



Ministry of
JUSTICE

Freedom of information guidance

Exemptions guidance

Section 30: Investigations and
proceedings conducted by public
authorities

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Introduction

Section 30 is concerned primarily with preserving the integrity of certain proceedings and investigations conducted by public authorities.

There are two ways in which the application of section 30 may be triggered:

- where information has at any time been held for the purpose of specified criminal and other investigations or proceedings
- where information relates to the obtaining of information from confidential sources and was obtained or recorded for specified investigations or proceedings.

Section 30 can only be relied on by an authority which itself exercises one of the investigation or litigation functions that are specified in the exemption.

There is an extremely close link between the sections 30 (investigations and proceedings conducted by public authorities) and 31 (law enforcement) exemptions. The two cannot apply to the same information and it is important that the correct exemption is applied. Generally you should consider section 30 first.

Section 30 is a qualified exemption and is therefore subject to the public interest test.

Section 30(1) does not apply to historical information, which is information over 30 years old. The section 30(2) exemption is unlimited. Section 31 (law enforcement) can apply to information for 100 years (see section 63).

Structure of the exemption

The exemption focuses on the purposes for which information was obtained, recorded or held and only in certain cases is it necessary to consider what the information relates to. These purposes and cases are considered further below; they are concerned primarily with investigations and proceedings which public authorities have legal powers or duties to conduct.

An important difference should be noted between the structure of the two key parts of this exemption:

- Section 30(1) applies to information which 'has at any time been held' for the purposes to which it refers. This is a very important feature of this exemption. If information has ever been held for these purposes, it will fall within the terms of the exemption, even if it has ceased to be held for those purposes, and regardless either of the purposes for which it might have been obtained, or of any other purposes for which it might at any time have been held.
- Section 30(2) applies to information which 'was obtained or recorded' for the purposes to which it refers and 'relates to' the obtaining of information from confidential sources. This is a different sort of test, which focuses on the acquisition of the information by the authority and also on the content of the information. Information will have been 'obtained' if it was acquired from a source outside the authority, and 'recorded' if it was generated by the authority itself.

In both cases, the test looks at the purposes of the information in the hands of the authority to which the request is made. It can be relied on only by an authority which itself exercises one of the investigatory or litigation functions described in the exemption.

There is a clear potential for overlap between the two parts of this exemption. Both will apply in the case of information which has at any time been held for the relevant investigation and prosecution functions in section 30(1), and which was acquired for the purposes of the functions set out in section 30(2), and which relates to the obtaining of information from confidential sources.

In practice, however, it will usually be more straightforward to rely on section 30(1) in cases of overlap – but in considering the balance of the public interest for and against disclosure, clearly all the relevant considerations applicable should be considered.

What information may be covered by this exemption?

The sub-sections of the exemption give detailed provisions for the type of information it covers and they are considered in more detail below.

The purposes to which section 30(1) relates all concern the conduct, by the authority in question, of criminal, and certain other statutory investigations and criminal proceedings.

Section 30(1)(a) - investigations which the authority has a duty to conduct

The investigation must be one conducted 'with a view to' charge or prosecution. This suggests a specific link between the investigation and the 'criminal' outcome. This part of the exemption is relevant where an investigation is designed primarily to decide whether or not there should be a charge or prosecution.

Section 30(1)(a) covers information that is held for the purpose of a criminal investigation conducted either with a view to its being ascertained whether a person should be charged with a criminal offence or, if a person has already been charged, whether they are guilty of it. The public authority that performs the investigation need not also lay the criminal charges.

This part of the exemption refers to a formal criminal procedure; the process of prosecution, following charge, before a court or tribunal competent to make a determination of criminal guilt. Where criminal procedure may be one of a number of possible courses of action taken by the authority, section 30(1)(b) is likely to be more relevant.

The limitation in the first place to investigations which the authority itself has a legal duty to conduct is an important one. The source of the legal duty will very usually (although not necessarily) be found in primary legislation.

There is no specific requirement for the charge/prosecution to which the investigation is directed to be one which the authority itself may bring.

