit future or sustain current informants. These individuals risk everything in light of current threats world wide to global security as well as homeland security. Such individuals would be dissuaded from providing information to the force and other government departments for fear of being identified. When asserting this argument the public authority stressed the current and unprecedented threat from extremists and the insight that informants provide into criminal activities occurring in closed worlds. It also suggested that disclosure would cause “anti-British feelings”.
90. The Commissioner accepts that information provided to the public authority or other government departments by informants is often central to combating international terrorism and in a considerable number of cases has been used to prevent attacks which threaten the security of the United Kingdom and its people. Therefore in principle section 24 may be relevant where disclosure would undermine the public authority’s ability to recruit or sustain informants. In view of this the Commissioner has gone on to consider whether, in the specific circumstances of this case, exemption from section 1(1)(b) is required for the purposes of national security.
91. However, at this point the Commissioner wishes to point out that he does not consider that section 24 can apply to any information within the CID Register which records details of staff sickness or general correspondence held by the public authority. For the avoidance of doubt the Commissioner has only considered section 24 in relation to the content of the three Special Account Ledgers and the material within the CID Register which records the identity of an informant, information they supplied, payments made to them or any details covering how they were managed by their handlers.
92. The Commissioner also wishes to re-iterate that the public authority has not provided any evidence to demonstrate that there are real and specific threats which necessitate the exemption from the duty to provide the information specifically requested in this case. Its arguments have been based on a general potential impact.

93. Copies of sample ledger pages were passed to the Commissioner under a protective marking of 'secret'. This is a classification of the information which is part of the Government Protective Marking System adopted by police services. The Association of Chief Police Officers (ACPO) provide guidance on their website at: [http://www.acpo.police.uk/asp/policies/Data/covering\\_letter\\_prot\\_marking\\_scheme\\_16feb01.doc](http://www.acpo.police.uk/asp/policies/Data/covering_letter_prot_marking_scheme_16feb01.doc). They cite that the classification of 'secret' can be applied to assets where their compromise would be likely to:
- *raise international tension*
  - *seriously damage relations with friendly governments*
  - *threaten life directly or seriously prejudice public order or individual security or liberty*
  - *cause serious damage to the operational effectiveness or security of UK or allied forces or the continuing effectiveness of highly valuable security or intelligence operations*
  - *cause substantial material damage to national finances or economic and commercial interests*
94. They further give the following examples of 'secret' items:
- *The name of an operation may not, itself, be SECRET, but the fact that an individual is the target of that operation may well be.*
  - *The full personal details of an informant will usually be SECRET since, if they fell into the wrong hands, the life of that informant could be in danger.*
95. The Commissioner notes that whilst the public authority has classed the ledgers as 'secret' they have allowed researchers to have sight of the information albeit that on occasion they had to sign a Form of Undertaking. The Commissioner notes that the 'Form of Understanding' makes no reference to either 'national security' or 'secrecy'. If the complainant had signed the Form and accessed the material there would have been no inference of national security-related concerns. If he had subsequently used any information in contradiction of the terms of the undertaking the Commissioner is of the opinion that there is little redress that the public authority would have had in that regard.
96. The Commissioner finds it contradictory that the public authority would grant any public access to information which it genuinely regarded as 'secret' or which it considers would harm national security if released. He also notes that the information itself bears no restrictive markings though this is perhaps not surprising given its age.
97. Whilst the Commissioner understands the public authority's concerns about the harm to its ability to recruit and retain informants he is not persuaded that releasing the specific information sought in this case would have this effect. As he explained in relation to section 30(2), he

considers that current and future informants would distinguish between relatively limited information which dates back 100 years and therefore relates to deceased informants and that which is more detailed and current.

98. In view of all the arguments above the Commissioner is not persuaded that exemption from 1(1)(b) in this case is “*required for the purpose of safeguarding national security*”. His decision is that the exemption is not engaged and the public interest arguments are therefore not explored further in this decision notice.

