

Investigations and proceedings (section 30)

Freedom of Information Act

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Introduction

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.
2. An overview of the main provisions of FOIA can be found in [The Guide to Freedom of Information](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.
4. This guidance explains to public authorities how the exemption provided by section 30 protects criminal investigations and proceedings conducted by public authorities and how it interacts with section 31, the exemption that protects a broader range of law enforcement activities.

Overview

- Section 30(1) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence, or the power to conduct such investigations and/or institute criminal proceedings.
- It is class based and information which has been held at any time for the purpose of these investigations and proceedings will be exempt.
- Section 30(2) protects the identity of confidential sources, primarily to ensure informants are not deterred from supplying law enforcement agencies with valuable intelligence.
- Section 30(2) not only protects confidential sources used in investigations falling under subsection (1) and criminal proceedings. It also protects those used by regulators in investigations for the purposes set out in section 31(2).

- Section 30(1) cannot apply to historical records whereas section 30(2) can. This reflects the importance of giving long term protection to confidential sources.
- A public authority does not need to confirm or deny whether it holds information which is exempt under either section 30(1) or (2) unless it is in the public interest to do so.
- Section 30 is subject to the public interest test. In applying the public interest test it is important to recognise that the purpose of the exemption is to protect the effective investigation and prosecution of offences and the protection of confidential sources.
- Circumstances influencing the public interest in maintaining the exemption include;
 - the stage of the investigation or prosecution,
 - the extent to which the same or other information is in the public domain,
 - the value of information obtained from confidential sources,
 - the significance of the information, particularly in terms of whether it would reveal any flaws in an investigation or set of proceedings.
- The disclosure of information about investigations can be distressing to victims of crime or their families. However, this is not a public interest factor that is relevant section 30.
- The exemptions from the duty to communicate information provided by sections 30 and 31 are mutually exclusive, however, they do complement one another. The exemptions from the duty to confirm or deny provided by sections 30 and 31 are not mutually exclusive.

What FOIA says

5. Section 30 states:

30 –(1) Information held by a public authority is exempt

information if it has at any time been held by the authority for the purpose 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.

(2) 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.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held would be)

exempt information by virtue of subsection (1) or (2).

Section 30

6. Section 30 is a class based exemption. Information simply has to fit the description contained in section 30 to be exempt. There is no need for the information to prejudice, for example, the investigation or set of proceeding that it was obtained for. However, the exemption is subject to the public interest test. Where there would be no harm in releasing the information, or the public interest arguments in favour of disclosure outweigh those in favour of maintaining the exemption, it will need to be disclosed.
7. Section 30 has two halves, subsection (1) concerns information held for particular investigations and proceedings which the public authority has the power or duty to conduct, whilst subsection (2) protects information relating to confidential sources.

Section 30(1)(a)-(c) - criminal investigations and proceedings

Held at any time

8. Section 30(1) provides an exemption from the duty to disclose information that a public authority has held at any time for certain investigations or proceedings. As long as the other requirements of the exemption are satisfied, the exemption will apply to information even if it was not originally obtained or generated for one of those purposes and it will continue to protect information even if it is no longer being used for the specified investigation or proceeding. It is only necessary for the information to have been held at some point for those purposes.
9. The exemption applies to information rather than documents so it is possible that information contained in a document created after the conclusion of an investigation or set of proceedings could still attract the exemption. For example, an internal police report on the growth of gun crime over the previous decade may include details of actual offences. This information could be exempt under section 30.

Necessary powers and duties

10. Subsection (1) can only be claimed by public authorities that have certain duties or powers to investigate offences and institute criminal proceedings. A duty is something that the public authority is obliged to do, whereas a power simply allows the public authority to do something. A public authority has discretion over whether it exercises its powers.

Section 30(1)(a) Public authority must have duty to investigate offences

30 –(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose 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,

11. Section 30(1)(a) can only be claimed by a public authority that has a duty to investigate offences. As discussed above, a duty imposes an obligation to carry out the investigations as opposed to a discretionary power to do so. Public authorities should be able to demonstrate to the Information Commissioner how this obligation arises. Usually it will be by statute.
12. When citing section 30(1)(a) public authorities need to explain not only how the duty to investigate arises but also which offence or offences, usually defined in common law or statute, are relevant in the particular circumstances.
13. The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged.
14. Any investigation must be, or have been, conducted with a **view** to ascertaining whether a person should be charged with

an offence, or if they have been charged, whether they are guilty of it.