Section 30(1)(a) clearly applies to criminal investigations conducted by the authorities which are primarily constituted for criminal law enforcement functions, for example:

- police authorities and forces
- the National Crime Squad
- the Serious Fraud Office

It may also be applicable to criminal investigations conducted by, for example:

- HM Revenue and Customs
- Department for Business, Enterprise, and Regulatory Reform
- Department for Environment, Food and Rural Affairs

- Food Standards Agency
- Environment Agency
- Health and Safety Executive
- Financial Services Authority
- Office of Fair Trading

– in circumstances in which the investigation is specifically directed towards a charging or prosecution decision.

Section 30(1)(b) - investigations which may lead to criminal proceedings by the authority

The investigation need not be one which an authority has a duty to conduct. Nor need it be an investigation focused solely on the question of whether or not to charge or prosecute. It is enough that it is an investigation which:

- an authority has the power to conduct, and
- may – in the case in question – lead to a decision that the authority will bring criminal proceedings

This provision therefore does not necessarily require that the only, or even the main or dominant, purpose of the investigation should be prospective criminal proceedings. That is a particularly important consideration for public authorities with regulatory functions or investigatory functions (such as, for example, the Health and Safety Executive, the Food Standards Agency, the Environment Agency, DEFRA or BERR) who may conduct investigations with a view to ascertaining whether a person should be charged with a criminal offence or alternatively be dealt with under regulatory powers in different ways – such as, for example:

- penalties or sanctions which may be imposed without criminal procedure
- disqualification (for example, disqualification from acting as a director of a company)
- loss of licence

Alternatively, the public authority may conduct statutory investigations and then forward the results to prosecutors for a decision on whether to institute criminal proceedings. This may be in addition to, or instead of, the information being used to launch, for example, disqualification proceedings.

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

This part of section 30(1) focuses not on investigations but on criminal court proceedings themselves. It applies to information held for the purposes of criminal prosecutions which the authority itself has the power to conduct as a prosecuting authority.

Again, this will apply to criminal proceedings conducted by those authorities primarily constituted to do so, such as the Crown Prosecution Service, but also to criminal proceedings conducted by any public authority with prosecution functions.

Section 30(2) – confidential sources

As indicated above, section 30(2) concerns information with two sets of components. The first set relates to the purposes for which it was acquired, and these are considered below. But it is the second set which essentially characterises section 30(2) – the information must relate to 'the obtaining of information from confidential sources'.

Information may 'relate to' the obtaining of information from confidential sources in many ways. It may identify those sources, describe the process of obtaining the information, or indeed itself constitute information obtained from confidential sources.

'Confidential sources' include providers of information operating in a context which is to some degree necessarily covert; they are also characterised by a relationship of confidence, or protection, with the authority (or indeed other body or individual) to which they provide the information.

The obtaining of information from confidential sources should be regarded as essentially limited to arrangements for acquiring information from third parties who have an expectation of confidentiality from the authority to which they give the information.

The exemption is unlikely to include agents or officers of the authority itself working under cover or information gathered by means of covert technology. Information about this sort of information-gathering would only be covered where it relates to confidential, as opposed to covert, sources

However, the information in question need not itself be confidential; it is the relationship with the source which must be confidential.

Other exemptions, such as sections 40 (personal information) and 41 (information provided in confidence), are likely to be relevant if the information was obtained from a living, identifiable and confidential source. Both sections 40 and 41 need to be considered, because disclosure of information to which either of those sections applies is capable of exposing authorities to legal proceedings.

Section 30(2) is therefore most likely to be relevant to information which does not identify individuals, or the individuals are deceased and the disclosure of the information would not be an actionable breach of confidence (for example it might not be actionable because it was obtained by one government department from another). Examples might include:

- a diary which recorded appointments to meet an unnamed informer
- details of any surveillance and investigative techniques associated with the management of external confidential sources
- an indication that certain information had been obtained from an unnamed confidential source.

The section 30(2) purpose – functions of the authority in relation to certain investigations and proceedings

Section 30(2) is limited by the fact that the information must have been acquired for the purposes of the functions of the authority in one of four specific areas, listed on the following page.

