

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 August 2007

Public Authority: Royal Mail
Address: 5th Floor
148 Old Street
London
EC1V 9HQ

Summary

The complainant requested information from Royal Mail including statistics on the number of thefts of mail from private vehicles being used to deliver mail. Royal Mail disclosed to the complainant some of the information requested but withheld the information on the statistics of thefts under section 30 and found that the public interest lay in maintaining the exemption. The Commissioner investigated the application of section 30 and found that section 30 was not engaged. The Commissioner investigated the application of section 31, offered in the alternative, and found that this was not engaged. Royal Mail therefore breached the requirement of section 1(1) (b) in failing to disclose the requested information to the complainant. The Commissioner also found that Royal Mail did not issue a refusal notice within twenty working days and therefore breached section 17 of the Act. Royal Mail in failing to disclose information held, to which no exemption applied within twenty working days breached section 10 of the Act. The Commissioner requires Royal Mail to disclose the requested information within 35 calendar days from date of this notice.

The Commissioner's Role

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.

The Request

2. The complainant has advised that on 11 January 2005 he made the following request for information to Royal Mail,

"1. On how many occasions has the Ilford Delivery Office authorised the use of private cars for postal deliveries in each of the following years: 2005, 2004, 2003, 2002, 2001, 2000, and 1999.

2. How many WE STD 5 risk assessment forms have been issued by the Ilford Delivery Office in connection with the use of private cars by postal delivery workers for each of the following years: 2005, 2004, 2003, 2002, 2001, 2000 and 1999.

I would also be grateful if you could furnish me with answers to the following questions.

3. How many thefts of mail from private cars used for delivery purposes on behalf of Royal Mail were recorded in the Ilford Delivery Office in each of the following years: 2005, 2004, 2003, 2002, 2001, 2000 and 1999.

4. How many claims for accidents involving private cars authorised for postal deliveries by the Ilford Delivery Office or thefts from said cars were reported to the Royal Mail's insurers in each of the following years: 2005, 2004, 2003, 2002, 2001, 2000 and 1999.

3. The complainant advised that he made a subsequent request to Royal Mail on 25 January 2005 in which he asked for the following information:

"1. From 10 May 2004 to 31 December 2004, specifically how was mail conveyed out to duties in the Ilford Office

2. For the year 2005 inclusive, specifically how was mail conveyed out to duties in the Ilford Office

3. From 2 January 2006 to 25 January 2006, specifically how was mail conveyed out to duties in the Ilford Office.

4. From 10 May 2004 to 31 December 2004, how many employees were issued with travel passes in the Ilford Office

5. From 10 May 2004 to 31 December 2004, how many employees were issued with a cash alternative in the Ilford Office.

6 For the year 2005 inclusive, how many employees were issued with travel passes in the Ilford Office

7. For the year 2005 inclusive, how many employees were issued with a cash alternative in the Ilford Office.

8. From 2 January 2006 to 25 January 2006, how many employees were issued with travel passes in the Ilford Office

9. From 2 January 2006 to 25 January 2006, how many employees were issued with a cash alternative in the Ilford Office.

4. On 24 February Royal Mail responded to the complainant's request of 11 January requesting more time to consider the public interest test as applied to section 30, 31, 36, 40 and 43 of the Act.
5. On 8 March 2006 the complainant submitted a further request for information to Royal Mail as follows:

"1. Countrywide (England, Scotland, Wales and Northern Ireland) – in the following years 2001, 2002, 2003, 2004, 2005 and 2006, how many post persons were legally covered to use their own private vehicles as a part of the delivery routine.

2. Countrywide (England, Scotland, Wales and Northern Ireland) – in the following years 2001, 2002, 2003, 2004, 2005 and 2006, how many thefts occurred involving the use of private vehicles, including thefts from, and thefts carried out using private vehicles.

3. Countrywide (England, Scotland, Wales and Northern Ireland) – in the following years 2001, 2002, 2003, 2004, 2005 and 2006, how many accidents occurred involving a post person using their private vehicles as part of the delivery routine.

4. Countrywide (England, Scotland, Wales and Northern Ireland) – in the following years 2001, 2002, 2003, 2004, 2005 and 2006, how many accidents resulted in fatality / fatalities involving a post person using their private vehicle as part of the delivery routine.

5. Regarding 'Royal Mail's Private Cars on Delivery Policy'. For this to have been proposed a risk assessment must have been carried out. I request a copy of this assessment and the date it was carried out/

The Investigation

Scope of the case

6. On 19 March 2006 the complainant wrote to the Commissioner asking him to investigate Royal Mail's lack of response to his requests of 11 January 2006 and 25 January 2006. The complainant wished to complain about the lack of a full refusal notice in the case of both requests within the 20 working day time limit.

