

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 March 2009

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

Summary

The complainant requested a copy of any reports prepared or received by West Yorkshire Police on issues of gun crime. West Yorkshire Police refused to provide the complainant with the information, explaining that it was exempt under sections 30, 40 and 41 of the Act. The Commissioner has investigated and found that section 41 is not engaged. The Commissioner found that section 30 is engaged for some of the withheld information and that the public interest favours maintaining the exemption. He also found that section 30 is not engaged for some of the information. The Commissioner found that section 40 is engaged where applied. The Commissioner requires the public authority to disclose the information found not to be exempt under sections 30 or 41, within 35 calendar days of this notice.

The Commissioner's Role

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

The Request

2. The complainant has advised that on 11 January 2005 the following request for information was made to West Yorkshire Police ("WYP"):

"How many illegal firearms have West Yorkshire Police recovered or confiscated in the last 5 years? I also request a copy of any reports prepared or received by West Yorkshire

police on the issues of gun crime or gun-related crime in the region or which include substantial reference to those issues over the same time period”

3. By letter dated 16 February 2005, WYP provided the complainant with information on the recovery/confiscation of firearms. It also advised the complainant that it held further information about gun crime. However, WYP argued that apart from information contained in certain press releases and already posted on the internet, all the additional information was exempt. WYP stated the information was being withheld under sections 30, 31, 38 and 40.
4. The complainant did not accept WYP's decision to withhold some of the requested information and asked WYP to review its decision.
5. WYP's Appeal Panel met on 8 April 2005 and its decision was communicated to the complainant on 12 April 2005. The Appeal Panel took the view that the initial decision was correct. WYP provided the complainant with further explanation to support the application of the exemptions to the withheld information

The Investigation

Scope of the case

6. On 29 April 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider if the exemptions claimed had been properly applied and that there was a clear public interest in the disclosure of the information due to the escalation in gun crime
7. Full detail of the exemptions applied can be found in the legal annex detailed at the end of this decision notice (Annex B)

Chronology of the case

8. The Commissioner's investigation of the complaint began on 30 January 2006 when he asked WYP to identify which parts of the requested information it had withheld. The Commissioner pointed out to WYP the disclosure of certain information by different police forces in response to similar requests.
9. The Commissioner was advised by WYP that different forces held different information and it could not be assumed that because one police force held certain relevant information, other forces held similar information. WYP produced a letter from the Association of Chief Police Officers of England, Wales and Northern Ireland as evidence of

this. In the absence of any evidence to the contrary, the Commissioner accepts WYP's point that different police forces do hold different information.

10. WYP further advised the Commissioner that the information it held was particularly sensitive and that, given this, WYP did not think it was appropriate to send it to the Commissioner. A member of the Commissioner's staff therefore agreed to attend at the premises of WYP to inspect the information. The inspection took place on 16 March 2006.
11. At the inspection, five relevant documents were identified which were reports on crime in the area of West Yorkshire. WYP explained that these reports contained details of third parties and as such was exempt under section 40(2). The Commissioner viewed the information and asked WYP police to review the documents to see if the documents could be disclosed in redacted form. WYP reviewed the five crime reports and found that not all of the requested information was exempt and agreed to consider partial disclosure to the complainant.
12. Following the intervention of the Commissioner, on 13 April 2006 WYP disclosed to the complainant four of the five crime reports in redacted format, withholding the remaining report in its entirety under section 31 and 40. The complainant was dissatisfied with this limited disclosure and on 25 April 2006, requested the Commissioner to investigate further the failure to disclose the remaining information.
13. The Commissioner requested WYP to send him a copy of all the withheld information which it agreed to do. The Commissioner then considered the following issues:
 - the nature of the redactions made;
 - whether it was appropriate to withhold one of the documents in its entirety;
 - whether there was any further relevant information in existence.
14. Following an exchange of correspondence with the Commissioner, WYP identified another relevant document, a "Strategic Assessment Report" ("the Report"). A redacted version of the Report was disclosed to the complainant on 17 August 2006. The complainant was advised by WYP that the Report had been redacted under the provisions of sections 30 and 41 of the Act.
15. In a letter dated 1 August 2006, WYP confirmed to the Commissioner that in addition to the redactions made under sections 30, 31, and 41, certain names had also been redacted from the information under section 40 and 38 of the Act, as it constitutes personal data. WYP confirmed that the individuals are junior rank police staff/officers who are not known to the public and whose identities should be protected.