### **Section 38 – Health and safety**

99. Information is exempt under this section if its disclosure would or would be likely to endanger the physical or mental health of any individual, or endanger the safety of any individual.
100. In a submission to the Commissioner dated 20 June 2007 the public authority referred to its duty to “*protect the right to life of individuals as in article 2 ... of the Human Rights Act*” saying that it was “*firmly of the opinion that informants’ identities must not and cannot be disclosed even after a long period of time has elapsed.*” Obviously the informants themselves are no longer alive after the significant passage of time so the HRA cannot apply to them personally. Whilst the citing of the HRA has not been further qualified the Commissioner assumes that the public authority believes that by releasing the information it would be failing to provide adequate protection to surviving relatives of any informants thereby putting their lives in danger. Potential risks to any surviving parties are considered by the Commissioner during the remainder of this section concerning health and safety.
101. The public authority has also asserted its general arguments about disclosure dissuading individuals from acting as informants in relation to section 38. The Commissioner would stress that the prejudice identified must be relevant to the particular exemption claimed. He considers that this argument is pertinent to sections 30(2) and 24(1) which have already been considered in this decision. Therefore he has not addressed it further in connection with section 38. However, he has considered the other arguments put forward by the public authority in respect of section 38 in more detail.
102. The prejudice test under section 38 contains the two limbs, ‘would endanger’ or ‘would be likely to endanger’ the mental or physical health or safety of an individual. In this case the public authority has not specified which of these tests it considers applies. In the absence of any evidence that the higher level test applies, the Commissioner has therefore considered the ‘would be likely to endanger’ test in this case.
103. On 2 April 2007 the public authority explained its view that if the requested information were released, regardless of its age, there would

be an impact on the descendents of those informants that are recorded as having worked with the public authority. It explained that in view of the means and tools available today to carry out research and track descendents, generations of families would be at risk of reprisals from various criminal quarters within that fraternity. It cited the possibility of the descendant of an informant being distressed to discover that their grandfather (or whoever) far from contributing to the establishment of an independent Ireland had in fact been a paid informant of the British.

104. The public authority also explained that it considered there to be a realistic possibility of physical harm from a direct result of avenge attacks from extremist groups or aggrieved family members as well as the mental distress caused by the public knowledge that, during the hostilities between different groups, the British had recruited and paid informants to supply information leading the remaining descendants to deal with the possible backlash from within their own communities and in some cases of being ostracized by their own communities. In view of this argument above it considered that it should not disclose informant details even after a long period of time has elapsed.
105. The Commissioner accepts that it would be possible to establish the names of individuals from the information within the CID Register which is more detailed than the Special Account Ledgers, though he notes that there is not a substantial amount of other information that would assist in clarifying their identity such as dates of birth. Nevertheless, he considers that in conjunction with other publicly available sources it would be possible to identify individuals. However, in order to be satisfied that the exemption is engaged the Commissioner must consider that there is a real and significant risk of the harm identified by the public authority arising. Whilst it is possible that someone could trace the relative of an informant and seek revenge the public authority has not provided any evidence to the Commissioner that would demonstrate that the disclosure of the specific information sought in this case would likely have this effect.
106. As explained in relation to the analysis of the other exemptions some information within the scope of the request has been accessed and published in Dr Clutterbuck's thesis. The Commissioner is not aware of any attempt to restrict access to the thesis via the British Library. This would seem implausible if there was a genuine likelihood of harm to health and safety.
107. Furthermore the complainant has accessed similar material within police or national archives in Holland, Belgium, France and Russia. The Commissioner is not aware of any evidence that the availability of this information has had the effects on health and safety that the public authority has suggested would be likely.
108. In this case the Commissioner notes that the complainant has indicated that he is particularly interested in obtaining information about

informants used in connection with the anarchist movement. The public authority has not indicated that there is any evidence that it is likely that people would seek revenge against the families of informants used for investigations linked to this movement. The Commissioner has not been able to locate such evidence independently.