Chronology

7. The Commissioner wrote to Royal Mail on 30 March 2006 outlining to Royal Mail its responsibilities under section 17 of the Act to respond to a request by either providing the information or issuing a refusal notice within 20 working days. The Commissioner requested that Royal Mail to advise him of the status of the two requests.

8. On 13 April 2006 the Commissioner wrote to the complainant informing him that he had contacted Royal Mail asking it to respond to his requests and asking the complainant to inform the Commissioner if no response was received from Royal Mail within 20 working days.
9. On 15 April 2006 the complainant wrote to Royal Mail to chase the response to the request dated 8 March 2006.
10. On 6 May 2006 the complainant wrote to the Commissioner informing him that no response had been received from Royal Mail following the Commissioner's 13 April 2006 letter.
11. On 24 May 2006 the complainant wrote to the Commissioner asking him to investigate Royal Mail's refusal to release to him the information requested in his 8 March 2006 request. The complainant also complained about the lack of any refusal notice from Royal Mail in relation to this request.
12. The Commissioner wrote again to Royal Mail on 6 June 2006 requesting that it now provide a response to the complainant in relation to his 8 March 2006 request.
13. On 25 July 2006 Royal Mail issued a refusal notice in relation to the requests of 11 January 2006, 25 January 2006 and 8 March 2006. In relation to the request regarding the use of private cars at the Ilford Delivery Office, Royal Mail indicated a response would follow. In relation to the request for statistics on thefts the Royal Mail confirmed it held the information but refused to disclose this under sections 30 'Investigations and proceedings conducted by public authorities' and 31 'Law Enforcement' of the Act.
14. After a further exchange, Royal Mail wrote on 26 September 2006 informing the Commissioner that to the best of its knowledge it had responded to all of the complainant's requests. Royal Mail informed the Commissioner that in a letter dated 31 August 2006 most of the information requested was supplied. Royal Mail confirmed that it had withheld some of the information and that this had been outlined to the complainant in the refusal notice of 25 July 2006. In response to the length of time taken to issue a refusal notice Royal Mail indicated that it had informed the complainant it required more time to complete the public interest test and in the interim it had been in regular contact with the complainant.
15. On 3 October 2006 the Commissioner wrote to the complainant stating that he understood from Royal Mail that a response had been sent on 25 July 2006 supplying him with some of the information requested, withholding some and stating the remainder was not held. The Commissioner invited the complainant to request an internal review of his case if this had not already been undertaken.
16. The complainant wrote on 25 October 2006 to Royal Mail requesting a review of its decision to withhold the requested information from him.
17. The complainant wrote to the Commissioner on 31 October 2006 stating he had only received a response dated 31 July 2006 and this did not address his

- requests fully. In particular the complainant queried the application of sections 30 and 31 and the length of time taken by Royal Mail to respond to any of his requests.
18. On 9 November 2006 the complainant wrote to the Commissioner indicating that he had received no response to his request for an internal review and requesting further advice on the next steps.
 19. On 5 January 2007 the complainant wrote again to the Commissioner informing him that Royal Mail had failed to respond to his request for an internal review and asking the Commissioner to intervene and investigate its handling of the request.
 20. The Commissioner wrote on 18 January 2007 informing the complainant that the Commissioner would now consider his complaint even though it had not been through the internal review procedure due to the unreasonable delay in Royal Mail responding to the complainant.
 21. On 9 March 2007 the Commissioner began investigating Royal Mail's handling of the complainant's request and wrote to Royal Mail. In his letter the Commissioner asked for a copy of the information already disclosed, further information as to the application of the exemptions, further consideration of the public interest test and a copy of the information being withheld.
 22. Royal Mail responded on 19 April 2007. Royal Mail confirmed that it had supplied the complainant with the majority of the requested information in a letter dated 31 August 2006 and enclosed an extract from this letter showing the answers given to each part of the request. Royal Mail explained that the only questions it had not answered were those requesting statistics on thefts; the questions from request 11 January 2006 numbered 3; and from 8 March 2006 numbered 2. This information was provided to the Commissioner in confidence. Royal Mail provided further explanation as to its application of section 30 and stated that if section 30 was found not to apply than it was relying on section 31. It also gave some background to the complaint to illustrate why a response to the original request had been outside the 20 working days.
 23. The Commissioner reviewed the information supplied by the Royal Mail in its response to the complainant of 31 August 2006. The Commissioner, in doing so, acknowledged that the complainant may not have received this information and asked Royal Mail to send this to the complainant again. The Commissioner agreed that Royal Mail had answered all but two of the complainant's requests and asked for further information regarding the application of the exemption specifically to this information.
 24. Royal Mail responded on 19 June 2007 providing further details and confirming that the letter of 31 August 2006 had now been forwarded to the complainant.
 25. The Commissioner wrote on 20 June 2007 to ask Royal Mail for further arguments regarding the application of section 30.