15. It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence. However, the purpose of the investigation must be to establish whether there were grounds for charging someone, or if they have been charged, to gather sufficient evidence for a court to determine their guilt. Section 30(1)(a) will still protect information if a police investigation fails to establish that an offence has been committed, or concludes that there is insufficient evidence to charge anyone.
16. Public authorities will have their own procedures for conducting investigations. Some may include an initial vetting process to determine whether the matter warrants a full investigation. Provided that any further investigation would be with a view to determining whether to charge someone with an offence, or whether someone charged is guilty, regardless of the outcome, these vetting processes are considered part of the investigation for the purposes of section 30(1).
17. Although the police are the most obvious users of section 30(1)(a), there may be other public authorities who have a duty to investigate offences which may lead to a suspect being charged.

Section 30(1)(b) power to investigate offences and conduct proceedings

30 –(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of –

- (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,

18. Section 30(1)(b) also applies to investigations but the public authority only needs to have the **power** to conduct those investigations rather than a duty. Importantly, the public authority must also have the power to institute and conduct any criminal proceedings that result from its investigation. Under section 30(5) criminal proceedings include military offences, for example proceedings before a court martial.

19. The necessary powers are usually conferred on the public authority itself. However, some powers can be conferred upon officers and officials rather than the public authorities that they represent. This will not prevent those public authorities from claiming section 30 as subsection (4) provides that, for the purposes of sections 30(1)(b), a public authority is deemed to have the necessary power to institute or conduct criminal proceedings if that power is held by the individual officers of the authority. Similarly, where the duty is vested in a minister, it is deemed to be the duty of the relevant government department.
20. Military offences aside, the exemption will typically be available to regulators that have both the power to investigate and, where appropriate, institute criminal proceedings.
21. The investigation must be one, "which in the circumstances may lead to the decision to institute criminal proceedings". It clearly covers investigations which commence with specific criminal proceedings identified even if ultimately they do not result in a prosecution. As with section 30(1)(a) there may be an initial investigation, or vetting process, to determine whether a full investigation is warranted. These initial investigations will be protected by section 30(1)(b) provided that the public authority can explain why any full investigation may, in the circumstances, lead to criminal proceedings.

Example

[In Stephen Wynn v Information Commissioner and the Serious Fraud Office \(EA/2011/0084 7 September 2012\)](#) the Serious Fraud Office (SFO) withheld information relating to the collapse of Equitable Life under a number of exemptions including section 30(1)(b). After an initial vetting procedure it decided that there was no realistic prospect of securing a conviction and the case was closed. The vetting process was part of what the SFO referred to internally as the 'pre-investigative' stage.

The appellant argued that no investigation had actually taken place and that therefore the exemption could not be claimed.

However, at paragraphs 26 and 27, the Information Tribunal found that the an investigation had been conducted,

"The Tribunal was formally informed by Mr Sanders on behalf of the SFO that within the SFO itself, terminology is employed

which draws a distinction between on the one hand, the "pre-investigative" stage or "vetting" stage of its inquiries and, on the other hand, the "investigative" stage, involving the exercise of powers afforded to the SFO under the relevant provisions of the 1987 Act,...

However, in the Tribunal's clear judgement, the fact that the SFO may use such labels does not in any way conceal the reality that there was, in the case of Equitable Life, an investigation falling squarely within section 30(1)."

22. It also captures investigations where although a criminal offence is suspected from the outset, the matter can be dealt with in a number of ways, for example a regulator could impose civil sanctions rather than resorting to criminal procedures.
23. Finally, section 30(1)(b) can protect an investigation where no criminal proceedings were envisaged from the outset but, by the time of the request, circumstances have arisen which mean that the public authority may decide to institute them.
24. Where circumstances change and a public authority decides that no criminal proceedings may be instigated, information predating that decision will be covered by section 30(1)(b) but material created after it will not.

Section 30(1)(c) – criminal proceedings that the authority has the power to conduct

30 –(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of –
(c) any criminal proceedings which the authority has the power to conduct.

