

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 29 June 2011

**Public Authority:** The Electoral Commission  
**Address:** 3 Bunhill Row  
London  
EC1Y 8YZ

### Summary

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The complainant made a number of requests for information relating to the public authority's investigation of Bearwood Corporate Services Ltd and donations to the Conservative Party. The public authority withheld the requested information under sections 30(1)(a)(i), 31(1)(g), 40(2), 41(1) and 42(1). After investigating the case the Commissioner decided that the requested information was exempt under section 30(1)(a)(i). However, the Commissioner considers that the public authority failed to meet the procedural requirements of section 17.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### Background

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2. In October 2008 the public authority began an initial enquiry into donations made to the Conservative Party by Bearwood Corporate Services Ltd ("Bearwood"). In January 2009, following receipt of information from various involved parties and an assessment of information already in the public domain, the public authority opened an investigation, in order to determine whether these donations had been a breach of the Political Parties, Elections and Referendums Act 2000

("PPERA"). The public authority explained that the relevant requirements of the PERA in relation to this investigation were,

*"...Before accepting a donation, a party must make sure it takes all reasonable steps to verify or ascertain the identity of the donor, and that the donor is 'permissible'. A permissible donor is, in the case of an individual, someone who is registered on the electoral register. In the case of a company a permissible donor must be, among other things, carrying on business in the United Kingdom at the time of the donation.*

*...Where an individual gives a donation to a party but is passing on that donation on behalf of someone else – in other words acting as an agent – the agent must notify the party that they are an agent and the party must ensure that the donor, rather than the agent, is a permissible donor.*

*...The party has 30 days from receipt of a donation to ascertain the identity of the donor and check that the donor is permissible. Where the party is unable to do so within 30 days, it cannot accept the donation.*

*...Where a party has accepted a donation which it was prohibited from accepting, the Commission may seek a court order that an amount equal to the impermissible donation be forfeited."<sup>1</sup>*

3. The public authority's investigation focused on:

- whether Bearwood was a permissible donor;
- whether the donations were correctly reported as coming from Bearwood, rather than an agent for someone else, including its parent company Stargate Holdings or Lord Ashcroft; and
- whether the Conservative Party had fulfilled its compliance duties, in particular its duty to be certain who the donor was before accepting the donations.

4. On 4 March 2010 the public authority announced the outcome of this investigation by issuing a press release and a case summary.<sup>2</sup> It stated that:

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<sup>1</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0009/87219/Case-summary-Bearwood-Corporate-Services.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0009/87219/Case-summary-Bearwood-Corporate-Services.pdf)

<sup>2</sup> The press release is available at: <http://www.electoralcommission.org.uk/news-and-media/news-releases/electoral-commission-media-centre/news-releases->

- in relation to the question of whether Bearwood was a permissible donor, it had concluded that Bearwood met the permissibility requirements for making political donations;
- in relation to the question of whether the donations were correctly reported as coming from Bearwood, it had concluded that, on the evidence before it, there was no basis to conclude that the donor was anyone other than Bearwood; and
- in relation to the question of whether the Conservative Party had fulfilled its compliance duties, it had decided that there was insufficient evidence to conclude, on the balance of probabilities, that the Conservative Party was uncertain as to the identity of the donor when accepting the donations.

Therefore the public authority concluded that no breach of PPERA had been established and that accordingly no legal action in relation to the Conservative Party would be taken. However, it noted that it had asked to meet party officials to ensure that they were clear about their responsibilities when complying with the law.<sup>3</sup>

5. In addition to this, in the case summary the public authority explained that,

*"The Commission's powers are limited, notably that it does not currently have the power to require anyone to attend an interview, and only has the power to require the provision of documents from a part and its officers, but not from reported donors or others. Within the limits of its current powers, the Commission conducted a thorough investigation. It obtained and considered a large volume of documents, including a substantial quantity of internal documents provided by the Conservative Party. The Commission asked various officers and staff within the party to attend interviews on a voluntary basis, but these requests were not agreed to."*<sup>4</sup>

## The Request

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[donations/bearwood-corporate-services-limited](#). The case summary is available at: [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0009/87219/Case-summary-Bearwood-Corporate-Services.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0009/87219/Case-summary-Bearwood-Corporate-Services.pdf)

