

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 17 May 2010

**Public Authority:** Public Prosecution Service for Northern Ireland  
**Address:** Belfast Chambers  
93 Chichester Street  
Belfast  
BT1 3JR

### Summary

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The complainant requested all documentation relating to criminal proceedings brought by the Public Prosecution Service of Northern Ireland (PPS) against four individuals for a number of offences. The PPS refused to release the information and relied on sections 30, 31, 38, 40(2) and 41 of the Act, although following the completion of the internal review the PPS later withdrew its reliance on sections 38 and 41. During the course of the Commissioner's investigation, however, the PPS sought to re-apply section 41 to the requested information.

The Commissioner is not satisfied that section 41 is engaged. The Commissioner finds that section 40(2) was correctly applied to personal information, some of which was sensitive. In relation to the remaining information, the Commissioner finds that whilst section 30 of the Act is engaged, the public interest in maintaining this exemption does not outweigh the public interest in disclosure. The Commissioner directs that the PPS should disclose the information as set out within the confidential annex attached to this Notice within 35 days from the date of this Notice.

### 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.

## Background

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2. The information requested in this case related to court proceedings taken against three men and a youth who were accused of causing criminal damage and obstructing police. The individuals were subsequently acquitted of these charges.

## The Request

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3. On 30 November 2008 the complainant submitted the following request to the PPS:

*"During the week beginning 24/11/08 three men and a youth were cleared of causing criminal damage to a crane in Belfast - they were also cleared of obstructing the police.*

*Could I have all the PPS documentation relating to this case (I don't require any names or addresses of anyone involved in the case)".*

4. On 1 December 2008 the PPS acknowledged receipt of the complainant's information request.
5. On 5 January 2009 the PPS advised the complainant that it was refusing to release the information requested on the basis that it was exempt under sections 30, 31, 38, 40(2) and 41 of the Act. The PPS was of the view that the public interest in maintaining the exemptions was not outweighed by the public interest in disclosure of the information.
6. On the same day the complainant asked the PPS to carry out an internal review of this decision.
7. On 16 February 2009 the PPS confirmed that an internal review had been carried out and it had decided to uphold its original refusal of the request. The PPS advised the complainant that it no longer wished to rely on sections 38 and 41 of the Act, but that sections 30, 31 and 40(2) of the Act were still applicable.

## The Investigation

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### Scope of the case

8. On 16 February 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant was not happy that the PPS had relied on section 40(2) when the names and addresses of the accused had all been reported in the local media.
9. The Commissioner notes that the complainant indicated that he did not require any of the names or addresses of any individuals relating to the case. The Commissioner sought clarification from the complainant as to what he meant by this phrase. The complainant confirmed that he did not require the names and addresses of the accused or those who provided witness statements to the police. The complainant also did not require details of the names and addresses of the legal representatives who acted on behalf of the accused. Therefore the Commissioner does not consider that this information falls within the scope of the complainant's request and therefore this will not form part of the Commissioner's decision. However, the complainant confirmed that he wished to receive the names of the police officers and the staff from the PPS who were involved in this case. The Commissioner will therefore only consider the names and addresses of these individuals as forming part of his decision.

### Chronology

10. On 7 January 2010, the Commissioner wrote to the PPS and requested a copy of the withheld information.
11. On 13 January 2010 the Commissioner received the withheld information from the PPS.
12. On 14 January 2010, the Commissioner wrote to the PPS for further representations in respect of its application of sections 30 and 31 to the withheld information. The Commissioner reminded the PPS that section 31 applies only to information which is not exempt under section 30 of the Act, and asked that the PPS clarify what information was being withheld under each exemption.
13. On 25 January 2010 the PPS advised the Commissioner that, although it was aware that section 30 and section 31 were mutually exclusive, it was seeking to rely on both exemptions as it believed that both exemptions were engaged.

14. It appeared to the Commissioner that the PPS did not fully understand the relationship between section 30 and section 31 of the Act. The Commissioner advised the PPS that it was not sufficient to claim that both exemptions applied and that the PPS should specify which exemption (i.e. section 30 or section 31) was engaged in relation to each piece of information.
15. On 26 January 2010 the PPS informed the Commissioner that the witness statements and information forwarded by the Police Service of Northern Ireland (the PSNI) fell "*both within section 30(1) and in the alternative under section 31*". The PPS offered no further information in support of this stance.
16. The Commissioner wrote to the PPS on 1 February 2010 and expressed his concern that the PPS was apparently still unable or unwilling to confirm which information was considered exempt under section 30, and which information was considered exempt under section 31. The Commissioner also noted that the PPS had provided limited arguments in relation to its application of section 40(2).
17. The Commissioner advised the PPS of his powers under section 51 of the Act to compel the provision of detailed arguments in relation to the PPS's handling of the request. Alternatively, if the PPS did not wish to provide any further arguments, the Commissioner could proceed to a Decision Notice, which would be likely to find that the PPS had failed to satisfy the Commissioner that it had handled the request in accordance with the Act. The Commissioner invited the PPS to provide a final, detailed submission to him.
18. On 2 February 2010 the PPS wrote to the Commissioner and indicated that all the withheld information may be exempt under section 40. The PPS referred the Commissioner to the Information Tribunal's decision in the case of *McCluskey*<sup>1</sup>. The PPS advised the Commissioner that, following the approach in *McCluskey*, section 40(2) was engaged because disclosure of the withheld information would breach the first and second data protection principles. The PPS argued that, if section 40(2) was found to apply to the requested information, the application of section 30 and/or section 31 may be inconsequential. However the PPS indicated that it would re-examine the withheld information in respect of sections 30 and 31.
19. The Commissioner wrote to the PPS on 12 February 2010. The Commissioner asked the PPS to confirm if it was seeking to rely on

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<sup>1</sup> EA/2007/0056 –McCluskey v Information Commissioner and the Public Prosecution Service for Northern Ireland

section 40(2) in relation to all or part of the withheld information and to provide him with clear representations as to why section 40(2) applied to the withheld information.