25. There is no investigatory element to section 30(1)(c). Typically it will be applied by public authorities that lack the investigative function but do have the power to conduct criminal proceedings, such as the Crown Prosecution Service (CPS).
26. Again, under subsection (4), the power to conduct criminal proceedings can be vested in the individual officers of the

authority, or, where the duty is vested in a minister, it is deemed to be the duty of the relevant government department.

27. The exemption dovetails with the exemptions provided by sections 30(1)(a) and (b) to provide protection throughout the investigative and prosecution stages of the criminal justice system. For example, 30(1)(a) will protect information held by the police for its investigation, if that investigation results in someone being charged and a file is passed to the CPS, section 30(1)(c) will protect that information and any additional information generated by the CPS. Similarly, section 30(1)(b) can protect information held as part of a regulator's investigation and section 30(1)(c) can protect the information generated following the conclusion of the investigation and the start of criminal proceedings.
28. There are differences in how criminal proceedings are pursued in Scotland and section 30(6) accommodates these differences so that subsections 30(1)(b) and (c) have the same effect in Scotland as they do elsewhere.

Section 30(2) – confidential sources

30(2) 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.

29. Confidential sources are an important means of gathering intelligence about criminals and other offenders. Section 30(2) exists to protect these sources and ensure they continue to provide information to the authorities. The exemption is qualified and the need to safeguard the supply of such information is an important factor when considering the public interest test.
30. For information to be exempt under section 30(2) it must both relate to the public authority's investigations or proceedings **and** relate to confidential sources.
31. However, it does not have to be obtained or recorded as part of a particular investigation. It only has to be obtained or recorded by the public authority for the purposes of its functions **relating** to those investigations or proceedings. For example, a police force may have its own procedures for handling confidential sources. Those confidential sources are used to assist the police in their investigations and so the procedure will relate to its duty to investigate criminal offences even though it is not held for a particular investigation.

Section 30(2)(a) – the relevant investigations and proceedings

32. The relevant investigations and proceedings are set out in section 30(2)(a). In broad terms, these include the same investigations and proceedings described in section 30(1)(a) and (b) together with investigations conducted for a range of purposes specified in section 31(2), and civil proceedings arising out of any of these investigations.

Section 30(2)(a)(i) – (ii) – criminal investigations and proceedings

33. Section 30(2)(a)(i) – (ii) describe the same investigations and criminal proceedings described in 30(1)(a) – (c).

Section 30(2)(a)(iii) – investigation introduced by section 31(2)

34. Section 30(2)(a)(iii) introduces a number of investigations that are set out in section 31(2) of FOIA. These investigations are

conducted by different public authorities for a range of regulatory functions. These are explained in detail in the guidance [Law enforcement \(section 31\)](#), but include investigations to:

- ascertain whether regulatory action is justified,
- ascertain the cause of an accident,
- protect the properties of charities.

35. A public authority must have express power to conduct these investigations since they have to be conducted either under enactment or by virtue of Her Majesty's prerogative.
36. Section 31(2) exempts information if its disclosure would prejudice these functions while section 30(2) provides a class based exemption for information relating to the use of confidential sources in investigations conducted as part of those regulatory functions.

Example

The Health and Safety Executive (H&SE) receives a request for information about an investigation it conducted into a serious breach of Health and Safety legislation at a factory following a tip off from an employee, together with the procedures it adopts in such cases. At the time of the request the investigation is still ongoing. The information captured by the request includes:

- a record of the original telephone call informing the H&SE of the alleged breaches,
- evidence collected during the investigation,
- procedures for ensuring the confidentiality of the source of such tip-offs.

The public authority is concerned that disclosing the evidence it has collected would prejudice its ongoing investigation and so exempts it under section 31.

Both the original tip-off from the employee, which is specific to the investigation, and the policy on protecting the identity of those providing such tip-offs, which has a more general

application, relate to the H&SE's function of securing the health and safety of people at work and the obtaining of information from confidential sources. Therefore, they fall within the scope of section 30(2).

Section 30(2)(a)(iv) – civil proceedings

37. Section 30(2)(a)(iv) concerns civil proceedings that result from the public authority's investigations, whether these are the investigations described by section 31(2) or section 30(1).