The functions of an authority may be its duties or simply its powers. It is important to note that the information must have been acquired for the purposes of the authority's own functions, relating to the four areas of activity.

This rather complicated interrelationship requires the following questions to be addressed:

- Why did the authority acquire the information? – it must have been for one of its own functions.
- Which of its functions did the authority acquire the information for? – it must be a function relating to one of its own investigations or proceedings in the four specific areas.

The information may have been acquired for the purposes of an authority's functions relating to a relevant activity in a range of ways. It may relate directly to that activity – for example, it may relate to a specific investigation or prosecution. Or it may relate to the administration of that activity – for example it may be about how its investigations or prosecutions generally are carried out. Or it may relate to the policies underlying the exercise of its functions.

The four relevant areas of activity are as follows:

1. Criminal and certain other statutory investigations by the authority. These are identical to the investigations which are considered in relation to section 30(1)(a) and (b) above.
2. Criminal proceedings which the authority has power to conduct. Again, this covers the same ground as is considered in relation to section 30(1)(c) above.
3. Certain (non-criminal) investigations by the authority which do not fall within section 30(1)(a) or (b).
4. Civil proceedings brought by the authority arising out of certain of its investigations.

The third area of activity, section 30(2)(a)(iii), has three components:

- it relates to investigations
- they must be either statutory investigations or investigations carried out under prerogative powers
- they must be carried out by the authority for one of the 'section 31(2)' purposes

Investigations which remain capable of falling within the terms of section 30(2)(a)(iii) include, for example, investigations which are conducted by the authority and which may lead to a decision to institute criminal proceedings by someone other than the authority (for example the Crown Prosecution Service). The main effect of this provision is, however, likely to be felt in relation to investigations which have in view outcomes other than formal criminal process.

The investigations must be either statutory or carried out under prerogative powers. There are very many investigations carried out by departments, either under the terms of an Act of Parliament or by virtue of Regulations or other secondary legislation made in the exercise of powers contained in an Act, which are capable of falling within the terms of this provision. Examples might include inquiries under section 14 of the Health and Safety at Work etc. Act 1974 and investigations under section 169 of the Financial Services and Markets Act 2000 (investigations etc. in support of overseas regulator). All investigations carried out by statutory bodies are likely to be statutory investigations. Investigations which are not statutory, but which are carried out by central government departments, are very likely to be carried out under prerogative powers.

The key feature of the investigatory activity described in 30(2)(a)(iii) is its limitation to the 'section 31(2) purposes'. These cover a range of law enforcement and regulatory purposes, both general:

- ascertaining whether any person has failed to comply with the law
- ascertaining whether any person is responsible for improper conduct
- ascertaining whether statutory regulatory action might be appropriate
- ascertaining a person's fitness and competence in relation to certain regulated activities

and specific to:

- accident investigation
- the protection of charities and
- health and safety at work

These purposes are considered in greater detail in the guidance section 31(law enforcement), and reference to that material is essential if you are considering reliance on this part of section 30.

The fourth area of activity described in section 30(2) relates to 'civil proceedings'. Civil proceedings are not specifically defined in the Act. The expression includes legal action (other than criminal proceedings) before a court or tribunal. It is possible that in some circumstances a wider meaning may be indicated, to include, for example, some forms of regulatory enforcement measures, but much will depend on the circumstances and on the terms of any regulatory regime involved. The proceedings must be brought either by the authority itself, or by another body on behalf of the authority.

It should be noted that the civil proceedings must arise out of 'such investigations'. The investigations in question include the investigations mentioned at both section 30(2)(a)(i) and (iii). If investigations conducted by the authority may lead to a decision by the authority to conduct criminal proceedings, but are also capable of leading to a decision to conduct civil proceedings, then information acquired by the authority for the purposes of its functions relating to any such civil proceedings are likely to fall within the terms of this exemption.

Relationship with section 31

This exemption is very closely related to the exemption in section 31 (law enforcement). Section 31 relates to certain disclosures which would or would be likely to prejudice a wide range of law enforcement functions.