20. On 11 March 2010 the PPS provided a response to the Commissioner, including a schedule of the withheld information. Of the 41 different documents that constituted the withheld information, the PPS identified which exemption or exemptions applied to each particular document. The Commissioner notes that the PPS identified that all the withheld information, except for one group of documents, was considered exempt on the basis of section 30 or by way of a combination of section 30 and the other exemptions cited. However the PPS did not provide any further explanation as to how the exemptions were engaged.
21. At this stage the PPS indicated that it wished to re-introduce reliance on the exemption at section 41, which it had withdrawn following the internal review.
22. On 23 March the Commissioner asked the PPS to confirm whether it was now seeking to rely on section 41 again. The Commissioner noted that no reference had been made to this exemption by the PPS during the course of the Commissioner's investigation and it was only when the investigation had reached an advanced stage that the application of section 41 was being raised.
23. The PPS responded to the Commissioner on the same day. The PPS advised the Commissioner that it was not in fact seeking to rely on section 41 in respect of this case. The PPS also made reference to other matters which are outside the scope of the investigation and therefore the Commissioner does not intend to refer to them in this Notice.
24. On 24 March 2010, the PPS informed the Commissioner that, following further internal discussions on the matter, it had decided that section 41 did, in fact, apply to some of the withheld information. The PPS provided the Commissioner with a legal Opinion from a Senior Counsel which was provided to the PPS, albeit not in respect of this case, as to the disclosure of prosecution papers in general.
25. The Commissioner expressed his extreme disappointment as to the manner in which the PPS had handled this case. The Commissioner was of the view that the PPS had ample opportunity to bring this matter to the Commissioner's attention at an earlier stage and had failed to do so. The Commissioner therefore requested that the PPS confirm which information it sought to withhold under section 41. The

Commissioner also asked the PPS to provide clear and detailed arguments as to why the section 41 exemption applied to the information in question. The Commissioner referred the PPS to his own guidance on this exemption. Given the PPS's piecemeal provision of information to the Commissioner, the Commissioner advised the PPS that this represented its final opportunity to provide any further arguments in respect of the other exemptions claimed.

26. On 25 March 2010, the PPS responded to the Commissioner. The PPS clarified which information it considered to be exempt under section 41, and provided details of its reasoning. The PPS declined to provide any further submissions in respect of the other exemptions claimed.

## Findings of Fact

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27. The Commissioner notes that the requested information is the prosecution file of papers relating to court proceedings involving those accused of the criminal charges that arose out of this particular incident. The Commissioner is mindful of his duty not to disclose exempt information, but is of the view that there is certain information which the public would expect to find within papers held by a prosecuting authority in respect of criminal proceedings. Therefore, the Commissioner considers it appropriate to categorize the withheld information in the following manner:

- Correspondence and attendance notes between the PPS and the PSNI;
- Correspondence and attendance notes between staff within the PPS;
- Correspondence between the PPS and the legal representatives of the defendants;
- Documentation relating to court appearances and witness availability;
- Witness statements;
- CCTV images;
- Confirmation of whether the accused had criminal records together with charge sheets and remand applications;

- Photographic images of the alleged criminal damage; and
  - Papers sent to and received by appointed Counsel for the PPS.
28. The Commissioner notes that the names, addresses and ages of the accused were all released in media reports following their acquittals. The name and address of the other accused was withheld due to his age.

## Analysis

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### Exemptions claimed

#### Section 40(2) – personal information

29. Section 40(2) provides an exemption for information which is the personal data of any individual other than the applicant, where disclosure would contravene any of the data protection principles as set out in schedule 1 to the Data Protection Act 1998 (the DPA). The relevant text of the DPA is cited in the Legal Annex attached to this Decision Notice.
30. The PPS identified 30 out of the 41 documents as being exempt under section 40(2) of the Act. The PPS was of the view that disclosure of this information would breach the first and second data protection principles. The PPS did not provide any further arguments in relation to the application of this exemption, but merely directed the Commissioner to the *McCluskey* Tribunal decision.
31. The Commissioner finds that simply because information is exempt in one case does not necessarily mean that similar information will be exempt on the same basis in the next case. Rather, the Commissioner has to consider the application of the exemptions in each case on their own merits and on the basis of the arguments advanced by the public authority. Therefore the Commissioner does not consider it appropriate for the PPS to have expected him to adduce arguments from a Tribunal decision.
32. The Commissioner is mindful of the fact that it is for the public authority to satisfy him that an exemption is engaged in any particular case. In the absence of detailed arguments the Commissioner may decide that the authority has failed to demonstrate that information is exempt. However the Commissioner is also mindful of his dual role as

the data protection regulator. With this in mind the Commissioner has considered the exemption at section 40(2) in more detail than the PPS provided.

### **Is the information personal data?**

33. Personal data is defined in section 1(1) of the DPA as:

*“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.”*

34. Having inspected the withheld information, the Commissioner is satisfied that it comprises information which would fall within the definition of personal data. The information mainly consists of witness statements provided to the police by a number of identifiable living individuals. The Commissioner believes that the documents containing personal data can be grouped into four separate categories, namely:

- Evidence provided by witnesses who are not police officers or staff of the police force;
- Information that relates to those accused of the criminal offences;
- Documents provided by and supplied to the PPS; and
- Evidence provided by witnesses who are police officers or police staff.

35. In light of paragraph 9 above, the Commissioner is mindful of the fact that the complainant does not require the names and addresses of the accused, their legal representatives or members of the public who provided statements to the police. So far as the accused are concerned, the Commissioner notes that information that was reported in the media identified these individuals. The Commissioner is mindful that any further information that is disclosed could be linked to the information that is already in the public domain and hence to identifiable individuals. The Commissioner finds that even where names and addresses have been removed, the disclosure of any information that relates to the accused will be a disclosure of personal data.



36. So far as witnesses who are not police officers or police staff are concerned, the Commissioner similarly takes the view that disclosure of the evidence that they have provided would amount to the disclosure of personal data. This is because although their identity may not have been revealed directly through the media, they are likely to be identifiable by their family, friends, colleagues or possibly others through the information contained in their evidence which contains specific details of where they were at a particular time and what they were doing.

**Is information that relates to the accused sensitive personal data?**

37. The Commissioner proposes to deal firstly with the information that relates to those accused of the offences. The Commissioner notes that four individuals were charged with committing criminal damage and obstructing police. The Commissioner notes that the withheld information concerns the police investigation and the subsequent decision to prosecute these individuals with these offences.
38. Although not considered fully by the PPS, the Commissioner considers that some of this information also falls within the definition of sensitive personal data as defined in section 2(g) of the DPA. Section 2(g) relates to information as to:

"...  
(g) *the commission or alleged commission by him of any offences...*"

39. The Commissioner is of the view that information relating to the accused individuals would meet the definition of sensitive personal data as it relates to allegations of criminal activity by these individuals. The Commissioner is of the view that this would also include any references to the accused contained in any of the witness statements provided to the PSNI.