Section 30(2)(b)- relates to obtaining information from confidential sources

38. Confidential sources contribute information which is often vital to the investigations, proceedings and the law enforcement activities of public authorities. A confidential source is a person who provides information on the basis that they will not be identified as the source of that information.
39. Confidential sources include informants who are recruited by the authorities, often from within the criminal community, to provide intelligence on criminal activity. These informants provide information secretly and could be operational for many years or for only a short period. Clearly they would have an expectation that the authority would keep their relationship confidential.
40. Confidential sources can also include witnesses who only provided information about a particular crime on the understanding that their identity would not be revealed and have declined to give a formal statement.
41. Confidential sources are not only used to fight crime. There will also be occasions when the regulators tasked with the functions described in section 31(2), will also receive information from someone on the basis that they will remain anonymous. For example, the Health and Safety Executive may be tipped-off about health and safety breaches as in the example at paragraph 36.
42. As a rule, confidential sources will be third parties. The authority's own officers are unlikely to be considered a confidential source. The exception is likely to be police officers and others working for law enforcement bodies working

undercover. Such officers develop relationships with others, for the purpose of covertly obtaining information on criminal activity. Such officers can only operate effectively and safely if their true identities remain unknown. As such the Information Commissioner is satisfied that they are confidential sources for the purposes of section 30(2). However, this is very different to where officers are simply trying to keep suspects under surveillance without being observed themselves.

43. The exemption will not only cover the actual information obtained from confidential sources but also any procedures, including administrative processes, relating to confidential sources. For example, it would capture protocols for handling such sources, reports on their use, and records of payments made to, or appointments made with, confidential sources.

Example

In [*The Metropolitan Police v Information Commissioner \(EA/2008/0078 30 March 2009\)*](#) the police had received a request for information contained in Special Branch ledgers from the late nineteenth and early twentieth centuries. These ledgers contained, amongst other things, the names of individuals acting as police informers who provided intelligence on Irish nationalist extremists. That information clearly fell within the class based exemption provided by section 30(2).

Example

ICO Decision Notice [FS50415840](#) concluded that a request for information about the payments made to informants for the previous six years was exempt under section 30(2), subject to the public interest test.

44. Where information identifies a confidential source the information could also be withheld under section 40(2), the exemption for third party personal data, providing of course that the informant is still alive and disclosure would breach the data protection principles.

45. It should be noted that there is a difference between confidential sources and confidential information. Under section 30(2) it is the relationship between the public authority and the source that needs to be confidential. Many public authorities will receive confidential information during the course of their investigations but this does not mean that the provider of that information is a confidential source. For example, HM Revenue and Customs could receive information from a company as part of an investigation into the company's tax affairs. Although the information itself may be confidential, the company providing it could not be considered a confidential source for the purposes of section 30(2)(b).

Historical Records

46. Under section 63 of FOIA information contained in a historical record cannot be exempt under section 30(1). Originally, a historical record was one over 30 years old, or if forming part of a file, the last entry on that file must be over 30 years old. However, this has now been amended to 20 years by the Constitutional Reform and Governance Act 2010. This reduction is being phased in gradually over 10 years. In effect, from the end of 2013, the time limit is 29 years. It will reduce by another year, every year, until it reaches 20 years at the end of 2022.
47. Section 31 provides an exemption for information the disclosure of which would prejudice the prevention or detection of crime, the apprehension or prosecution of offenders or the administration of justice. This exemption can be applied to historical records. Therefore, where section 30(1) is no longer available, information relating to criminal investigations and proceedings held in a historical record could be exempt under section 31(1) if its disclosure would be prejudicial.
48. Section 63 does not limit the use of section 30(2). This shows the importance placed on protecting confidential sources.

Section 30(3) Neither confirm nor deny

49. As well as the duty to communicate information provided by section 1(1)(b) of FOIA, public authorities also need to consider the duty under section 1(1)(a) to confirm or deny whether information is held.

30(3) 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).

50. Where section 30(3) applies it is subject to the public interest test. Although the exemption may be automatically engaged where the information would be exempt under either subsection (1) or (2), it could only be maintained in the public interest if confirmation or denial would interfere with the effective conduct of the investigations or proceedings. If no harm would arise the public authority should not attempt to apply section 30(3).