16. The Commissioner reviewed the withheld information in detail and considered whether the exemptions cited by WYP were engaged. As WYP had not specified which exemptions applied to which redacted sections, the Commissioner, on the 22 February 2007, asked WYP to specify which exemptions had been applied to each redaction. WYP supplied a table to the Commissioner detailing the exemptions applied to each redaction, the table showed that WYP were now only relying on sections 30, 38, 40 and 41 to withhold the remaining information, not section 31.

Findings of Fact

17. The information being withheld consists of sentences and paragraphs redacted from documents 1, 2, 3, 4 and 6 and the entirety of document 5:

1. WYP Developmental Problem Profile Criminal Use of Firearms
2. Developmental Problem Profile Criminal Use of Firearms in Bradford
3. Problem Profile- Criminal Use of Firearms in Kirklees
4. Problem Profile – Criminal Use of Firearms in Leeds
5. The Withheld Document
6. Strategic Assessment Report.

18. The information is being withheld under sections 30, 40 and 41. Section 38 has been applied in conjunction with section 40. A table can be found at Annex A to this decision notice detailing the application of the exemptions at section 40 and 30 (where the Commissioner has found the information should be withheld in relation to the specific redactions identified by WYP) and the redactions the Commissioner has found can be disclosed.

Analysis

The Exemptions

Section 30(1) 'Investigations and proceedings conducted by public authorities.'

19. Section 30(1) (a) provides that information is exempt if it has at any time been held by the authority for the purpose of any investigation which it has the duty to conduct with a view to it being ascertained (i) whether a person should be charged with an offence or (ii) whether a person charged with an offence is guilty of it.
20. The Commissioner notes that in order for section 30 to be engaged, the information must relate to a specific or particular investigation and

not for investigations in general. This is supported by the decision in the Information Tribunal case *Toms v The Information Commissioner (EA/2005/0027)*,

“... for the exemption to apply, the information in question must be held for the purpose of any investigation which the public authority has a duty to conduct, that is, a specific or particular investigation with which the public authority is concerned. The exemption would not appear to relate to, for example, the manner in which, or the procedure according to which, investigations in general are, or should be, conducted by a public authority...”

21. WYP explained that the information withheld under section 30 was information relating to crime patterns as well as information relating to current and past investigations. The information has been provided by the Force's various information sources and is vital for building up a picture of criminal activity and dealings. Release of the information would help inform the criminal elements enabling them to changing their habits and dealings which in turn would negate current police tactics and operations.
22. The Commissioner considers that the information withheld under section 30 can be said to fall into two categories: information relating to specific intelligence gathered as part of ongoing and past investigations; and general intelligence or analysis of criminal activity patterns. WYP argue that the intelligence included which does not relate to any specific investigation is the distillation of all the intelligence and information gathered by the Force in relation to gun crime. The contents contain information relating to current crime patterns, types of weapons used, recovered, discharged etc. It represents a view at that point in time of the fluctuating nature of gun crime within West Yorkshire. This information is distributed to senior officers so that they can use it to develop their operational tactics when dealing with this type of criminal activity.
23. However, the Commissioner considers that the information which relates to patterns of criminal activity in geographical areas, patterns of crime occurrence, intelligence and analysis is not information relating to any specific investigation and therefore cannot be exempt under section 30(1).
24. In relation to the information withheld which relates to specific investigations which have been carried out or are ongoing WYP explained that the content of these parts of the reports rely on intelligence gleaned from data sources some of whom are likely to be paid and unpaid informants. The Commissioner accepts that where the information withheld under section 30 relates to a specific investigation or operation which has been or is being carried out by WYP then the exemption is engaged.

25. The Commissioner therefore finds that section 30(1) is engaged where the information relates to intelligence gathered on specific criminal activities or references specific ongoing operations or investigations. The table at Annex A to this Notice indicates those parts of the reports in respect of which the Commissioner has accepted section 30(1) is engaged.