**Would disclosure of information that relates to the accused breach the data protection principles**

40. The Commissioner notes that the PPS referred to the first and second data protection principles. In this case the Commissioner believes that the relevant data protection principle is the first one, which states:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

(a) *at least one of the conditions in Schedule 2 is met, and*

(b) *in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*

41. Sensitive personal data may not be disclosed unless to do so would be fair and lawful. The Commissioner finds that any information which relates to the allegations of criminal behaviour is considered sensitive personal data. Such information would include any references which could identify any of the accused by linking them to their names, addresses, age, physical description or similar details.
42. In the vast majority of cases, there is an agreed assumption that as the information is considered sensitive personal data, it is more than likely that it would be considered unfair to have it disclosed into the wider public domain. Where someone has been accused of criminal offences or has been convicted of such an offence, there is a clear expectation that this information should not be disclosed as it could be potentially damaging to an individual.
43. The Commissioner notes that the majority of the withheld information in this case falls under section 2(g) of the DPA as it relates to the alleged commission of criminal offences. As such, by its very nature, this has been deemed to be information that is regarded as the most private information about an individual. Furthermore, as disclosure of this information is more than likely to have a detrimental or distressing effect on those accused of the criminal behaviour, the Commissioner considers that it would be unfair to disclose the requested information that falls within the definition of section 2(g).
44. The Commissioner is aware that a video recording relating to the incident was published by the media at the time of the trial. However, the Commissioner is of the view that the information published in this manner would not be the same as that retained as evidence by the police, despite the fact that it was recorded by the same individual. The Commissioner would expect that the coverage posted on the news-link would have been edited in accordance with the actual news report, and would be unlikely to reveal all the images available on the day in question including any members of the public who were witnessing the event.
45. Even though the PPS has not considered the application of section 40(2) to this particular item, the Commissioner is mindful of his regulatory role in relation to personal information. The Commissioner finds that this part of the withheld information also falls within the definition of personal data as it will identify living individuals through

their images. The Commissioner is also of the view that the recording would contain information which would identify individuals as those accused of the alleged incident. This therefore relates to allegations of criminal behaviour which would fall within the definition of sensitive personal data. Accordingly, the Commissioner finds that this recording has been correctly withheld, albeit not for the reasons proffered by the PPS.

### **Remaining personal information**

46. Having decided that the sensitive personal data about the accused is properly exempt, the Commissioner has considered the personal information which does not fall under this definition. As noted above, personal information is exempt if its disclosure would breach any of the data protection principles, and the PPS cited the first and second principles.
47. When considering whether disclosure of the requested information would be fair, the Commissioner will consider a number of different factors to include:
  - The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information were to be disclosed? In taking this into account, the Commissioner may consider:
    - whether information of the nature requested is already in the public domain;
    - if it is in the public domain, what is the source of this disclosure;
    - even if the information was in the public domain, does this mean that disclosure now could still cause damage or distress?
  - The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
    - what the public authority may have told them about what would happen to their personal data;
    - their general expectations of privacy, including the effect of Article 8 ECHR;
    - the nature or content of the information itself;
    - the circumstances in which the personal data was obtained;

- particular circumstances of the case, e.g. established custom or practice within the public authority; and
  - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
48. When considering whether disclosure of the requested information would be fair, the Commissioner will consider balancing the consequences of any disclosure and the reasonable expectations of the data subject against the principles of accountability and transparency. In doing so, the Commissioner will also consider the nature of the actual information and the circumstances in which it was obtained.
49. The Commissioner has considered the following groups of individuals in relation to their personal data:
- Witnesses who are not police officers or staff of the police;
  - Witnesses who are police officers or staff of the police force; and
  - PPS staff

**Witnesses who are not police officers or police staff**

50. The Commissioner notes that some of the withheld information provided to the police was provided by members of the public. These individuals include those who provided video evidence and written evidence to substantiate the prosecution's case against the four accused. The Commissioner has already found that the information contained within the video recording has been correctly withheld on the basis that it identifies the accused and therefore falls within this definition of sensitive personal data as it relates to allegations of criminal behaviour. Therefore the Commissioner is not required to further consider whether or not the disclosure would be unfair.
51. The Commissioner notes that one prosecution witness provided two statements which included written evidence for the purposes of the prosecution case. This written evidence contained a breakdown of the alleged damage caused together with a fee note for the repair costs. The statements also contained details of the loss of income that the witness' employer would face depending on how long it would take to repair the damage.

52. The Commissioner is of the view that this information was communicated solely for the purposes of the police investigation, and was not for the general public. The Commissioner accepts that this individual would have a high degree of expectation that this information would not be released to the general public.
53. Notwithstanding the expectation of this individual that this statement would not be disclosed, the Commissioner must look at whether there is a legitimate interest to the public to have access to this information. The Commissioner considers that there is a legitimate interest in the public seeing that public authorities carry out their actions in an accountable and transparent manner. There is a strong public interest in ensuring that investigations are carried out correctly so as to bring those responsible for criminal behaviour to the courts. Disclosing this information would therefore allow the public to scrutinize the actions of the PPS and to give them a better understanding of why prosecutions have been undertaken or why charges are withdrawn.
54. The Commissioner has also considered the financial cost of the alleged criminal damage that surrounded this incident. The Commissioner has noted that the damage incurred was reportedly £10,000 together with the possibility of further financial implications being incurred depending on how long it took to repair the damage. The Commissioner is of the view that, given the value of damage allegedly caused, there is a legitimate and compelling interest as to why this information should be disclosed.
55. The Commissioner has found that there are a number of reasons why there is a legitimate interest in disclosing the information provided by this particular witness. However, the Commissioner has weighed these factors against the unwarranted prejudice to the rights and freedoms of the data subject. The Commissioner finds that it would not be unreasonable for the witness to expect that this information would not be disclosed to the public and rather it was provided to the police for the purposes of the police investigation. There is a significant risk that the witness could be subjected to unwarranted interference and harm if this information was to be disclosed. Therefore the Commissioner has concluded that the disclosure would be unfair. Accordingly, the Commissioner finds that section 40(2) was correctly applied to the statements and evidence provided by both this prosecution witness and the individual who supplied the video recording. The Commissioner would also note that, as per the comments made above regarding the video recording, any information contained within the statements and supporting evidence provided by this witness which contained information that could identify the accused would be considered

exempt in any event as it would be considered sensitive personal information.