109. The public authority has highlighted particularly the fact that informants recorded in the withheld information are also linked to the investigations and operations associated with unrest in Northern Ireland. In particular the public authority cited an example of an individual who was the victim of an unsolved murder in 1974. He was believed to have been killed by the IRA. The Commissioner would distinguish the circumstances of that case from the information in question here. In particular, that individual was a well-known informant whose identity was revealed during his lifetime. In contrast the Commissioner has assumed that individuals recorded in the withheld information in this case are all deceased. Moreover, the victim mentioned by the public authority was killed when there was a very different political situation in Northern Ireland.
110. The public authority has not advanced any further evidence that, in light of the present and significantly different political position in Northern Ireland, that there is a real and significant risk of reprisals if the information withheld in this case were released. The Commissioner wishes to point out that he is aware of the particular sensitivities in this area and it is unlikely that he would reach the same conclusions in relation to more current and / or detailed information.
111. At the time of the request historic talks were taking place between two parties about agreeing to share government in Northern Ireland. The public authority suggested that if the requested information was released it would likely be used by extreme groups to try to disrupt the talks which would unsettle communities. It did not supply further information in this regard and the Commissioner has not identified any obvious evidence to support the public authority's assertion in this regard. In any event, the Commissioner does not consider this argument relevant to the section 38 exemption. He has not considered this argument further in this case.
112. In view of all the points above the Commissioner is not persuaded that the public authority has demonstrated a real and significant likelihood of endangerment to the health or safety of an individual(s) and therefore he does not consider that section 38(1)(a) or (b) applies.

## **The Decision**

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113. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the procedural

requirements of the Act, specifically in that it failed to issue a timely refusal notice thereby breaching section 17(1). Additionally, this refusal notice did not refer to the sub-section of each the exemptions claimed thereby breaching section 17(1)(b).

114. The Commissioner also finds that by failing to inform the complainant of its change in reliance on an exemption the public authority breached section 17(1)(a), (b) and (c) and, in failing to cite section 12, it breached section 17(5).
115. As the public authority did not make the requested information available to the complainant within twenty working days it breached sections 1(1)(b) and 10(1) of the Act.
116. The Commissioner further finds that by not responding to the complainant's further information requests, identified at paragraph 14 above, the public authority breached sections 1(1)(a) and (b) of the Act and section 10(1).
117. The Commissioner finds that section 12 was misapplied.
118. In relation to the application of the exemptions relied on by the public authority the Commissioner's decision is as follows:
119. Section 21 was correctly applied to a limited amount of the information. This applies to material which appears in Dr Clutterbuck's thesis and can be clearly attributed to the Special Account Ledgers or the Chief Constable's Register.
120. Any information within the Special Account Ledgers which is not exempt by virtue of section 21 falls within the exemption in section 30(2). Furthermore, any information within the Register which is not exempt by virtue of section 21 and falls within the following categories is also within the section 30(2); i.e. information that:
  - Identifies an informant
  - Details information obtained from that informant
  - Details payments made to an informant
  - Details the way in which an operation or police officer managed or handled an informant
121. However the Commissioner has concluded that the public interest arguments in favour of maintaining the exemption at section 30(2) do not outweigh those in favour of disclosure.
122. Section 24 does not apply as exemption from the duty to provide information in section 1(1)(b) is not required for the purpose of safeguarding national security.

123. Section 38(1)(a) and (b) are not engaged as the public authority has not demonstrated a real and significant likelihood of endangerment to the health or safety of an individual if the information were released.
124. The Commissioner is satisfied that it would be reasonably practicable for the public authority to provide the information to the complainant by the means he specified in his request, i.e. via inspection.