26. Royal Mail responded on 5 July 2007 providing further details regarding the application of section 30.

Findings of fact

27. On 31 August 2006 Royal Mail provided answers to the questions raised in the three separate requests. In doing so Royal Mail provided to the complainant answers to all but two of the questions initially raised.
28. The information withheld consists of the number of thefts from private vehicles used for delivery nationwide between 2001 and 2005; and the number of thefts from private cars used for delivery at Ilford Office between 2001 and 2005.
29. Royal Mail has stated the information is being withheld under section 30(1) (b) and if this is found not to apply then section 31(1) (a) 'Law Enforcement'.

Analysis

Procedural Matter: Section 17 'Refusal of Request'

30. A full text of the sections referred to below can be found in the legal annex at the end of the notice but the relevant points are summarised below.
31. Section 17 states that a public authority which is relying on withholding the requested information under one of the exemptions listed in the Act, must provide to the complainant, within the time for complying with section 1, a notice which (a) states the fact; (b) specifies the exemption; and (c) states why the exemption applies.
32. Section 10 of the Act states that a public authority must comply with section 1 no later than the twentieth working day from receipt of the request.
33. The three requests were made on 11 January 2006, 25 January 2006 and 8 March 2006. Royal Mail responded to the complainant in respect of the 11 January 2006 on 24 February 2006 requesting further time to consider the public interest test. This response was outside of the 20 working days. A refusal notice was issued on the 25 July 2006 in relation to two of the outstanding questions: This was outside of the 20 working days.

Section 10 'Time for Compliance'

34. Section 10 of the Act states that a public authority must comply with section 1 no later than the twentieth working day from receipt of the request.
35. The complainant's original requests were dated 11 January 2006, 25 January 2006 and 8 March 2006. Royal Mail disclosed to the complainant answers to all but two of the questions raised in these three requests on the 31 August 2006.

36. Royal Mail failed to disclose to the complainant the information held which it was not relying on an exemption to withhold, within twenty working days from receipt of the request. In doing so Royal Mail breached the requirements of section 10 of the Act.

Exemption: Section 30 'Investigations and Proceedings conducted by public authorities'

37. Royal Mail has stated that the information is exempt by virtue of section 30(1) (b). This states that information is exempt if it has at any time been held for the purposes of 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 the power to conduct.
38. Section 30 is a 'class based' exemption. This means that unlike the prejudice exemptions in the Act, there is no requirement to point to the harm that might arise from disclosure of the information. The exemption at section 30 (1) (b) contains the words 'at any time' this means that information is exempt if it is or has been at any time held for the purposes of to an ongoing, closed or an abandoned investigation.
39. The information being withheld under section 30 comprises the number of incidents of theft from private cars authorised for delivery of mail, by year from 2001 to 2005 at both National level and from the Ilford Delivery Office.
40. Royal Mail explained that records of thefts from private vehicles are held by Royal Mail Group Security primarily as part of its investigative functions. Its security department records and tracks details of individual incidents and uses statistics from this in order to identify crime patterns, predict areas in which suspects may operate, develop intelligence in support of investigations and direct surveillance operations. Royal Mail confirmed that during the period in question the Security Department did carry out specific investigations into theft of mail from private vehicles.
41. The Commissioner has considered the purposes for which Royal Mail state the statistics are held and does not consider that they are held for an investigation. As Royal Mail have stated its Security department tracks details of individual incidents and uses this information to predict areas of vulnerability and direct surveillance. Whilst the Commissioner acknowledges that during the period requested there was a specific investigation, the statistic itself is not information held for the purpose of an investigation but is information which led to an investigation.
42. The Commissioner finds that section 30(1) (b) is not engaged in relation to the information requested.

Section 31(1) (a) - 'Law Enforcement'

43. Section 31(1) (a) states that information is exempt if its disclosure under the Act would, or would be likely to prejudice the prevention or detection of crime.

