



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Freedom of Information Act 2000 Awareness Guidance Number 16

Investigations (Section 30)

The ICO has produced this guidance as part of a series of awareness guidance designed to help understand and apply the Freedom of Information Act 2000 (FOIA).

We will develop the guidance over time as we determine applications under the FOIA and the courts make decisions.

It is not a comprehensive statement of the exemption and does not constitute legal advice.

The aim of this guidance is to help the staff of public bodies involved in investigations, and members of the public seeking information which may be contained in those records.

This guidance covers information contained in records produced for the purposes of investigations or proceedings carried out by public authorities.

A What does the Act say?

General

Section 30 creates an exemption for information:

- which is or has been held for the purposes of a criminal investigation;
- which is or has been held for criminal proceedings conducted by a public authority; or
- which was obtained or recorded for various investigative functions from confidential sources and relates to those confidential sources.

Criminal investigations and proceedings include matters dealt with in the Armed Forces either summarily or before court martial.

The first part of the exemption covers particular criminal investigations and proceedings conducted by public authorities. The second part provides protection to information about confidential sources for a wider range of investigative responsibilities.

In some cases it will be impossible to draw a clear line between the information covered by the two parts of the exemption. For instance, information provided by a confidential source, which identifies that source, may be held for the purposes of an ongoing investigation and so be covered by the first and second parts of the exemption. In practice, trying to draw clear lines is unlikely to help public authorities apply the exemption

Type of exemption

Section 30 is a class based exemption. This means it is not necessary to identify some harm or prejudice that may arise as a result of disclosure.

However, it is a qualified exemption. This means that even though information may be exempt, the public authority must consider whether it is in the public interest to disclose it. The public interest test is considered in section D below.

Relationship with section 31 (Law enforcement)

There are areas of overlap between sections 30 and 31. Section 30 provides an exemption in relation to particular criminal investigations and proceedings brought by public authorities (as well as some information received in confidence). Section 31 provides an exemption for general steps taken in relation to law enforcement.

Section 31 makes clear that, in cases where section 30 applies, section 31 cannot be used. In areas such as policing or investigations carried out by, for example, local authority trading standards or environmental health departments, section 30 covers particular investigations, whereas section 31 covers investigative procedures. The law enforcement exemption is also much wider and includes crime prevention, taxation and other regulatory matters.

The duty to confirm or deny

The right to know places two related duties on public authorities:

- the duty to confirm or deny that the information requested is held; and
- if the information is held, to communicate that information to the person requesting it (the applicant).

Both duties must be considered separately, although if the public authority concludes that there is an exemption from the duty to confirm or deny holding the information, there will be no obligation to provide it.

The success of many investigations depends on making sure that information about them is not disclosed prematurely. It is likely that public authorities will want to respond to a number of requests for information by giving a non-committal response. It may also be necessary to provide such a response to protect the identity of some informants.

It is not acceptable to provide no response. Section 17 of the FOIA requires public authorities to explain their reasons for refusing a request for information. As a matter of good practice, we strongly recommend that those authorities who are likely to want to neither confirm nor deny that they hold the information requested, consider preparing a statement of policies about disclosure which they can then provide to applicants without the risk of implying comment on particular requests.

For further information on the duty to confirm or deny please refer to Awareness Guidance 21.

B What information is covered?

The information described in this section is exempt only where the public authority is under a duty to carry out investigations or has a power to conduct proceedings as described below. Unless this duty or power exists, this exemption cannot be applied.

The exemption is divided into two parts.

Particular investigations or prosecutions

The first part covers information which has at any time been held by a public authority for any of the following purposes.

- Investigations into whether a person should be charged with an offence.
- Investigations into whether a person charged with an offence is guilty of it.
- Investigations which may lead the authority to initiate criminal proceedings.
- Criminal proceedings.

The phrase **at any time** means that information is exempt if it relates to an ongoing, closed or abandoned investigation.

This part of the exemption does not apply to information which is thirty years old or more, when it is classed as a historical record.

Information obtained by investigating bodies from and about confidential sources

The second part of the exemption is concerned with information held in relation to more general investigatory functions, which the authority has received from confidential sources and which relates to those sources. The functions in question are as follows.

- The investigations and criminal proceedings referred to earlier.
- Other investigations:
 - into whether a person has failed to comply with the law;
 - into whether a person is responsible for any improper conduct;
 - into whether there are or may be circumstances which would justify regulatory action under any legislation;
 - into a person's fitness or competence to manage a corporate body or to continue in any profession or other activity which they are, or would like to become, authorised to carry on;
 - into the cause of an accident;
 - protecting charities against misconduct or mismanagement in their administration;
 - protecting the property of charities from loss or misapplication;
 - recovering the property of charities;
 - securing the health, safety and welfare of people at work; and
 - protecting people against risks to their health or safety from the actions of people at work.
- Civil proceedings brought by or on behalf of a public authority arising from any investigation referred to above. This specifically refers to matters that the authority has a power to investigate or prosecute and would cover, for example, investigations and proceedings for antisocial behaviour orders, enforcement of child protection legislation, and orders to forfeit the proceeds of crime.