<sup>3</sup> <http://www.electoralcommission.org.uk/news-and-media/news-releases/electoral-commission-media-centre/news-releases-donations/bearwood-corporate-services-limited>

<sup>4</sup> <http://www.electoralcommission.org.uk/news-and-media/news-releases/electoral-commission-media-centre/news-releases-donations/bearwood-corporate-services-limited>

6. The complainant contacted the public authority on 5 March 2010 and made the following request,

*"Please disclose under the FOI Act:*

*The full report of the investigation into the donations reported by the Conservative Party from Bearwood Corporate Services Limited.*

*I am aware that the case summary of the report is available on the Electoral Commission's website, but I believe that it is in the public interest to disclose the full report.*

*Can you also please disclose copies of all correspondence between the Conservative Party and the Electoral Commission in relation to the investigation.*

*In terms of correspondence this should include letters, emails and records of any meetings and phonecalls."*

7. The public authority responded on 24 March 2010 and confirmed that it held information that fell within the scope of the request. In response to the request for a copy of the full report, the public authority stated that it believed that this information was exempt under sections 30(1)(a)(i), 31(1)(g), 40(2), 41(1) and 42(1). In response to the request for correspondence, the public authority stated that it believed that this information was exempt under sections 30(1)(a)(i), 31(1)(g) and 40(2).
8. The complainant wrote to the public authority on 26 March 2010 and requested an internal review.
9. The public authority carried out an internal review, and responded to the complainant on 11 May 2010. It upheld its previous use of the exemptions in order to withhold the requested information.

## **The Investigation**

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### **Scope of the case**

10. On 12 May 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider whether the public authority was correct to withhold the information she had requested.
11. During the investigation of the case the public authority provided a detailed breakdown of which exemption it was seeking to rely upon in relation to each request. In particular, it clarified that it was seeking to

rely upon section 30(1)(a)(i) in relation to all of the withheld information. It also stated that if the Commissioner did not believe that section 30(1)(a)(i) applied to any of this information, it would seek to rely upon sections 31(1)(g) and 31(2)(a) in the alternative.

12. Therefore the scope of this case has been to consider whether the public authority was correct to rely upon the following exemptions:

- Request for the report – sections 30(1)(a)(i), 31(1)(g), 31(2)(a), 40(2), 41(1) and 42(1).
- Request for correspondence – sections 30(1)(a)(i), 31(1)(g), 31(2)(a), 40(2) and 41(1).

13. In addition to this the Commissioner has also considered whether the public authority has complied with the requirements of section 17.

## Chronology

14. The Commissioner wrote to the public authority on 14 October 2010 and asked for a copy of the withheld information. He also asked it to provide him with submissions to support its use of sections 30(1)(a)(i), 31(1)(g), 40(2), 41(1) and 42. He asked for a response by no later than 11 November 2010.

15. Following an exchange of correspondence, the public authority provided the Commissioner with a copy of the withheld information on 31 January 2011. It provided its full submissions in a letter dated 14 February 2011, including a detailed breakdown of which exemption it had applied to which piece of information. In particular, it confirmed that it was seeking to rely upon section 30(1)(a)(i) in relation to all of the withheld information. It also said that if the Commissioner did not believe that section 30(1)(a)(i) applied to any of this information, it would seek to rely upon sections 31(1)(g) and 31(2)(a) in the alternative.

## Analysis

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### Exemptions

#### Section 30(1)(a)(i)

16. Section 30(1)(a)(i) states that,

*“...information held by a public authority is exempt information if it has 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..."*

The full text of section 30 can be found in the legal annex at the end of this notice.