The public interest test

51. The exemptions from the duties to confirm or deny and communicate information are subject to the public interest test. The exemptions can only be maintained if the public interest in doing so outweighs the public interest in disclosure. Guidance on [the public interest test](#) in general is available from the Information Commissioner's website.
52. In a democratic society it is important that offences can be effectively investigated and prosecuted. However, the public needs to have confidence in the ability of the responsible public authorities to uphold the law and the public interest will be served by disclosures which serve that purpose.

The interests protected by section 30

53. When considering the public interest in maintaining the exemptions it is necessary to be clear what they are designed to protect. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings.
54. A vital element of many investigations and proceedings is the intelligence supplied by confidential sources and it is important

that section 30 serves to protect these sources so that they are not deterred from cooperating with public authorities.

55. When considering the public interest inherent in section 30, tribunals have been guided by the White Paper, "Your Right to Know", which preceded the introduction of FOIA.

Example

In [Patrick Toms v Information Commissioner \(EA/2005/0027 19 June 2006\)](#) the Information Tribunal quoted from the White Paper when explaining the interests protected by section 30,

"[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".

56. Out of the four requirements listed in the White Paper the relevance of the first two to section 30 is clear. The practical application of the last two principles is less obvious. However, as discussed below, it is accepted that whilst investigations and prosecutions are ongoing, public authorities require a safe space in which to operate and premature disclosures could create intense media pressure which could present problems for the judicial processes. Disclosures prior to the conclusion of a court case could interfere with an individual's right to a fair trial. They could also frustrate a judge's ability to manage the judicial process. Any of these potential consequences would impact on the interests which section 30 serves to protect.
57. However, care is needed when considering arguments around preserving the court as the sole forum for determining guilt. Although trial by the media is not in the public interest it is important that the public have confidence in those public authorities tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in particular cases. The level of scrutiny that is appropriate will depend on many

factors including the harm that any disclosure could have on the effective investigation and prosecution of offences.

Circumstances influencing the balance of the public interest

58. The Information Tribunal in [Patrick Toms v Information Commissioner \(EA/2005/0027 19 June 2006\)](#) identified the interests protected by section 30, ie the effective investigation or prosecution of offences. The Information Tribunal and other tribunals also set out some of the circumstances that would influence the extent to which a disclosure would prejudice these interests.

Example

In [Alan Digby-Cameron v the Information Commissioner and Bedfordshire Police and Hertfordshire Police \(EA/2008/0023 and 0025 26 January 2009\)](#) summed up the factors as follows,

“in assessing where the public interest balance lies in section 30(1) case relevant matters are therefore likely to include (a) the stage a particular investigation or prosecution has reached, (b) whether and to what extent the information is already in the public domain, (c) the significance or sensitivity of the information requested and (d) whether there is any evidence that an investigation or prosecution has not been carried out properly which may be disclosed by the information.”

Stage of the investigation or prosecution

59. The stage an investigation or prosecution has reached will have a bearing on the extent of any harm caused by the disclosure. For example, at an early stage in an investigation the police may be carrying out covert surveillance before making an arrest. A disclosure of information that would alert a suspect to a surveillance operation would clearly prejudice the investigation.
60. Those investigating an offence need private thinking space if they are going to fully explore all aspects of a case without fear that their half formed opinions will be reported in the press or enter the public domain. Such concerns would hinder the efficient running of an investigation if disclosed. This does not

mean that officers conducting an investigation would not expect that they may ultimately be required to give evidence in court. However, the evidence they present in such proceedings represents their fully considered conclusions.

61. As a general rule there will always be a strong public interest in maintaining the section 30 exemption whilst an investigation is ongoing.
62. Where a criminal offence is unsolved there is always the possibility that the investigation could be reopened. This may be as a result of new witnesses coming forward or advances in forensic techniques. Where there is a real possibility that a case could be reopened there will still be a public interest in not prejudicing any future investigations into the matter. Therefore, the age of the information is relevant, though not critical, to the application of the public interest test.

Example

In ICO Decision Notice [FS50373733](#) the Information Commissioner agreed with the Police Service Northern Ireland that the public interest favoured maintaining section 30(1) in respect of information from the investigation of a double murder dating back 35 years. At the time of the request the case was being reviewed by the police's Historical Investigation Team.