44. As outlined in the discussion of section 30 in paragraph 40, Royal Mail state the statistics are held as part of its investigative functions in order to identify crime patterns, predict areas in which suspects may operate, develop intelligence in support of investigations and direct surveillance operations. The Commissioner accepts that this information is held for the purposes of preventing or detecting crime.
45. Section 31 is a 'prejudice' based exemption and therefore, to engage the exemption the Royal Mail must demonstrate that disclosure of the information would, or would be likely to prejudice the prevention or detection of crime.
46. The Commissioner has considered the Tribunal decision EA/2005/005 *John Connor Press Associates vs. The Information Commissioner*. The tribunal interpreted the definition of prejudice to mean that the chance of prejudice must be more than a hypothetical or remote possibility; there must be a real or significant risk. This was further expanded in the Tribunal decision *Hogan vs. The Information Commissioner EA/2005/0026 and Bexley vs. The Information Commissioner EA/2006/0060*. In these cases the Tribunal considered what was meant by "would be likely to prejudice" and when a prejudice based exemption might apply: that 'prejudice must be real, actual and of substance' and that 'the occurrence of prejudice to the specified interests is more probable than not and secondly there is a real and significant risk of prejudice, even if it cannot be said that the occurrence of prejudice is more probable than not'
47. Royal Mail argue that raising awareness of the presence of mail in private vehicles would increase the probability of attacks on those vehicles and consequently increase theft of mail. Royal Mail explained that any private mail carried in private vehicles must be kept out of all sight at all times and this, along with the fact that vehicles are unmarked and do not obviously contain mail, limits the risk. Royal Mail also explained that attacks on mail are often pre-planned rather than opportunistic and publishing information on theft of mail from private vehicles would identify this as an opportunity for local criminals and encourage them to carry out similar attacks, targeting private vehicles leaving delivery offices.
48. Royal Mail informed the Commissioner that the potential for postman's private vehicles to contain mail is not generally advertised or widely known to the public and publishing the information would raise the profile of this method of mail conveyance. Royal Mail states it believes criminals will go to reasonable lengths in order to attack private vehicles they know may contain mail, including following cars from a delivery office.
49. In support of this argument Royal Mail stated from 2006 onwards the spread and number of thefts from private vehicles is intermittent and singular. But in three postcode areas the thefts are more or less continuous and frequent suggesting that there is local knowledge of the use of private cars. In one these areas the theft of mail from private vehicles has now stopped following arrest of an external offender.

50. Royal Mail acknowledges that there is a public interest in the security of mail and in knowing that there are suitably robust processes in place to prevent theft. However, Royal Mail concluded that the prejudice to the prevention or detection of crime in disclosing is real and significant.
51. Royal Mail also state that thefts from private vehicles currently only affects a tiny fraction of the Mail handled by Royal Mail.
52. The Commissioner considers that the main argument put forward by Royal Mail for engaging the exemption is as follows: Increasing awareness of the use of private vehicles for delivering mail will increase the profile of postmen's private vehicles as potential targets for criminals and therefore increase the numbers of attacks. Royal Mail state that this is not already widely known to the public or advertised by Royal Mail.
53. In considering this argument the Commissioner has researched the degree to which the public has or may have knowledge of the use of private vehicles. In doing so the Commissioner found a Guardian article 11 March 2006 entitled 'Postal Deliveries by Car increasing risk of thefts' as well as the 2004 Channel Four 'Dispatches' programme which showed examples of possible problems in relation to the security of vehicles.
54. The Commissioner therefore finds that whilst Royal Mail may not actively advertise the use of private vehicles, there is public awareness of their use. The Commissioner does not therefore agree that disclosure of the number of thefts from private vehicles would necessarily *increase* public awareness, but rather it might give more depth to the understanding that already exists.
55. Royal Mail also argued that disclosure of thefts at both national and local level would make criminals more aware of the practice and, because of regular shift patterns at delivery offices, be able to deduce that any private vehicle leaving an office at a certain time will be carrying mail.
56. The Commissioner acknowledges that there is a need to ensure that attacks on mail are not increased but does not find that disclosure of this information will increase awareness of the current practices of using private vehicles. The Commissioner has also considered a previous case reference FS50072311. In this case the complainant requested the number of street storage boxes used for the delivery of mail that were broken into in Glasgow in a specific year and the location of these boxes. Royal Mail disclosed the number of storage boxes broken into in Glasgow but not the specific location. Royal Mail state that the information requested in this case was different as it was already commonly known that street storage boxes contain mail, and that they are painted red and on pillar boxes. Royal Mail state the key difference in this case is that most people don't know private cars are being used to deliver mail. This case was also subject to an Information Tribunal Decision *EA/2005/0027* which upheld the Commissioner's decision.
57. The request for information in this case is for both figures of thefts at a national level and for a specific locality. The Commissioner does not find that disclosing

the figures in this case differ significantly from disclosure, at a local level, of the number of thefts from street storage boxes. Whilst the Commissioner recognises that mail storage boxes are easily identifiable as a target the Commissioner has found that the use of private cars is known to the public and so disclosure does not reveal a previously unknown vulnerability. The Commissioner has also considered that as the cars are unmarked the risk of their attack would be arguably less than marked cars and, as in the above case, red storage boxes.