17. Section 30 is a class based exemption. Where a class based exemption is claimed it is not necessary to demonstrate prejudice or harm to any particular interest in order to engage it. If the information in question falls within the class of information set out in the exemption, the exemption is engaged.
18. As noted above, the public authority has applied this exemption to all of the withheld information. This information is held by the public authority for the purpose of its investigation into donations made by Bearwood to the Conservative Party.
19. During its investigation into these donations the public authority considered whether offences had been committed under sections 54(7), 56(3) and 61 of the PPERA. Under section 145 of the PPERA the public authority has the function of monitoring compliance with the restrictions imposed under parts III to VII of that Act. Sections 54(7), 56(3) and 61 all fall within part IV. Therefore the public authority has the function of monitoring compliance with sections 54(7), 56(3) and 61 and consequently the investigation was one that the public authority had the duty to conduct.
20. The public authority would not itself bring any charges against any person. Instead, having carried out its investigation, if it believed that an offence had been committed a referral would be made to either the police or the Crown Prosecution Service which would then bring any charge. As to what effect, if any, this has on the question of whether the exemption is engaged, the Commissioner notes that section 30(1)(a)(i) refers only to an investigation with a view to it being ascertained whether a person should be charged with an offence; this wording gives no suggestion that it is essential that any charges would be brought by the same public authority that carried out the investigation. The view of the Commissioner is, therefore, that the fact that the public authority would not itself bring any charge does not prevent this exemption being engaged here.
21. On the basis of the wording of sections 54(7), 56(3), 61 and 145 of the PPERA, the Commissioner accepts that the investigations carried out by the public authority and referred to in the request were of the type described in section 30(1)(a)(i). Therefore the Commissioner considers

that this exemption is engaged in relation to all of the withheld information.

22. Section 30(1)(a)(i) is a qualified exemption and is therefore subject to a public interest test. The Commissioner has first considered the public interest in favour of disclosure.
23. In considering the public interest factors in this case the Commissioner has been mindful of arguments made by the public authority in another case – FS50314970. This other case also focused on access to information relating to the public authority's investigation of the Bearwood donations which had been withheld under section 30(1)(a)(i).

### **Public interest arguments in favour of disclosing the requested information**

24. The Commissioner recognises that there is a public interest in openness and accountability. The public authority has recognised that there is a public interest in it properly enforcing the restrictions of the permissibility of donations to political parties imposed by the PPERA. The Commissioner considers that the disclosure of the withheld information would increase public understanding of whether the public authority has carried out its duties to enforce this legislation. This would lead to greater accountability for the public authority's decision making process.
25. In particular, the Commissioner notes that in both the press release and the case summary the public authority made several references to the limited powers at its disposal for regulating the PPERA. Given the purpose and importance of the PPERA the Commissioner considers that it is in the public interest to increase public understanding of the public authority's regulatory powers, and to facilitate a public debate on that issue. He considers that the withheld information would contribute to both of these factors.
26. In the particular circumstances of this case, the decisions made by the public authority relating to its investigation of Bearwood and the donations to the Conservative Party attracted a significant amount of media attention, and were a matter of considerable public debate. Given the nature of the requests in question in this case, the Commissioner considers that the withheld information would be of great assistance in further informing that public debate. This would be in the public interest. In addition to this, the investigation carried out by the public authority, and its subsequent decision also raised issues in relation to the wider public debate on the funding of political parties.

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

27. The Commissioner notes that when considering the public interest in favour of maintaining section 30(1)(a)(i) consideration should be given to protecting what is inherent in the exemption – the effective investigation and prosecution of crime. This requires:
- the protection of witnesses and informers to ensure people are not deterred from making statements or reports by fear it might be publicised;
  - the maintenance of independence of the judicial and prosecution processes;
  - preservation of the criminal court as the sole forum for determining guilt;
  - allowing the investigating body space to determine the course of an investigation; and
  - information that deals with specialist techniques.
28. The public authority has argued that the restrictions on the permissibility of donations to political parties imposed by the PPERA are an important part of the legal framework governing elections and political campaigning. In order to maintain public trust and confidence in the political system it is important that these restrictions are upheld. Therefore, it has argued, there is a significant public interest in upholding the practical effectiveness of its regulatory powers.
29. It has argued that during its investigation it obtains evidence from third parties on a confidential basis. It is in the public interest to maintain this confidentiality, as it encourages the free and frank provision of information from third parties. Any prejudice to the provision of this kind of information would be harmful to the public authority's ability to carry out its statutory functions. This would not be in the public interest.
30. It has added that in order to carry out its inquiries in an effective and efficient manner, it tries to ensure the cooperation of individuals and entities from which it seeks to obtain information. Those individuals and entities have a reasonable expectation that the information they provide will not be disclosed to the public at large. If the withheld information was disclosed under the Act it would make them reluctant to co-operate in the future, and may also prejudice the future cooperation of other such individuals and entities.
31. The public authority has added that,
- “...the co-operation of the regulated community and other enforcement agencies is essential to our ability to conduct our*