63. Once a case has been closed because there is no evidence that an offence has been committed, there is no longer any realistic prospect of solving the case, or any proceedings have concluded, the public interest in maintaining the exemption may wane. However, this will depend on the actual information in question. Revealing the identity of confidential sources, even in relation to investigations from many years ago, could still deter people from providing information in the future.

Example

In [The Metropolitan Police v the Information Commissioner \(EA/2008/0078 30 March 2009\)](#), a case concerning Special Branch ledgers from the late nineteenth and early twentieth centuries containing the identities of informants who provided information on Irish nationalists, the Information Tribunal accepted that disclosing names from the ledgers would still have the effect of deterring confidential sources. It found that

the public interest favoured maintaining the section 30(2) exemption.

The Metropolitan Police Service (MPS) provided compelling evidence of the, *“overwhelming importance of the longstanding policy adopted by the MPS that informants can be assured that their names and identities will not be disclosed even after they die”*.

The police stressed the importance of ensuring the continued supply of information from confidential sources at a time when there is a serious terrorist threat.

64. The need to provide long term protection for confidential sources is reflected in the fact the application of section 30(2) is not limited in the same way as section 30(1) under the provisions relating to historical records.

Confidential sources

65. As illustrated in the previous example there is a significant public interest in protecting the supply of information from confidential sources. Informants will not provide information where they fear being identified as the source and suffering retribution as a consequence. The form of retribution feared will depend on the circumstances; the most obvious example being the fear of physical assault where a confidential source has provided information about a criminal. Where an individual has tipped off a law enforcement agency about the activities of their employer, or within a particular profession, they may be fearful over their job and future employability.

Information in the public domain

66. The fact that the requested information is in the public domain, ie realistically accessible to the general public, can add weight to both sides of the public interest balancing test. The existence of information in the public domain may well reduce the importance of releasing the same or similar information in response to a request. However, where the same or similar information is already known, it is more difficult to argue that there could be any great harm in releasing the disputed information.
67. It is important to consider whether the actual information in the public domain is the same as that which has been

requested. The source of the publicly available information is an important factor. There is clearly a qualitative difference between information in a speculative news report and an official confirmation of events.

68. Where information originally entered the public domain it will not necessarily remain there indefinitely. This is a particular consideration in respect of information that has been revealed in open court during criminal proceedings.

Example

In [*Armstrong v Information Commissioner and Her Majesty's Revenue and Customs \(EA/2008/0026, 14 October 2008\)*](#) the Information Tribunal considered a request for material relating to the trial of Abu Bakr Siddiqui in 2001 for contravening export controls. The request was made in 2005. The Information Tribunal considered that,

"... even if the disputed information had entered the public domain by virtue of having been referred to during the Siddiqui trial in 2001, it does not necessarily follow that it remains in the public domain. We agree with the observation of the Commissioner in the Decision Notice that knowledge obtained in the course of criminal trials is likely to be restricted to a limited number of people and such knowledge is relatively short-lived".

69. Where the information heard in open court was reported by the press and is still available through a newspaper's website, the information will remain in the public domain for longer.
70. For further information on how to determine whether information is in the public domain and what, if any, impact this has on the public interest test please see our guidance on [information in the public domain](#).

Significance of the information

71. The significance of the information relates to both the subject of the investigation or set of proceedings and what the information reveals about the probity or integrity of the criminal justice system.

Example

In [Guardian Newspapers Limited v Information Commissioner and the Chief Constable of Avon and Somerset Police \(EA/2006/0017 5 March 2007\)](#) the newspaper had made a request for information relating to the investigation that led to the trial of Jeremy Thorpe for incitement to murder. When weighing the public interest in maintaining section 30(1) the Information Tribunal took account of whether the information would shed light on whether the investigation had been properly conducted. In concluding that the public interest favoured withholding the information, it stated,

"we are satisfied ... that there is no hint whatever of an investigation which lacked vigour, thoroughness or independence. If there was a suspicion in some quarters that the police had "pulled their punches" because of the eminence of one of the suspects, the reports suggest nothing of the sort."

Had the information revealed some faults with the investigation this would have increased the weight of the public interest in disclosure.

Jeremy Thorpe was acquitted of the charges against him and the Information Tribunal noted that,

"... there will always be a public interest in revisiting a possibly unjustified conviction. Save in the most exceptional case, there will be no comparable public interest in re-examining acquittals."