### **Police officers and police staff**

56. The Commissioner notes that the PPS also applied section 40(2) to the statements that have been provided by the individual police officers in relation to this incident. These documents contain the names, rank, and identification numbers of several police officers who had various degrees of involvement in the police investigation. The documents specify what actions were taken by the officers in respect of the arresting, interviewing and charging process of each of the accused.
57. The Commissioner also notes that the withheld information contains photographic evidence of the scene of the alleged incident. This information was provided by a photographic officer who is a member of the PSNI staff and who also provided a statement to the PSNI.
58. In order to consider whether disclosure of this information would be fair, the Commissioner will once again consider those factors outlined at paragraph 47 above. The Commissioner accepts that some of the names of the police officers have been in the public domain as a result of their appearances at the Magistrates Court in relation to the alleged incident. However, this does not necessarily mean that this information will still be in the public domain. The Commissioner however does not feel that to place this information into the public domain would result in any damage or distress being caused to the officers.
59. The Commissioner considers that the officers were acting in the course of their professional capacity and none of the documents contain information about the personal lives of any of the officers. The officers therefore would have an expectation that their names would be released to the general public, if so required. The only reason why this information would not be disclosed would be if this would pose a security risk to the officers involved. In this case, the Commissioner has not been provided with any evidence to suggest that this is the case.
60. The Commissioner has however considered whether or not there is a legitimate interest in allowing the public to have access to this information. The Commissioner considers that there is a legitimate interest in allowing the public to have the opportunity to scrutinize the work of police officers to ensure that they are carrying out investigations properly. Disclosure of this information would also allow the public to have a better understanding of the criminal allegations

and the police investigation which resulted in a number of individuals being charged with the offences. The Commissioner therefore finds that disclosure of the information would help ensure that the actions of the PPS are transparent and accountable. Disclosure of this information would also illustrate to the public the thoroughness of the police investigation and subsequent prosecution.

61. The Commissioner has also considered the financial cost of the alleged criminal damage that surrounded this incident. The Commissioner has noted that the cost of the damage incurred was reportedly £10,000 together with the possibility of further financial implications being incurred depending on how long it took to repair the damage. The Commissioner is of the view that, given the value of damage allegedly caused, there is a legitimate and compelling interest as to why this information should be disclosed.
62. The Commissioner is of the view that there is a legitimate interest in the public being able to access this information in order to ensure that transparency and accountability are achieved. The Commissioner is aware that some of the officers had only minimal involvement in relation to the actual investigation compared to the officers who arrested and interviewed those who committed the crimes. The Commissioner is of the view there is an interest for the public to find out the names of the officers involved in the case so as to understand how the investigation was conducted. The greater the degree of involvement of an officer the greater that public interest is but the Commissioner does not find that any of the police officers would incur damage or distress in having their names released given their public-facing role. The Commissioner finds that the level of detail included in the documents is not so significant so as to cause any unnecessary intrusion to the police officers. As outlined above, none of the documents contain any references to the officers' private lives. Therefore the Commissioner finds that section 40(2) has been incorrectly applied to the statements provided by the police officers.
63. As per paragraph 56 above, the Commissioner notes that the statements contain details of the rank and identification numbers of the officers. The Commissioner has considered that the rank and identification numbers relate to the performance of the officer's duties, which is information which falls within the definition of personal data under the DPA. The Commissioner has, as above, considered a number of arguments to ascertain whether or not disclosure of the rank details and identification numbers would be fair. The Commissioner believes that disclosure of this information is fair as it relates solely to the officers public and professional life, rather than their private lives. The Commissioner considers that an officer would

exercise a high level of personal judgment, and would bear significant responsibilities, in the course of his or her duties. The officers would have, as a result of their investigative functions, direct contact with members of the public which would result in their rank and identification numbers being on display. Therefore, as a result of this engagement with the wider public, they would expect to be subjected to a high degree of scrutiny and interest from the public.

64. The Commissioner finds that there is a legitimate interest for members of the public to know the ranks of those officers involved in this police investigation so as to allow the public to scrutinize the actions of those officers involved in the investigation. This also applies to the identification numbers of the officers involved. The Commissioner believes that such disclosure is in the interests of transparency and accountability. Furthermore, there would be no unwarranted interference or harm caused to the officers involved. Therefore, for the reasons as outlined above, the Commissioner finds that there is no reason to withhold the police officers' identification numbers or rank details.
65. In relation to the statement provided by the photographer to the PSNI, the Commissioner is of the view that whilst the individual is a member of PSNI staff, the photographer does not have a public-facing role. Even though the photographer was acting in the course of his professional capacity, this role was one which provided background support to the PSNI. Because of the nature of the allegations and the amount of damage allegedly caused, there is a legitimate interest for the public to be able to see what evidence the police had to substantiate this charge. The Commissioner is of the view that disclosing the name of the photographer will not contribute significantly to this. On the other hand, given the nature of the role, the photographer would have a reasonable expectation that his involvement in particular cases would not be made public. Therefore the Commissioner finds that the name of the photographic officer should not be released and that section 40(2) has been correctly applied to the name of this individual.
66. The Commissioner is aware that some of the withheld information contains references to the accused. The Commissioner considers that those references should be redacted as they fall within the definition of sensitive personal information as discussed above, and the remainder of the documents should be disclosed.
67. However, the Commissioner notes that some documents, and in particular the police interviews with the accused, would have to be substantially redacted so as to avoid sensitive personal information



being disclosed. Therefore, the Commissioner has taken the view that all the information, save for the names of the officers, cannot be disclosed without breaching the DPA.

68. In relation to the photographic evidence, the Commissioner has inspected each of the five photographs and finds that these contain no information which in any way identifies those accused of the alleged criminal behaviour. The Commissioner notes that the photographs merely depict the interior of the crane cab including its contents. However, these photographs are so innocuous in nature that it is impossible to identify any of those accused of the alleged criminal behaviour or any of the prosecution witnesses. Therefore the Commissioner does not consider that the photographs are personal data and therefore do not need to be considered under the data protection principles. Accordingly, the Commissioner finds that the photographs were incorrectly withheld under section 40(2).
69. The Commissioner notes that the PPS has also claimed that the majority of the documents referred to above are exempt under section 30 of the Act. However, at this juncture the Commissioner does not accept that all of these documents should be withheld on the basis of section 40(2) but will address the application of section 30 in greater detail.