*statutory functions. It is particularly important to ensuring we are able to obtain information in a timely manner. As our investigations rely on gathering evidence from these organisations it is clearly in the public interest that we maintain their co-operation and avoid releasing information that could prevent exchange of relevant information in the future and have the effect of hindering our ability to conduct our statutory functions."*

32. The request was made only a few days after the investigation was closed. The public authority has pointed out that at that time the investigation could have been re-opened if additional information came to light, and disclosure of this information would have been likely to prejudice any future investigation. It would not be in the public interest to prejudice any re-opened investigation by the disclosure of the withheld information in this case.

### **Balance of the public interest arguments**

33. In reaching a decision as to the balance of public interest arguments, the Commissioner has been mindful of the particular circumstances of this case.
34. The Commissioner considers that the public interest arguments in favour of disclosure are weighty. The withheld information in this case directly relates to a high profile investigation into substantial donations made to the Conservative Party. Both the investigation and the outcome of the investigation attracted considerable media attention, and were a matter of significant public debate at the time of the request. This debate focused on both the matter under investigation by the public authority, and the wider issue of financial donations made to political parties.
35. In addition to this, and as noted above, the published case summary makes several references to the limited powers available to the public authority for carrying out its regulatory duties under the PPERA (see paragraph 5). Taking this into account, the Commissioner also considers that at the time of the request the effectiveness of the investigation and the functions of the public authority were also a matter of public debate. Given the important role of the PPERA in the 'legal framework governing elections and political campaigning' the Commissioner considers that informing that debate was a particularly weighty public interest factor in favour of disclosure.
36. The public authority has argued that the public interest in greater transparency and accountability is reduced because it has already placed information in the public domain in the form of the press release and case summary (see paragraph 4 above). The public authority has

suggested that the withheld information would add little to public understanding of its investigation or of its work generally.

37. The Commissioner does not accept this argument. He accepts that the press release and the case summary give some detail of the matters considered by the public authority in its investigation, the steps taken and the reasons for its decisions. However, he considers that the withheld information would give a considerable insight into the public authority's investigation, and more generally into the way in which it carries out its regulatory duties.
38. The Commissioner considers that there is a strong public interest in increasing the transparency of the public authority's investigation into the donations in question; and also into informing the public debate surrounding the investigation, the effectiveness of the regulation of the PPERA, and the wider issue of the funding of political parties. The Commissioner considers that the disclosure of the withheld information would be of considerable assistance in further informing that public debate.
39. However, this has to be balanced against the public interest in favour of maintaining the exemption.
40. In particular, the public interest in disclosure has to be balanced against the public interest in avoiding prejudice to the functions set out in section 30(1)(a)(i), i.e. the effective investigation and prosecution of crime. In order to reach a view on the weight to give to this public interest argument the Commissioner has taken into account the following factors:
  - the stage of the investigation at the time of the request;
  - whether and to what extent the information has already been put into the public domain;
  - the significance or sensitivity of the information; and
  - the age of the information.
41. In relation to the first of these factors, the Commissioner notes that the investigation in question was complete at the time of the request. Therefore, the disclosure of the withheld information would not have been harmful to an ongoing investigation. However, the public authority has pointed out that the investigation had only been recently been concluded and therefore, at the time of the request, there was a possibility that the investigation could have been re-opened had new information come to light. The Commissioner considers that the possibility of this occurring was slight as the public authority had already

conducted a thorough investigation during which it had interviewed a number of individuals. Moreover, the Commissioner is of the view that because of the Act's assumption in favour of disclosure a public authority would need to demonstrate that there is a real possibility of a case being re-opened in order for this argument to carry any real weight.