### **Steps Required**

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125. In accordance with section 11(1)(b) of the Act, which provides that an applicant can express a preference to be given reasonable opportunity to inspect a record containing the information, the Commissioner requires the public authority to ensure that the ledgers requested by the complainant are made available for his inspection. Whilst the public authority is entitled to remove the information subject to the exemption in section 21 he would suggest that it would be practical for the public authority to make the entirety of the information available.
126. The Commissioner does wish to point out that he recognises that inspection may not be reasonably practicable in different circumstances where certain information was exempt and therefore required redaction. In such circumstances he would be likely to accept that it would not be reasonable to give effect to the stated preference for an inspection, though he would expect a public authority to consider alternative means of communication.
127. The public authority should respond to the further information requests identified at paragraph 14 in accordance with its duties under section 1.
128. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

### **Other matters**

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129. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
130. The section 45 Code of Practice states that each public authority should have a procedure in place for dealing with complaints. Although the complainant was apprised of this procedure his requests for an Internal Review were never dealt with. The public authority needs to ensure that its complaints procedures are better handled. The Commissioner will monitor any future complaints against the public authority to ensure they comply with their own procedures.

131. A 'form of undertaking' should not be used to enforce a blanket exemption of information requested under the Act. Each case must be considered on its own merit. The exemptions cited on this form would require public interest tests on each occasion, and, as has been demonstrated, may not apply.
132. There has been much inconsistency with responses from the public authority and direct questions have not had direct responses. There has been a perceived unwillingness to co-operate and assistance has not been forthcoming with the necessity of the Commissioner to continually chase responses. Additionally, the late addition of different exemptions, as others are found to be inappropriate, is unacceptable and was unfair to the complainant who was unaware of these changes until he was advised by the Commissioner. Had the public authority conducted an Internal Review then this may not have been necessary.
133. Where a public authority has not referred to a particular exemption when refusing a request for information, the Commissioner may exercise his discretion and decide whether, in the circumstances of the case, it is appropriate to take the exemption into account if it is raised in the course of his investigation. Given the nature of the issues surrounding National Security, and the lack of internal review which may have identified issues at an earlier stage, the Commissioner considered that in this particular case he would consider its late application.

### **Failure to comply**

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134. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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135. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk)

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 20th day of August 2008**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

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

## Legal Annex

**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(1)** provides that –

...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 11(1)** provides that –

Where, on making a request for information, the applicant expresses a preference for communication by any one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.

**Section 12(1)** provides that –

Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

### **Section 17**

**(1)** 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.

**(5)** A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

### **Section 21(1)**

Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

**Section 24** provides that –

- (1) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.
- (2) 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 30(2)(b)** provides that –

Information held by a public authority is exempt information if it relates to the obtaining of information from confidential sources.

**Section 31** provides that –

- (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,
  - (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
  - (e) the operation of the immigration controls,
  - (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
  - (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
  - (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
  - (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.
- (2) The purposes referred to in subsection (1)(g) to (i) are-
  - (a) the purpose of ascertaining whether any person has failed to comply with the law,
  - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
  - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
  - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
  - (e) the purpose of ascertaining the cause of an accident,

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

- (1)** 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.”
- (2)** 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 62** provides that –

- (1)** For the purposes of this Part, a record becomes a “historical record” at the end of the period of thirty years beginning with the year following that in which it was created.
- (2)** Where records created at different dates are for administrative purposes kept together in one file or other assembly, all the records in that file or other assembly are to be treated for the purposes of this Part as having been created when the latest of those records was created.
- (3)** In this Part “year” means a calendar year.

**Section 63** provides that -

- (1)** Information contained in a historical record cannot be exempt information by virtue of section 28, 30(1), 32, 33, 35, 36, 37(1)(a), 42 or 43.
- (4)** Information cannot be exempt information by virtue of section 31 after the end of the period of one hundred years beginning with the year following that in which the record containing the information was created.
- (5)** Compliance with section 1(1)(a) in relation to any record is not to be taken, at any time after the end of the period of one hundred years beginning with the year following that in which the record was created, to be capable of prejudicing any of the matters referred to in section 31(1).