### **Staff of the PPS**

70. Even though the PPS has not considered the application of section 40(2) to this particular group of documents, the Commissioner is mindful of his regulatory role in relation to personal information. The correspondences contain the names, contact numbers and email addresses of a number of staff of the PPS who were involved in the prosecution of those accused of these offences.
71. The Commissioner notes that the emails sent and received by the PPS staff were correspondences involving staff who had various degrees of input and responsibility in respect of the investigation. The Commissioner finds that the PPS staff were all acting in their professional capacity and none of the documents contain information about the personal lives of any of the staff members. However, the Commissioner has noted that a number of the documents have been prepared by junior members of the PPS staff. The Commissioner has noted that these junior staff members do not deal with members of the public and they do not appear to have had any significant input in relation to the prosecution of the four accused. The Commissioner notes that junior members of staff appeared to have merely carried out administrative functions such as ensuring that witnesses were available

to attend court and that court directions were followed within the required timescales as opposed to having any direct responsibility for the conduct of the prosecution case. Therefore, the Commissioner is of the view that names of junior members of staff should not be disclosed.

72. The Commissioner has also considered whether or not names of senior staff involved in the case should be released. The Commissioner notes that some of these senior staff have a public-facing role, particularly the prosecution solicitors who attended court and made a number of representations in relation to the court case. The Commissioner also considers that it was senior personnel who made a decision to proceed with the prosecution against the four accused and why each charge was deemed to be appropriate to the facts of the case. These roles therefore would have involved a significant level of personal judgment and individual responsibility. The senior staff would therefore have an expectation that their names would be released to the general public, if so required. The only reason why this information would not be disclosed would be if this would pose a security risk to the officers involved. The Commissioner has not been provided with any evidence to suggest that this is the case.
73. The Commissioner therefore finds that there is a legitimate interest in disclosing this information. However, as per paragraphs 66 and 67 above, the Commissioner notes that some of these documents may contain sensitive personal data relating to the four accused. For these reasons, the Commissioner has ordered that these documents should be redacted accordingly so as not to not disclose sensitive personal data and thereby breach the DPA.
74. The Commissioner also notes that the PPS has also claimed that these correspondences are exempt under section 30 of the Act. However, for the reasons outlined above, the Commissioner does not accept that all of these documents should be withheld on the basis of section 40(2) but will address the application of section 30 now in greater detail.

### **Section 30 – Investigations and proceedings conducted by public authorities**

75. The PPS stated that the exemption at section 30 was engaged in relation to all of the requested information except for one of the documents. Despite the Commissioner's enquiries the PPS did not explain which subsection of this exemption it was seeking to rely on. Therefore the Commissioner has considered which provisions of this section apply to the requested information.

76. Section 30(1) of the Act states 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.*

77. The Commissioner notes that save for one reference in its correspondence of 11 March 2010, the PPS did not indicate to either the complainant or the Commissioner which subsection of section 30 it wished to rely on. The Commissioner notes that the PPS gave no reasoning as to why it believed that section 30(1)(c) applied to the requested information. It appears to the Commissioner that the relevant subsection is 30(1)(c), as the withheld information was held by the PPS for the purposes of the prosecution, which the PPS had the power to conduct.

78. Section 30 is a class-based exemption. This means that it is not necessary to identify some prejudice that may arise as a result of disclosure in order to engage the exemption. Therefore, despite the PPS's failure to provide detailed arguments, it is clear to the Commissioner that the withheld information does fall under the exemption at section 30(1)(c). However, section 30 is a qualified exemption and is therefore subject to the public interest test under section 2(2)(b) of the Act. Section 2(2)(b) provides that:

*"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information".*

## Public interest arguments in favour of disclosing the information

79. The PPS acknowledged that disclosure of this type of information would lead to greater accountability and transparency in the prosecution decision-making process. This would allow the public to see the reasoning behind decisions taken by the PPS which affect the way in which prosecutions are taken and how they impact upon people's lives.
80. The PPS also recognised that by disclosing the requested information this would help to further the interests of justice as it would improve the public's knowledge and understanding of the wider criminal justice process. This would help encourage the public to participate in this process which would be for the benefit of all members of the community.
81. The Commissioner has also considered the amount of information that was in the public domain at the time the information request was submitted. The Commissioner has been able to locate two website links relating to media reports of the case. The first link related to the initial court appearance of the four accused and contained video footage of the alleged incident. The second link contained details of the outcome of the court appearance and some of the reactions of those acquitted of the criminal charges. The Commissioner finds that the fact that there is information in the public domain does add some weight to the public interest test. The Commissioner believes that there is a strong interest in knowing why a case was brought before the court but did not result in successful convictions. However, the Commissioner notes that no details of why the prosecution case failed were recorded in the news bulletins.
82. The Commissioner recognises that there is considerable interest in criminal cases and it is important for the public to see that justice is carried out. The Commissioner notes that the case was conducted before an open court and it was on the basis of a contested hearing that the judge acquitted the individuals. The Commissioner also accepts that information which has entered the public domain having been disclosed or referred to in court does not necessarily remain in the public domain. Very often this information is only revealed to those present during the court proceedings. Information usually has a short life-span subject to the amount of coverage it receives, unless of course there is a particularly high level of interest, which in this case there was not. The Commissioner has previously considered this point in an earlier Decision Notice (*Transport for London*). In that case, which concerned information about prosecutions relating to bus fare irregularities, the Commissioner recognised that even though data is

disclosed in court and could be reported, disclosure at a later point could still be unfair. The Commissioner found that:

*"...in practice public knowledge of the issues is only short lived and may be limited to only a small number of people. Even where cases are reported in newspapers this does not lead to the establishment of a comprehensive, searchable database of offenders..."<sup>2</sup>*

83. The Commissioner also notes the findings of the Tribunal in the case of *Armstrong v Information Commissioner and the HRMC*, which stated that:

*"knowledge obtained in the course of criminal trials is likely to be restricted to a limited number of people and such knowledge is generally short-lived..... even if the information had previously entered the public domain, that is not in itself conclusive of whether the public interest weighs in favour of disclosure, it is merely one consideration to be weighed in the public interest balance"<sup>3</sup>.*

84. The Commissioner is also aware that not all the information provided to the police in the context of an investigation is either disclosed during the court proceedings or reported in subsequent media coverage.
85. The Commissioner notes that where a prosecution has collapsed, the public interest in favour of the disclosure of information about the investigation may be stronger than for those cases which were concluded successfully. The Commissioner notes that all four individuals were charged with a variety of different offences arising out of the alleged incident. A decision was taken by the PPS to proceed with all of the charges and present them to court whereupon they were successfully challenged by the defence and the individuals were acquitted of all charges by the presiding Magistrate. Therefore the Commissioner accepts that there will be legitimate public interest in understanding how this case was handled by the PPS.