42. In relation to the second of these factors, the Commissioner notes that the public authority has itself drawn his attention to the information that it has put into the public domain about its investigation into the donations in question. He notes that the press release and the case summary do outline the overall issues faced by the public authority, and the steps that it took in order to come to a conclusion on those issues. However, the Commissioner considers that the withheld information would give considerable background detail as to the investigation into the donations in question – to a much more detailed level than the information already published by the public authority. In particular it would give a detailed insight into the factors taken into account when the decision was made by the public authority. The information would also show in considerable detail the steps taken by the public authority during its investigation. Given this, the Commissioner considers that the withheld information has not already been put into the public domain. The public interest in maintaining the exemption is therefore not undermined by the availability of information already in the public domain.
43. In relation to the significance and sensitivity of the information, if the withheld information, whilst relating to the investigation, was of no particular significance to it, this would reduce the likelihood of harm occurring to the investigatory process through the disclosure of this information. Conversely, the greater the significance of the information, the greater the likelihood of harm to the investigatory process, should that information be disclosed. In reaching a view on this, the Commissioner has considered the withheld information in detail.
44. In relation to the withheld information in this case, the Commissioner notes that this information relates directly to the public authority's investigation into the donations in question. The first part of the request asks for a copy of the Report that was presented to the public authority's Board prior to the final decision being made as to the outcome of the case. This gives considerable detail of the history and methodology of the investigation, and of the evidence obtained by the public authority. The information held that falls under the second part of the request relates directly to evidence obtained by the public authority during its investigation, and how it went about obtaining this information. Taking this into account, the Commissioner considers that

the withheld information has a particular and central significance to the investigation in question.

45. Finally, in relation to the age of the information, the Commissioner notes that at the time of the request the public authority's investigation had only just been concluded. As noted above, the public authority has provided little evidence that the investigation might have been reopened. However, the Commissioner has also noted that given the close significance of this information to the investigation, the potential for harm to the public authority's investigatory process would be greater as this would reveal more up to date information about the way in which it investigated cases.
46. Despite the strong public interest factors in favour of disclosure, the Commissioner considers that the public interest factors in favour of maintaining this exemption are particularly significant in relation to the withheld information. In particular, the Commissioner is mindful of the inherent public interest in protecting information obtained during the course of a criminal investigation. Where Parliament has entrusted a particular statutory body with a specific investigatory and regulatory role in relation to matters of great public importance, the Commissioner considers that it is very much in the public interest that the discharge of those functions by such a body should not be impeded by concerns over the potential subsequent disclosure of information given voluntarily in the course of and for the purposes of a criminal investigation.
47. In addition to this, given the significance of the withheld information to the public authority's investigation, the Commissioner considers that the disclosure of this information would be likely to prejudice its investigatory functions. Given this, the Commissioner finds that the public interest in avoiding prejudice to the public authority's ability to conduct future investigations particularly weighty and significant.
48. Taking this into account, the Commissioner has concluded that, in the circumstances of this case, the public interest in maintaining section 30(1)(a)(i) outweighs the public interest in disclosure. Therefore the requested information should be withheld.

### **Procedural Requirements**

49. Section 17(1) requires a public authority, which is relying upon an exemption in order to withhold requested information, to issue a refusal notice within twenty working days 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.

50. Although the public authority informed the complainant that it was seeking to rely upon section 40(2), the Commissioner notes that the public authority did not fully specify, in either the refusal notice or the internal review, which of the conditions of section 40(3) it believed was satisfied. In failing to do this, the public authority did not comply with the requirements of section 17(1)(b).

51. The full text of section 17 can be found in the legal annex attached to the end of this notice.

## **The Decision**

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52. The Commissioner's decision is that the public authority dealt with the request in accordance with the requirements of the Act in that it correctly relied upon section 30(1)(a)(i) to withhold all of the requested information.

53. However, the Commissioner has also decided that the public authority failed to meet the requirements of section 17(1)(b).

## **Steps Required**

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54. The Commissioner requires no steps to be taken.

## Right of Appeal

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

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

Tel: 0300 1234504

Fax: 0116 249 4253

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

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

56. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
57. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 29<sup>th</sup> day of June 2011**

**Signed .....**

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

## Legal Annex

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### Section 17

- (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or 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.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) Subsection (5) does not apply where –
- (a) the public authority is relying on a claim that section 14 applies,
  - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
  - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
- (7) A notice under section (1), (3) or (5) must –
- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
  - (b) contain particulars of the right conferred by section 50.

### **Section 30**

- (1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-
- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
    - (i) whether a person should be charged with an offence, or



- (ii) whether a person charged with an offence is guilty of it,
  - (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
  - (c) any criminal proceedings which the authority has power to conduct.
- (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 by the public authority would be) exempt information by virtue of subsection (1) or (2).
- (4) 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.

(5) 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."

(6) 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.