Public Interest Test

26. Section 30 is a qualified exemption and the Commissioner must therefore consider if the public interest in maintaining the exemption outweighs the public interest in disclosure of the withheld information.
27. WYP acknowledge that the use of guns has risen in towns and cities and it is in the public interest for the public to know as much information as possible about why this is happening and how it is being dealt with. In particular it can be seen as important that the public are aware of the decisions that the police make as these have a direct effect on the local population.
28. However, WYP have argued that the public interest favours maintaining the exemption for the following reasons:
- Release of information concerning investigations either ongoing or complete may compromise current and future law enforcement activities
 - Disclosure could result in a reduction in the level of intelligence gathered as releasing sensitive information could act as a deterrent to the public providing information to the Force
 - Release of information concerning specific incidents may well hinder ongoing investigations and encourage others to replicate the original crime
 - Release of the information could be a deterrent to the public providing information to the force
 - Release of the information would create fear in the community and/or risk public safety.
29. WYP explained that the information provided to it by its various information sources is vital in building up a picture of criminal activity and dealings. Release of the information would help inform the criminal elements, assist them in changing their habits and dealings which in turn would have a negative impact on current police tactics and operations. It explained that the role of the police is to ensure justice is done and as disclosure of the details of investigations would have the negative effects described above it would jeopardise this role.
30. WYP acknowledged that disclosure of the information could, through increased awareness, lead to additional input from members of the

public into police investigations; make people in the local area more aware of the dangers that surround them, enabling them to take appropriate steps; and give the public a better view of what the police are doing to prevent gun-related crimes occurring. WYP also stated that with the use of guns having risen in the urban context, there is a public interest in providing as much information as possible to promote the spirit of openness and accountability and to enable the public to see how crime is being dealt with by the police. However, it concluded that disclosure would hinder the prevention and detection of crime, may cause unnecessary public concern and could act as a deterrent to the public providing valuable information to the police. Finally WYP state that increasing the fear of crime in an area may well generate mistrust in terms of living in the area thus creating a 'ghetto' effect for the resident population.

31. WYP also argued that with tensions brought about by the London Bombings on 7 July 2005 still relatively fresh in the communities minds (at the time of the request), the release of the information would only further inflame the delicate balances that exist in these communities. As there is a strong undercurrent of distrust and disquiet about the police and intelligence services, the release of this information will only hinder the progress made and lead to less and less intelligence being supplied to counteract these criminal elements. The Commissioner does not accept that this could have impacted on the public interest in maintaining the exemption at the time the request was made, as the London Bombings did not occur until five months after it was made.
32. In the case of *Toms v The Information Commissioner*, the Information Tribunal stated, with regard to the consideration of the public interest in relation to s30(1) that, *"In striking the balance of interest, regard should be had, inter alia, to such matters as the stage or stages reached in any particular investigation or criminal proceedings, whether and to what extent the information has already been released into the public domain, and the significance or sensitivity of the information requested."*
33. In terms of the stage reached in an investigation, it should be noted that Tribunal also recognised the public interest in the principle of protecting information acquired during police investigations. This suggests that the public interest in maintaining the section 30 exemption in cases where an investigation is open will be considerable, and may override all other factors. The Tribunal stated

"[freedom of information] should not undermine the investigation, prosecution or prevention of crime, or the bringing of civil or criminal proceedings by public bodies. The investigation and prosecution of crime involve a number of essential requirements. These include the need to avoid prejudicing effective law enforcement, the need to protect witnesses and informers, the need to maintain the independence of the judicial

and prosecution processes, and the need to preserve the criminal court as the sole forum for determining guilt.”

34. The Commissioner has found that the majority of the information to which the section 30 exemption has been applied relates to specific investigations or operations which were ongoing at the time of the request. The remaining information for the most part relates to concluded investigations, incidents or operations. However, the Commissioner notes that, according to statistics,, gun crime was increasing at the time of the request. The Commissioner recognises that there is considerable public interest in ensuring that information about investigations is not released where it could prejudice future or ongoing investigations. The Commissioner also notes that the information has not been made public and remains of significance.
35. The Commissioner considers that the public interest favours maintaining the exemption for the following reasons
- ongoing investigations and the apprehension of offenders should not be prejudiced;
 - assisting offenders to commit crime or avoid apprehension should be avoided;
 - the full and frank flow of information to the Force should not be hindered - if informants fear reprisals they will be less likely to provide information;
 - sources of information should be protected and the confidentiality of their communications respected;
 - the impact of the information causing public alarm should be avoided;
 - the risk of creating a 'ghetto' effect in the worst areas of gun crime should be avoided.
36. The Commissioner therefore concludes, in all the circumstances of this case, that, where the section 30(1) exemption is engaged the public interest in maintaining the exemption outweighs the public interest in disclosure of the requested information.