The two exemptions have very different structures; section 30 refers to the purposes for which an authority has information and section 31 refers to the prejudice a disclosure would be likely to cause.

A key point to note is that sections 30 and 31 are expressed to be mutually exclusive; section 31 applies only in cases which do not fall within section 30. However, both exemptions can be applied to separate pieces of information within a file. For example, a crime file held for the purposes of an investigation may contain a policy or procedural note unrelated to the investigation to which section 31 would apply if its release would prejudice law enforcement. You can also argue them in the alternative, where you think that section 31 would apply to the extent that section 30 does not.

One of the most important reasons why a request for information may fall to be considered under section 31 rather than section 30 is precisely, as indicated above, because of section 30's limitations to information held by an authority for its own law enforcement purposes. Section 31, by contrast, will be relevant in cases in which authorities hold information relevant to the law enforcement purposes of other bodies.

As a general guideline, section 30 should be considered first in respect of any information acquired in the course of relevant investigations and proceedings (from their earliest stages).

Public interest test

The public interest both for and against the disclosure of information falling within the terms of section 30 needs to be considered on a case-by-case basis. In balancing public interest considerations you will need to consider the potential effects of disclosure of the specific information requested and the nature and seriousness of the matter being pursued.

At the heart of this exemption lies the importance of public confidence in the investigations and litigation to which it refers. These all relate to processes which are either part of law enforcement, or relate to the obtaining of information from confidential sources for the purposes of other forms of law enforcement.

Confidence in the investigations and litigation can be increased through greater transparency of their processes. This may be particularly true in cases where justice was not seen to be done, or where there was procedural failure or mismanagement as there would be a public interest in holding the public authority accountable.

However, the Tribunal has consistently recognised that there is an important public interest in public confidence in the relevant investigation processes (both criminal and non-criminal), the prevention and detection of crime and the apprehension or prosecution of offenders and the integrity and effectiveness of the criminal justice system as a whole. Crucial to this is confidence in being able to provide information to the police, HM Revenue and Customs and to other public authorities by individuals and organisations in confidence.

Particularly in relation to confidential sources, any disclosure of information may have extremely serious consequences in terms of the general willingness of individuals to supply information, and individual cases may involve serious risk of injury or loss of life. This principle has been recognised by the Tribunal. In the *Atlantic* decision, the Tribunal stated that 'in relation to such procedures and possible proceedings, the maintaining of confidential sources must be respected.' It also stated that it was 'fully conscious of the need to ensure that complainants might never otherwise come forward were the disclosure of identities at risk.'¹ In *Alcock*, the Tribunal held that 'the disclosure by Staffordshire Police of information provided to them on a confidential basis would be likely to deter others from providing information to them. This would be likely seriously to hinder police

¹ *Dept. of Trade and Industry v. The Information Commissioner* (EA/2006/0007) (10 November 2006), paras. 57 and 61 respectively.

efforts in the prevention and detection of crime'.² And in *Avon and Somerset*, the Tribunal agreed that there is 'an interest in principle, recognised by the exemption applying to section 30(1), in protecting information acquired, often in confidence, in police investigations.'³

The timing of disclosure may have an effect on the public interest. Once an investigation has reached a conclusion there may be greater public interest in understanding how it was reached than while it is in progress. The passage of time since an investigation may also have an impact on the public interest as the sensitivity may diminish over time however the public interest in disclosure can also diminish over time as there may be little or no interest in the subject matter. The Tribunal in that case found that '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.'⁴

The factors to be taken into account in considering the balance of the public interest will depend upon the circumstances of the particular case. In determining whether the public interest in withholding the information outweighs the public interest in disclosing the information, one or more of the following factors may be of assistance, namely, the extent to which either disclosing or withholding information would:

- promote or diminish the chances of a successful prosecution, bringing future charges, or making arrests
- promote or diminish the chances of a fair trial taking place
- be fair, in cases where decisions have been taken not to proceed, to those who have not been prosecuted
- assist or hamper the gathering of intelligence information from confidential sources (for instance, informants/whistleblowers/calls to Crimestoppers)
- further the interests of justice in the participation of victims, witnesses, informants, suspects or offenders in investigations and proceedings – and either protect or endanger them as they do so
- assist or impede other ongoing or future proceedings

² *Mr E Alcock v. The Information Commissioner and Chief Constable for Staffordshire* (EA/2006/0022) (3 January 2007), at paragraph 42.