### **Public interest arguments in favour of maintaining the exemption**

86. The PPS argued to the Commissioner that information supplied by members of the public and the police to the PPS is provided with an expectation that this would only be used for the purposes of the particular investigation. Disclosure of this information may result in

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<sup>2</sup> FS50075171

<sup>3</sup> EA/2008/0026, paragraphs 85 and 86

members of the public as well as witnesses being unwilling to participate in the criminal justice system. This may diminish the likelihood of successful investigations and prosecutions which would clearly not be in the public interest. Therefore the PPS held that disclosure of the withheld information would inhibit the future effectiveness of police investigations. However, the Commissioner considers this argument to relate more to the personal information withheld under section 40(2), rather than the non-personal information in this case.

87. The Commissioner recognises that there is a strong public interest in maintaining the independence of the judicial and prosecution process. The Commissioner has taken the findings of the Information Tribunal in the case of *Digby-Cameron v Information Commissioner and Bedfordshire Police and Hertfordshire Police* into account when considering this argument. In that case, the Tribunal considered whether information which was voluntarily provided to the police should be disclosed in relation to an on-going investigation. The Tribunal in that case found that such evidence:

*"...would only be used for the purposes of ..... a criminal case in court and not disclosed to third parties.....in advance....the independence of the prosecution process and the preservation of the position of the criminal court may have been undermined if the information was disclosed without consent in advance of a criminal case or decision not to prosecute"<sup>4</sup>.*

88. However, whilst it is imperative that the criminal court system remains the sole forum for determining the guilt of an accused, the Commissioner notes that in this case the court has already made a finding in respect of the guilt of the accused. It was through the court system that the strength of the prosecution case was correctly tested and it was here that the evidence was found to be of an insufficient weight to demonstrate that each of the accused was guilty of the charges they faced.
89. The Commissioner considers that where there is a prospect of further investigations with a view to securing additional prosecutions, it would clearly not be in the public interest to release this information if such investigations or proceedings were to be jeopardized. However, the Commissioner notes that in this particular case the PPS has provided no evidence to suggest that there is a likelihood of this happening and therefore the Commissioner does not consider this to be a factor which will affect the balance of the public interest test.

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<sup>4</sup> EA/2008/0023 & 0025

90. Whilst not raised by the PPS as a factor relevant to the public interest test, the Commissioner has considered the age of the requested information. The Commissioner notes that the complainant requested the information two days after the conclusion of the criminal court proceedings. The Commissioner is aware that there was a possibility that the PPS could have lodged an appeal in relation to the outcome of the proceedings. However, the period of time for issuing a Notice of Appeal had expired before the PPS provided the complainant with the refusal notice and the Commissioner notes that the PPS opted not to take this course of action. In taking this into account, the Commissioner has considered the findings of the Tribunal in the case of *Guardian v Information Commissioner and Avon and Somerset Police*, where the information in question was of a considerable age. The Tribunal made the following comments in relation to the issue of age of information:

*“The passage of time was a double-edged argument, whichever side wielded the sword. It probably reduced the risks of prejudice to future investigations but it similarly weakened the legitimate public interest in knowing more of the background facts<sup>5</sup>”.*

91. The Commissioner has considered that given the age of the information in this instance there is a risk that disclosure could prejudice future prosecutions carried out by the PPS. The Commissioner believes that such prejudice could occur if witnesses became less willing to co-operate in the criminal justice process because of a fear that their statements might be made public. This risk is likely to be greater if witnesses find that their statements are made public shortly after the conclusion of a court case. Therefore the Commissioner considers that this argument does carry some weight in favour of maintaining the exemption.

### **Balance of the public interest test**

92. The Commissioner is of the view that the PPS did not appear to correctly balance the arguments in favour of maintaining the exemption and the arguments in favour of disclosing the information. The Commissioner believes that the PPS did not consider each document individually to ascertain whether or not it was exempt information. Rather, the PPS appears to have taken a “blanket” approach to this request by claiming that all the information was exempt generally.

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<sup>5</sup> EA/2006/0017, paragraph 36

93. The Commissioner has however carefully weighed up the factors in favour of disclosure against the arguments in favour of maintaining the exemption. The Commissioner is mindful of the strong public interest in law enforcement agencies being accountable and transparent in their actions. The Commissioner considers it important that the public are able to scrutinise the manner in which criminal investigations are carried out to ensure that they are conducted in a thorough and impartial manner. The Commissioner therefore finds that there is a strong public interest in ensuring that the public has confidence in the criminal justice system and that all efforts are made to ensure that the perpetrators of crimes are brought to justice.
94. The Commissioner believes that there is a strong public interest in ensuring that investigations should not be jeopardized, especially where investigations are still ongoing or where criminal proceedings are still pending. However, the Commissioner notes that at the time the complainant submitted his request, a criminal prosecution had already been brought before the courts. The Commissioner recognises that the public interest in maintaining the exemption will be very strong while an investigation is being carried out, or has the potential to be re-opened. However, once an investigation is completed, the public interest in understanding why a particular conclusion has been reached will often outweigh the public interest in maintaining the exemption.
95. The Commissioner also finds that there is a strong public interest in favour of disclosure where a prosecution has collapsed or where a decision has been made to not proceed with prosecution. In this case, criminal proceedings were brought before the local Magistrates court against four individuals. The PPS decided to proceed with the prosecution and the court subsequently acquitted the four individuals of all the charges they faced. The Commissioner considers that there is a strong public interest in allowing the public to see why the case proceeded in the first instance, and why, it subsequently failed.
96. Having weighed the factors favouring the maintenance of the exemption against the factors in favour of disclosure, the Commissioner concludes that the public interest in maintaining the exemption does not outweigh the public interest in disclosure. The arguments put forward by the PPS in favour of maintenance of the exemption do not carry significant weight, and are not sufficient to tip the balance of the public interest in favour of non-disclosure in respect of this case.