Section 41 'Information Provided in confidence'

37. Section 41(1) provides that information is exempt information if it was obtained by the public authority from any other person and the disclosure of the information to the public would constitute a breach of confidence actionable by that or any other person.
38. WYP have applied section 41 to information obtained from its various information sources. The first stage of the test to determine if section 41(1) is engaged is to determine if the information withheld under section 41 has been obtained by WYP from a third party. The exemption cannot apply to information generated by the public authority itself.

39. To assess this, he has taken into account the nature of the information and the circumstances in which it was created. The withheld information was created by WYP. Whilst some of the information relies on data from confidential sources, the reports themselves were created by WYP and not by any third party. The Commissioner has already accepted that where that data relates to a specific investigation it is exempt under section 30(1) and should not be disclosed. He has only considered the application of section 41 to the remaining information. This information shows the patterns of gun crime in West Yorkshire as determined by WYP. Whilst data from third parties has fed into this information, the analysis, conclusions and any recommendations of WYP are of its own creation.
40. In the Information Tribunal decision *Derry City Council v the Information Commissioner, Appeal Number: EA/2006/0014* the Commissioner argued that “*the exception (41) does not cover information which the public authority has generated itself.*” Whilst in this case the request was for a written agreement or contract between two parties, the principle is the same. The Tribunal agreed with the Commissioner’s position. Therefore information which is generated by a public authority itself, even if this is done using information from a third party, cannot be said to be information obtained by the public authority from a third party. In the present case the analysis and creation of data on crime patterns is based on details and information from third parties but the information in the documents has been generated by WYP. Consequently, WYP incorrectly applied the section 41 exemption as the information was not obtained by it from another party
41. The Commissioner therefore finds that section 41 is not engaged.

Section 40(2) ‘Personal Data’

42. Section 40(2) provides that information is exempt if the information is the personal data of someone other than the applicant, ‘third party data’, and disclosure of the information would breach any of the data protection principles. The term ‘personal data’ includes information about a living individual from which that individual can be identified.
43. In order for the Commissioner to reach a decision as to whether section 40(2) has been applied correctly the Commissioner must first consider if the information is personal data and then decide if disclosure would breach any of the data protection principles. The Commissioner has considered the definition of personal data as defined in the Data Protection Act 1998:

*‘...data which relate to a living individual who can be identified
a) from those data, or*

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

44. The withheld information, other than that which the Commissioner has determined should be withheld under section 30(1), to which section 40(2) has been applied is the names of a police officer and a staff member, the latter being identifiable from the document reference. The Commissioner accepts that this information falls within the definition of personal data.
45. WYP have argued that disclosure of the individuals' names would breach the first data protection principle. The first data protection principle has two components:
1. Personal data shall be processed fairly and lawfully and
 2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.
46. In considering whether disclosure of the names would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken into consideration the following factors:
- The reasonable expectations of the individual as to what would happen to their personal data;
 - Whether disclosure would cause any unnecessary or unjustified damage or distress; and
 - Whether the individual consents to the disclosure of the requested information.
47. WYP stated that the individuals concerned are both junior in their roles and their names would not be known to the general public. WYP stated that the staff member is not a police officer but a junior member of the support staff who undertakes analysis work and has no dealings with the general public. The work undertaken is of a sensitive and confidential nature and exposing their personal details to public scrutiny may lead to them being targeted by the criminal fraternity. The police officer named is also in a junior role and as such their name is not known to the general public, nor would their name be mentioned in any Force material that is available to the public. The police officer named works in a specific training division and release of their details could make them a potential target and affect the delivery of specialist training to WYP officers.

48. The Commissioner's guidance on the section 40 exemption suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:

'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'

49. On the basis of this guidance the Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act.

50. This approach is supported by the Information Tribunal decision (*House of Commons v Information Commissioner and Norman Baker MP* EA2006/0015 and 0016). This decision involved a request for information about the details of the travel allowances claimed by MPs. In its decision the Tribunal noted that:

'where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives'.

51. The Commissioner also believes that there is a distinction between the levels of information which junior staff should expect to have disclosed about them and that which senior staff should expect to have disclosed about them. This is because the more senior a member of staff is, the more likely it is that they will be responsible for making influential policy decisions and/or decisions related to the expenditure of significant amounts of public funds.