³ *Guardian Newspapers v The Information Commissioner and the Chief Constable of Avon and Somerset Police* (EA/2006/0017) (5 April 2007), para. 36.

⁴ *Guardian Newspapers v The Information Commissioner and the Chief Constable of Avon and Somerset Police* (EA/2006/0017) (5 April 2007), para. 36.

- prevent or facilitate the commission of crime

This is not an exhaustive list and in some cases none of these factors may be relevant.

It may be necessary to consult with other public bodies to determine whether or not the information should be released and the balance of the public interest in any individual case.

Neither confirm nor deny

It will usually be necessary to neither confirm nor deny when the existence of an investigation is not in the public domain as the success of an investigation can often depend on ensuring that information is not disclosed prematurely. It may also result in the disclosure of sensitive and personal information.

Duration of the exemption

Under section 63(1) information contained in a historical record, that is information in a document or file over 30 years old, cannot be exempt under section 30(1).

The section 30(2) exemption is unlimited. The exemption in section 31 (law enforcement) lasts for 100 years. Apart from the section 63 requirements, the passage of time may be a significant factor in considering disclosure. However it is also important to consider the sensitivity relating to particular cases and the possibility of future appeals and proceedings which may take place many years after the event.

Relationship with other exemptions

The relationship between sections 30 and 31 is considered in more detail above. If law enforcement information does not fall within the terms of section 30, it may be necessary to consider the possible application of section 31.

Information covered by section 30 usually contains personal information about suspects, informants and victims of crime to which section 40 (personal information) will apply.

Although there is provision in section 30 for information obtained from confidential sources, section 41 (information provided in confidence) may also apply to such information. If information has been provided in confidence, an authority can incur legal liability for disclosure.

If information would be particularly distressing to a victim or their family section 38 (health and safety) may apply as release could endanger their mental health. Section 38 could also apply to information provided in confidence if its release could endanger the physical health of an individual, for example a member of a criminal organisation informing on other members would be at risk of physical harm.

In relation to live or prospective legal proceedings, the exemptions relating to court records (section 32), legal professional privilege (section 42) and contempt of court (section 44) may also need to be considered.

In many cases of statutory investigations and proceedings, the statute in question may contain general or specific prohibitions on disclosure. In those cases, section 44 will be relevant. Section 44 will also apply to prevent any disclosure which would be contrary to an authority's obligations under the Human Rights Act, for example by breaching any of the Article 6 provisions on the right to a fair trial.

Annex A: Explanation of key terms

The term 'charged' includes:

- the issue of a summons
- the situation where criminal proceedings are initiated by way of a bill of indictment ('a voluntary bill of indictment') under the Indictments (Procedure) Rules 1971 (SI 1971 No.2084, as amended)
- where proceedings are instituted by way of a written charge and requisition under section 29 of and Schedule 2 to the Criminal Justice Act 2003
- where a 'conditional caution' is given under section 22 of the Criminal Justice Act 2003

(These provisions of the Criminal Justice Act 2003 have not yet been brought into force.)

Powers of public authorities:

Subsection (4) ensures that the references in this section to public authorities' powers to conduct criminal proceedings includes both individual officers of the authority and, in the case of government departments, ministers. This is necessary because, as is often the case, the power to prosecute is sometimes specifically vested in a particular office-holder within the authority rather than in the authority generally. For example, certain powers to prosecute are given to inspectors appointed under section 19 of the Health and Safety at Work etc. Act 1974, rather than, say, to the Health and Safety Executive as the relevant public authority.

The term criminal proceedings:

Section 30(5) defines criminal proceedings to include proceedings before courts-martial and Courts Martial Appeals Courts, and proceedings involving charges brought under various pieces of armed forces legislation as defined in the section, as well as criminal proceedings before civilian criminal courts in the United Kingdom.