If information held by a public authority is for the purposes of any of these functions **and it has been obtained from a confidential source**, any information relating to

the informant is covered by this exemption. The exemption will not always apply to the information supplied by the informant, but it will do if it relates in any way to the source of the information. Information exempted under this part of the section might include, for instance, criminal intelligence gathered from confidential sources which may help the development of investigations that have not yet been launched and identifies either directly or indirectly the source of the information. Confidential sources may include witnesses and police informers. An important consequence of this provision is to give protection to the identities of confidential sources so that they are not discouraged from approaching investigative bodies and informing upon criminal or improper acts or otherwise helping with that process.

'Confidential' in this section has a wider meaning than in other parts of the FOIA and is not limited to circumstances where a breach of the confidence could result in civil action.

C Who is likely to use the exemption?

Some public authorities have the duty or power to investigate complaints, some to bring prosecutions. Some combine both roles. It is not possible to provide a definitive list. However, they will include:

- the Police;
- the Environment Agency;
- local authorities (for example, trading standards, environmental health);
- the Crown Prosecution Service;
- the Serious Fraud Office;
- the General Medical Council;
- the Department of Trade and Industry;
- the Health and Safety Executive.

Public authorities relying on the exemption will have to be able to explain the legal basis of any investigations or prosecutions which they carry out.

Information held by investigating officers

In the area of law enforcement and investigation some powers are conferred upon officers and officials rather than the organisations to which they belong. For the purposes of this exemption, the information held by individual investigating officers is held by the public authorities they belong to.

D The public interest test

Section 30 is a qualified exemption. This means that even if the information requested is exempt, the public authority must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing it.

For this exemption, it will involve weighing the harm that may be caused to an investigation against the wider public interest in disclosure.

A critical issue is likely to be the timing of disclosure. The public interest in the disclosure of information is likely to be weaker while an investigation is being carried out. However, once an investigation is completed, the public interest in understanding why an investigation reached a particular conclusion, or in seeing that the investigation had been properly carried out, could well outweigh the public interest in maintaining the exemption.

Similarly, the public interest is likely to outweigh the disclosure of most information about investigations which, having been suspended, may be reopened.

There tends to be considerable public interest in criminal cases and in seeing that justice is done. There will be occasions when this factor favours disclosure, for instance where there is a well reported suspicion that justice was not done either to an accused person or a victim. In some cases, this may shift the balance of public interest in favour of the disclosure of information about completed cases or those which have been abandoned with no reasonable prospect of being reopened. However, there will be other cases where disclosure should not take place because it could prejudice the right to a fair trial.

Public authorities should not assume that they should not release all information relating to ongoing investigations. Much will depend on the effect of disclosure. There will be a stronger case for maintaining the exemption where the confidentiality of the information is critical to the success of the investigation. In cases where a prosecution has collapsed for reasons of procedural failure or mismanagement on the part of the investigating or prosecuting authority, there will be a stronger public interest argument in favour of the disclosure of information about this and other, similar investigations.

Applying the public interest test in relation to this exemption is likely to involve a number of considerations including human rights issues and an assessment of the impact of disclosure on the success of an investigation or potential prosecution. We strongly advise public authorities to put procedures in place for identifying the difficult cases and for taking appropriate legal advice.

For further information on the public interest test please refer to Awareness Guidance 3 on our website.

Examples	
I am a solicitor in a local authority and recently prosecuted a defendant who pleaded guilty to food hygiene offences after receiving an outline of the prosecution case. A solicitor for an interested third party has now requested copies of all the witness statements on the prosecution file. Can we refuse the request under section 30?	These statements will fall within the exemption under section 30 (2)(a)(ii) as information held for the purposes of the local authority's functions relating to criminal proceedings which the authority has power to conduct. You will need to apply the public interest test and also to consider data protection issues in deciding whether to release the information.
We are a local authority gathering evidence before deciding whether to bring antisocial behaviour proceedings against two individuals living in Anytown. Some of this evidence has been provided by neighbours who have indicated that they do not want to be identified in any circumstances; some is from witnesses who are content to be called to court. We have received a request from a local reporter for any information held about antisocial behaviour complaints in Anytown. Is this evidence covered by section 30?	The evidence from neighbours falls within section 30 as it can be described as from confidential sources in relation to investigations into whether someone has broken the law. If releasing any part of it would tend to identify the source it is exempt. The other evidence is not covered by section 30 as it does not relate to investigations into criminal offences. For this evidence, you will need to look at section 31. You also need to consider data protection issues and the public interest test.

More information

You can get this and other guidance on exemptions from our website or in hard copy form. Advice is also available on the website of the Department for Constitutional Affairs (www.dca.gov.uk).

If you need any more information about this or any other aspect of freedom of information, environmental information or data protection, please contact us.

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