## Section 31

97. The PPS cited section 31(1)(a), (b) and (c) in relation to the same information it sought to withhold under section 30. The PPS claimed that in the event that section 30 did not apply to the requested information, section 31 would be applicable. Despite the Commissioner advising the PPS on a number of occasions as to the applicability of sections 30 and 31, the PPS failed to distinguish between the two sections. As the Commissioner has made clear to the PPS, these sections are mutually exclusive; they cannot both be engaged in relation to the same information. This is confirmed by the wording of section 31(1) which states that:

*"Information which is not exempt information by virtue of section 30..."*

98. Thus, if section 30 is engaged, section 31 cannot be engaged even where the public interest in maintaining the exemption provided by section 30 does not outweigh the public interest test in disclosure.

## Section 41

99. As outlined above, the Commissioner notes that the PPS changed its stance in relation to the exemption at section 41 a number of times. In its refusal notice of 5 January 2009 the PPS cited reliance on section 41, but withdrew this on 16 February 2009 following completion of the internal review. At the beginning of the Commissioner's investigation the PPS advised that it was not relying on section 41, but on 11 March 2010 the PPS advised that it now sought to rely on this exemption again. At this late stage of the investigation the PPS claimed that the information contained within 35 documents was exempt by virtue of section 41 of the Act.
100. The Commissioner has discretion to decide whether, in the circumstances of the case, it is appropriate to take an exemption into account if it is raised in the course of his investigation. In doing so, the Commissioner will take into consideration what risks could arise if the information was disclosed together with what impact disclosure would have. This issue was considered by the Information Tribunal in the case of *Department of Business and Regulatory Reform v Information Commissioner and Friends of the Earth*. The Tribunal held that:

*"The question for the Tribunal is whether a new exemption can be claimed for the first time before the Commissioner. This is an issue which has been considered by this Tribunal in a number of*

*other previous cases<sup>6</sup> and there is now considerable jurisprudence on the matter. In summary the Tribunal has decided that despite ss. 10 and 17 FOIA providing time limits and a process for dealing with requests, these provisions do not prohibit exemptions being claimed later. The Tribunal may decide on a case by case basis whether an exemption can be claimed outside the time limits set by ss. 10 and 17 depending on the circumstances of the particular case. Moreover the Tribunal considers that it was not the intention of Parliament that public authorities should be able to claim late and/or new exemptions without reasonable justification otherwise there is a risk that the complaint or appeal process could become cumbersome, uncertain and could lead public authorities to take a cavalier attitude to their obligations under ss. 10 and 17. This is a public policy issue which goes to the underlying purpose of FOIA.”<sup>7</sup>*

101. Strictly speaking the PPS did not submit a late claim in relation to section 41. Instead it changed its stance a number of times between the original refusal of the request and the completion of the Commissioner’s investigation. The PPS advised the Commissioner that whilst one officer took the view that section 41 applied, the reviewing officer at the internal review stage took an alternative view and held that it did not apply. It was only upon speaking with the Senior Assistant Director, at a late stage of the Commissioner’s investigation, that a decision was taken to reinstate the application of this exemption.
102. However, the Commissioner notes that the PPS did not provide any explanation as to why it had not previously raised section 41 during the course of the Commissioner’s investigation. The Commissioner also notes that the PPS failed to provide any reasons why it would be appropriate for the Commissioner to consider it at a late stage.
103. Nevertheless the Commissioner did provide the PPS with a number of opportunities to make representations in relation to the exemption at section 41. On 24 March 2010 the PPS provided the Commissioner with a copy of legal advice obtained from the Senior Crown Counsel for Northern Ireland. The Commissioner has examined the legal advice but finds that it relates to the provision of witness statements to the family of a murder victim. The advice does not refer to any part of the Act, nor does it refer to disclosure of information into the public

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<sup>6</sup> Bowbrick v Information Commissioner & Nottingham City Council [EA/2005/006]; England & London Borough of Bexley v Information Commissioner [EA/2006/0060&66]; Benford v Information Commissioner [EA/2007/0009]; Archer v Information Commissioner & Salisbury County Council [EA/2006/0037] and Ofcom v Information Commissioner & TMobile [EA/2006/0078].

<sup>7</sup> [EA/2007/0072] para 42.

domain. Therefore the Commissioner is satisfied that the legal advice is not entirely relevant in determining whether the exemption at section 41 is engaged.

104. The PPS further advised the Commissioner on 25 March 2010 of its view that the witness statements, both from members of the public and from police officers, were provided in confidence. Although the PPS maintained that the remainder of the information withheld under section 41 was exempt, the PPS did not provide any further arguments to support this.
105. However, as set out above, the Commissioner has already considered the personal information contained within the withheld information (i.e., the witness statements). The Commissioner has found that, apart from the names of police officers, any information which was sensitive personal data was correctly withheld under section 40(2) of the Act. The Commissioner considers that the witnesses have been considered and their privacy rights protected.
106. In relation to the information which is non-sensitive data, the Commissioner notes that the PPS indicated that only one group of documents was considered exempt on the basis of section 41 of the Act. This group of documents was entitled "DPP (NI) Magistrates Court Outcome forms and Court Progress Record forms".
107. The Commissioner must consider whether information withheld under this section of the Act was obtained in confidence and whether its disclosure would constitute an actionable breach of confidence. The Commissioner considers that a breach under section 41 will only be actionable if: -
  - the information has the necessary quality of confidence;
  - the information was imparted in circumstances importing an obligation of confidence; and
  - there was an unauthorised use of the information to the detriment of the confider.
108. The Commissioner has first considered whether or not the court forms were provided in confidence. The Commissioner finds that these forms are the property of the PPS, having been used by its predecessor, the Department of Public Prosecutions ("DPP"). Therefore, the Commissioner has taken the view that these forms were not provided by any third party. Furthermore, the forms are particularly generic in nature and are used for recording the outcome of each court

appearance. As well as recording sensitive personal data relating to the accused, the forms also record the date of the court appearance, the initials of the presiding magistrate and the prosecution's representative together with details as to the nature of the court application. The Commissioner is satisfied that there is no information contained within the documents that has been provided by a third party in confidence. Therefore the Commissioner considers that in the absence of any detailed arguments from the PPS, it is unlikely that this information was in fact provided in confidence and therefore section 41 is not engaged in relation to these documents. However, as outlined above, the Commissioner is aware that these documents contain sensitive personal data which should have been withheld under section 40(2). Therefore the Commissioner finds that the information should be disclosed, with the exception of this sensitive personal information.