58. Royal Mail also argue that as thefts from private vehicles represent only a small proportion of the mail handled disclosure of the information would have little significance to the public. However, in a statement for the report 'Royal Mail's Mail Integrity Procedure: Report on Review by Postcomm. February 2006' Royal Mail stated that:

"Postcomm should be concerned about every item that did not reach its recipient"

59. The Commissioner agrees that the small proportion of mail stolen when carried in this manner, does not lessen the importance of ensuring the security of mail and raising awareness of the risks associated with the use of private vehicles.
60. In deciding whether the exemption is engaged and if disclosure would, or would be likely to prejudice the prevention or detection of crime, the Commissioner has considered the main argument put forward by Royal Mail. This is that increasing public awareness correlates to increasing attacks. The Commissioner does not accept the argument that there is 'little' public awareness of the practice of using private cars nor does he find that increasing what awareness there already is would increase the likelihood of attacks. As Royal Mail pointed out, attacks on mail are pre-planned and rarely opportunistic. It is reasonable to conclude that a criminal wishing to steal mail would plan any attack on either private or Royal Mail marked vehicles thoroughly and, as stated by Royal Mail, observe a delivery office to ascertain patterns.
61. The Commissioner finds that disclosure of the statistics would not prejudice, or be likely to prejudice the prevention or detection of crime. The Commissioner considers that disclosure of the information enhances the public understanding of the risks of delivering mail by this method and their ability to assess the performance of Royal Mail. Royal Mail has a duty to protect the integrity of mail as outlined in 'Royal Mail Licence Schedule 2 – Condition 8: Protecting the Integrity of Mail, A Code of Practice' and the disclosure of the information would help the public to assess Royal Mail's adherence to this Code by disclosing the requested figures.
62. The Commissioner finds that section 31 is not engaged as disclosure of the information would not prejudice, or be likely to prejudice, the prevention or detection of crime.

Section 1 – Right of Access.

63. Section 1(1) (b) states that any person making a request for information to a public authority is entitled to have that information communicated to him.
64. The Commissioner has found that Royal Mail incorrectly applied the exemptions at section 30(1) (b) and 31 (1) (a). In incorrectly applying an exemption and therefore failing to supply the complainant with the requested information Royal Mail breached the requirements of section 1(1) (b).

The Decision

65. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act for the following reasons:
- The public authority in failing to issue a refusal notice within 20 working days, breached section 17 of the Act.
 - The public authority in failing to disclose the information held, to which no exemption applied, within 20 working days breached section 10 of the Act.
 - The public authority were incorrect to apply section 30 and in the alternative section 31 to the information requested.
 - In incorrectly applying section 30 and 31 to the information requested the public authority breached the requirements of section 1(1) (b) in that it failed to communicate the information to the complainant.

Steps Required

66. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- (i) To disclose the information withheld under section 30 and 31.
67. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

68. 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

70. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 9th day of August 2007

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Time for Compliance

Section 10(1) provides that –

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

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

Refusal of Request

Section 17(1) provides that -

“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 deny is relevant to the request or on a claim that information is exempt 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 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Investigations and proceedings conducted by public authorities

Section 30(1) provides that –

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

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

Section 30(2) provides that –

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

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either

- by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
- (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and

(b) it relates to the obtaining of information from confidential sources.”

Section 30(3) provides that –

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

Section 30(4) provides that –

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

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

Section 30(5) provides that –

“In this section-

"criminal proceedings" includes-

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

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

Section 30(6) provides that –

“In the application of this section to Scotland-

- (a) in subsection (1)(b), for the words from "a decision" to the end there is substituted "a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted",

- (b) in subsections (1)(c) and (2)(a)(ii) for "which the authority has power to conduct" there is substituted "which have been instituted in consequence of a report made by the authority to the procurator fiscal", and
- (c) for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence."

Law enforcement

Section 31(1) provides that –

"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 persons 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."

Section 31(2) provides that –

"The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,

- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work."

Section 31(3) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”