52. The Commissioner recognises that ultimately, all public sector employees are accountable to the public. However, the Commissioner accepts that in the context of this request, the names withheld in both instances relate to junior staff members. The junior member of the civilian staff in WYP would not be known to the public and would not normally expect their personal information to be disclosed to the public. Equally disclosure of the junior officer's name, could expose them to be targeted by criminals. The Commissioner accepts that due to their positions, their expectations regarding disclosure and the sensitivity of the work being undertaken by them, disclosure of their names would not be fair.

53. The Commissioner is therefore satisfied that disclosure of information withheld under section 40(2) (as detailed in Annex A) would breach the first data protection principle and is therefore exempt under section 40(2) of the Act. This is an absolute exemption.
54. As section 38 (health and safety) was only applied to the names found to be exempt under section 40(2) the Commissioner has not gone onto consider the application of this exemption.

The Decision

55. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

The application of sections 40(2) and 30(1) to some of the withheld information (as detailed in Annex A)

56. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- (i) The application of section 41(1)
- (ii) The application of section 30(1) to some of the withheld information (as detailed in Annex A)

Steps Required

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

Disclose the information incorrectly withheld under sections 30(1) and 41(1) as identified in Annex A

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

Right of Appeal

59. 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@dca.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 16th day of March 2009

Signed

**Graham Smith
Deputy Commissioner**

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

Annex A**Table of Redactions to be withheld / disclosed****Document 1 WYP Developmental Problem Profile Criminal Use of Firearms**

Information to be withheld under section 40	Redaction 2, 5, 12(a), 16(a), 22 ,26 ,28 ,29(a), 32(a)
Information to be withheld under section 30(1)	Redactions 6, 9, 11,14,16, 18, 20, 24, 27 and 31
Information to be disclosed	Redactions 1, 3, 4, 7, 8, 10, 12, 13, 15, 17, 19, 21, 23, 25, 29, 30, and 32

Document 2 Development Problem Profile – Criminal Use of Firearms in Bradford

Information to be withheld under section 40	Redactions 1(a), 2, 5, 7, 9,11 and 13
Information to be disclosed	Redactions 1, 3, 4, 6, 8, 10 and 12

Document 3 Problem Profile Criminal Use of Firearms in Kirklees

Information to be withheld under section 40	Redaction 1 (name only)
Information to be disclosed	Redactions 1(excluding the name) 2, 3, 4, 5, 6, 7, and 8

Document 4 Problem Profile Criminal Use of Firearms in Leeds

Information to be withheld under section 40	Redactions 1, 3, 5, 7, 8, 10, and 13
Information to be withheld under section 30(1)	Redactions 4
Information to be disclosed	Redactions 2, 6, 9, 11 and 12

Document 5

Information to be withheld under section 40	Redactions 1 (name only) and 2
Information to be disclosed	Redactions 1 (excluding the name) 3, and 4

Document 6

Information to be withheld under section 30(1)	Redactions 6, 9 and 10
Information to be disclosed	Redactions 1, 2, 3, 4, 5, 7, and 8

Annex B 'Legal'

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

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

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

Section 30(2) provides that –

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

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

Section 30(3) provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).”

Section 30(4) provides that –

“In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references-

- (a) to any officer of the authority,
- (b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and
- (c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department.”

Section 30(5) provides that –

“In this section-

"criminal proceedings" includes-

- (a) proceedings before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 52G of the Act of 1957,
- (b) proceedings on dealing summarily with a charge under the Army Act 1955 or the Air Force Act 1955 or on summary trial under the Naval Discipline Act 1957,
- (c) proceedings before a court established by section 83ZA of the Army Act 1955, section 83ZA of the Air Force Act 1955 or section 52FF of the Naval Discipline Act 1957 (summary appeal courts),
- (d) proceedings before the Courts-Martial Appeal Court, and
- (e) proceedings before a Standing Civilian Court;

"offence" includes any offence under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.”

Section 30(6) provides that –

“In the application of this section to Scotland-

- (a) in subsection (1)(b), for the words from "a decision" to the end there is substituted "a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted",
- (b) in subsections (1)(c) and (2)(a)(ii) for "which the authority has power to conduct" there is substituted "which have been instituted in consequence of a report made by the authority to the procurator fiscal", and

- (c) for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence.”

Personal information

Section 40(1) provides that –

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

Section 40(2) provides that –

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

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

Section 40(3) provides that –

“The first condition is-

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

Section 40(4) provides that –

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

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
"data subject" has the same meaning as in section 1(1) of that Act;
"personal data" has the same meaning as in section 1(1) of that Act.

Information provided in confidence.

Section 41(1) provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

Section 41(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”