109. For the remainder of the documents that the PPS considered were exempt under section 41 of the Act, the Commissioner considered whether or not any actionable breach of confidence would arise in the event that the information was disclosed. The Commissioner notes that the PPS only made a brief reference to this in its correspondence to the Commissioner of 25 March 2010. The PPS indicated that: -

*"...to breach that confidence could lead to action if [sic] the form of legal action against the PPS for negligence, loss or injury incurred through the disclosure. The information was obtained by the PPS as a public authority from another public authority (the PSNI) in confidence and for the purpose of determining whether or not criminal proceedings should take place".*

110. The PPS failed to indicate how a breach of confidence would occur. The Commissioner has considered the limited arguments provided by the PPS, but is not satisfied that the PPS has demonstrated that the exemption at section 41 is engaged in relation to any of the requested information. The Commissioner is of the view that the PPS has had ample opportunity to provide details of its reasoning, but has failed to do so. The legal advice provided to the Commissioner was not relevant to this case, and the Commissioner is not persuaded that the PPS has sufficiently considered this exemption. Therefore the Commissioner must find that the PPS cannot withhold information under section 41 of the Act.

## **Procedural Requirements**

### **Section 1(1)(b): duty to provide information and section 10(1): time for compliance**

111. Section 1(1)(b) of the Act requires a public authority to provide information to an applicant in response to a request. Section 10 of the Act states that a public authority must comply with section 1(1) promptly, and in any event not later than twenty working days after the request has been received.
112. As the Commissioner has decided that some of the information requested was incorrectly withheld, the Commissioner believes that this information should have been provided by the PPS to the complainant at the time of his request. The PPS's failure to do this constitutes a breach of section 1(1)(b). Furthermore, by failing to provide this information within twenty working days from the date of the request, the PPS also breached section 10(1).

### **Section 17: refusal notice**

113. Where a public authority refuses a request for information it is required under section 17 of the Act to provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon.
114. In accordance with section 17(1)(b), public authorities must state which subsection of the exemption they are seeking to rely upon. In this case, the PPS cited sections 30 and 31, which are both multi-limbed exemptions, so the PPS ought to have specified which subsection it sought to apply. The Commissioner therefore finds that the PPS failed to comply with the requirements of section 17(1)(b) in relation to the refusal notice.
115. The Commissioner also notes that the PPS failed to explain why section 40(2) applied to the withheld information. The Commissioner believes that the PPS did not fully address why some of the information was personal information or consider how it would breach the data protection principles. Accordingly, the Commissioner finds that the PPS failed to comply with the requirements of section 17(1)(c) of the Act in relation to this matter.

## The Decision

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116. 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:

- It correctly withheld some of the information requested under section 40(2) of the Act

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

- Some of the information was incorrectly withheld under section 40(2) of the Act;
- The remaining information was incorrectly withheld under section 30(1), section 31 and section 41 of the Act;
- The public authority breached sections 1(1)(b) and 10(1) by failing to disclose this information at the time of the request; and
- The public authority breached section 17(1)(b) and 17(1)(c) in failing to provide the complainant with an adequate refusal notice.

## Steps Required

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

- Disclose to the complainant all the information identified within the confidential annex attached to this Notice.

119. 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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120. The Commissioner wishes to record his concerns at the way the PPS handled this request. It appears to the Commissioner that the PPS did

not actually consider each piece of requested information until the Commissioner specifically asked it to do so. The PPS then sought to refer the Commissioner to an Information Tribunal case and a piece of unrelated legal advice, rather than make detailed representations in relation to the case in question.

121. The Commissioner would emphasise that each request for information must be considered fully, and on its own merits. If a public authority wishes to apply an exemption, it is required to demonstrate to the Commissioner that the exemption applies. In relation to qualified exemptions, the public authority is required to provide full details of the public interest arguments it identified, and how it balanced them. In the absence of robust arguments, the Commissioner cannot be satisfied that information has been correctly withheld, and may order disclosure.
122. The Commissioner has formally expressed these concerns to the PPS and expects that his comments will be carefully considered in relation to future information requests.

### **Failure to comply**

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

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

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 17<sup>th</sup> day of May 2010**

**Signed .....**

**David Smith  
Deputy Commissioner**

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



## **Legal Annex**

### **Section 1 – General right of access to information held by public authorities**

- 1(1) Any person making a request for information to a public authority is entitled –
- (a) to be informed in writing by the public authority whether it holds the information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.

### **Section 10 – Time for compliance with request**

- 10(1) Subject to subsections (2) and (3), a public authority must comply with section (1) promptly and in any event not later than the twentieth working day following the date of receipt.

### **Section 17 – Refusal of request**

- 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 denies relevant to the request or on a claim that information is exemption information must, within the time for complying with section 1(1), give the applicant a notice which –
- (a) states that fact,
  - (b) specifies the exemption in question, and
  - (c) states(if that would not otherwise be apparent) why the exemption applies.

### **Section 30 – Investigations and proceedings conducted by public authorities**

- 30(1) 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 31 – Law enforcement**

31(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 person 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.

## **Data Protection Act 1998**

### **Part 1**

1) In this Act, unless the context otherwise requires -

"personal data" means 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 intentions of the data controller or any other person in respect of the individual;

### **Schedule 1**

The first principle states that:

Personal data shall be processed fairly and lawfully, and in particular, shall not be processed unless -

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

### **Schedule 2**

Conditions relevant for purposes of the first principle: processing of any personal data.

1. The data subject has given his consent to the processing.

2. The processing is necessary -
  - (a) for the performance of a contract to which the data subject is a party, or
  - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary -
  - (a) for the administration of justice
  - (b) for the exercise of any functions conferred on any person by or under any enactment
  - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department
  - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6.
  - (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
  - (2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.