Independent evidence

72. Where it has been alleged that an investigation or prosecution was flawed account should be taken of any independent evidence which either supports or counters that allegation.

Example

In [Keely v Information Commissioner \(EA/2007/0113, 19 May 2008\)](#) the appellant had requested information relating to an investigation by the Department of Business, Enterprise and Regulatory Reform (DBERR) for information about its investigation into a publicly listed company. Following an initial review of the case the public authority decided not to take the

matter any further. Mr Keely believed this decision amounted to maladministration and complained to the Parliamentary Ombudsman. He also made a request to DBERR for information relating its investigation.

When weighing the public interest the tribunal took account of the Ombudsman's findings that DBERR had followed the appropriate procedures. In the circumstances it rejected the argument that the public interest favoured disclosure because the information would reveal flaws in the investigation.

Non-relevant factors

73. Disclosing information relating to some investigations and prosecutions could be distressing for those involved, for example the victims, their families or suspects who were ultimately not charged or were acquitted at court. In the Guardian Newspaper case concerning information about the investigation into Jeremy Thorpe, the Information Tribunal found that these were not relevant to the public interest in maintaining section 30. They are not matters that impact on the effective investigation and prosecution of offences.
74. Therefore, a public authority that wishes to prevent harm of this nature will have to consider other exemptions that may apply. Section 38, which relates to disclosures which would endanger the mental health of individuals, may seem the most appropriate. However, not all distress will result in the endangerment of mental health, as explained in the Information Commissioner's guidance on this exemption. Nevertheless where the consequences of disclosure would be serious, section 38 may be engaged.

Other considerations

Sections 30 and 31

75. Sections 30 and 31 are closely related. Together they protect the work of law enforcement agencies.
76. As discussed, section 30 protects investigations with a view to ascertaining whether someone should be charged with an offence or whether those charged are guilty of it. It also protects investigations that, in the circumstances, may lead to

a decision to institute criminal proceedings as well as any confidential sources used in such activities. It can only be claimed by public authorities that have particular powers and duties.

77. The exemption from the duty to communicate information provided by section 31 cannot be applied to information that is exempt under section 30; they are mutually exclusive. However, the two exemptions do complement one another in a number of ways, for example the police could use section 30 to protect information obtained from a public authority whilst investigating a crime on its premises. Section 31 could be used to protect the same or similar information held by the public authority if its disclosure by the public authority would prejudice the police's investigation.
78. Section 30 would protect forensic evidence gathered during a police investigation and section 31 could protect information detailing the procedures for collecting that forensic evidence if disclosing it would prejudice the detection of crime.
79. Section 31 protects a range of investigations which are not covered by section 30, but any information relating to the use of confidential sources in those investigations is protected by section 30(2).
80. Unlike the exemptions from the duty to communicate information, the exemptions from the duty to confirm or deny in sections 30 and 31 are not mutually exclusive.
81. Detailed guidance on section 31 is available in [Law enforcement \(section 31\)](#).

Other considerations

82. There are a number of other exemptions that may apply to information that falls within the section 30 exemptions. Where the request relates to an investigation into the actions of an individual, or proceedings against an individual, section 40(2) is likely to be relevant. Similarly, section 40(2) could apply where the requested information would identify confidential sources.
83. Where information has been provided in confidence by a third party the information may be exempt under section 41. In some cases there are statutory prohibitions which prevent the disclosure of information obtained in course of the investigations of some public authorities. Where this is the case section 44 would apply.

84. Depending on the nature of the offence being investigated, or prosecuted, the exemptions relating to the work of the security bodies – section 23, and national security – section 24, could be relevant.
85. This guidance relates only to FOIA. If the information is environmental, public authorities will instead need to consider exceptions under the EIR. Of particular relevance will be the EIR guidance on:
- the course of justice and inquiries exception (regulation 12(5)(b)), and
 - the interests of the person who provided the information exception (regulation 12(5)(f)).
86. Additional guidance is available on [our guidance pages](#) if you need further information on the public interest test, other FOIA exemptions, or EIR exceptions.

More information

87. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.
88. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
89. If you need any more information about this or any other aspect of freedom of information, please [contact us](#): see our website www.ico.org.uk.