



ACPO FREEDOM OF INFORMATION MANUAL

Public Facing Version v1

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ACPO STATEMENT OF FAIRNESS

ACPO is committed to the fair treatment of people regardless of their age, colour, culture, disability, ethnic or national origins, gender, race, religious beliefs or sexual orientation.

The content of this brochure has been created to ensure that every individual or group is treated equitably and consistently.

When applying the FOIA, the Police Service will consider the legislative requirements that must guide decision making to avoid discriminating against any group or individual.

INTRODUCTION

This publication has been written to explain the way in which the Police Service will deal with Freedom of Information (FOI) requests from 1st January 2005 and exactly what members of the general public may expect from us.

We provide an explanation covering all aspects of the implementation and application of the Freedom of Information Act (2000), including the application process and a review of the key exemptions we're likely to use and why.

From the outset, we would stress that the Police Service fully embraces the opportunity to become more transparent and accountable at every level. It is our intention to adopt a positive approach to the release of information wherever and whenever possible.

We believe that the public has a right to know that the service it funds is being run efficiently and effectively. However, when considering the release of information, we must balance this right against the Police Service's responsibility to the communities it serves. There is information that, if released into the public domain, would compromise our operational effectiveness and make it harder for the core function of law enforcement to be fulfilled. This is the type of information that we are committed to withholding for the benefit of the public and their communities.

The Act has made a series of provisions to safeguard information that would compromise the Service's ability to prevent crime and enforce the law. These are called 'exemptions'. Balancing the release of information that is in the public interest against what would harm organisational effectiveness is key to the consistent and equitable application of the Freedom of Information Act (FOIA).

THE FREEDOM OF INFORMATION ACT 2000

The spirit of this legislation is one of openness and accountability. By complying with the spirit of the Act, the Police Service is committed to proactively releasing information to inform and educate the public on how their money is spent.

Similar legislation has been in existence in other jurisdictions for some time and we have looked to the experience in other democracies to assist us as we implement our own Freedom of Information legislation.

The Police Service will be releasing information to the public through 2 key tools:

- **Force Publication Scheme**

This makes available a significant proportion of information that will be routinely disclosed without waiting for it to be requested.

Each force has its own publication scheme and is already actively publishing several classes of information – minutes, policies, performance, names and details of senior personnel expenses and plans, objectives and strategies.

Publication schemes will be regularly reviewed and updated and information will be added in response to requests for information.

- **General Right of Access**

Public authorities must make available requested information (subject to a range of exemptions) to any individual or organisation, anywhere in the world, so long as the request is made in writing, is legible and clearly identifies the information being sought.

MAKING AN FOI REQUEST

What You Can Expect

If you apply for information under the FOIA, you have the following rights:

- The right to be told whether we hold the information; and
- The right to receive the information you've requested, subject to the application of exemptions.

The Police Service's policy is to contact you to clarify your request upon receipt if necessary. This will help us to provide you with the most efficient service possible and narrow down the search for information you require, thus assisting you to the best of our ability.

We will acknowledge receipt of your request and provide you with an estimated time within which it will be dealt.

With straightforward requests, this will be within 20 working days (as stipulated in the legislation) and the first working day is classed as the day AFTER we receive the request.

Where we are required to apply more complicated qualified exemptions, we can 'stop the clock'. This means that for more complex requests or requests referring to sensitive information, we have more time to make a decision but we will inform you of how long it may take.

Another obligation we have under the Act is to provide the information in the requested format, subject to cost considerations. These will be explained shortly.

What You Must Do

For a request to be valid under FOI, it must meet a number of criteria including:

- It must be made in writing by letter, fax or e-mail;
- It must clearly describe the information being sought;
- It must be legible;
- It must contain the name of the applicant and a contact address, even if this is only an e-mail address; and

- Although not mandatory, it would assist us if you provided a telephone number.

FOI requests can be made from anyone anywhere in the world and they can be made by an individual or an organisation.

If you wish to make an FOI request, you neither need to mention the Freedom of Information Act in your application nor are you obliged to use a special form. However, it will help us to fast track your application if you mention the Act and use the application form on the next page.

What's Covered?

The UK's Act is unique in that it is fully retrospective. As long as the public authority holds the information, it must consider releasing it.

The Act covers records capable of recovery **in any format**, no matter how it's recorded.

The FOI Act:

- Applies to information not data;
- Applies to information and not just documents;
- Applies to written records, typed, handwritten and scribbled notes, e-mails, spreadsheets, photographs, exhibits, tapes records, flip-charts, videos, audio tapes, computer tapes, logs, answer phone messages, tapes of telephone conversations, archived records;
- Applies to structured and unstructured information; and
- Applies to any information, documentation or record that's produced internally by a public authority, or held by contractors or third parties on behalf of the public authority, is covered by the Act.

Request for Information Under FOI

Please note a valid FOIA request **must** contain your name and an address. The provision of any other contact details is optional, however any additional information you choose to provide will enable the Police Service to provide you with a faster and more efficient service.

Title (e.g. _____ Surname:.....
Forename(s):.....
Address:.....
E-mail
Tel. No. (daytime and/or
Facsimile
If you are making this request on behalf of an organisation or business
Name of
Your position in the organisation/business:.....
What information do you want? (Please be as specific as possible and attach an additional sheet if insufficient space.)
Would you like a copy of the original or a summary of the information: <input type="checkbox"/> Copy of the original <input type="checkbox"/> Summary of the information
What type of format do you require: <input type="checkbox"/> Hard copy <input type="checkbox"/> Electronic copy <input type="checkbox"/> Inspection
Do you have any special requirements for the format? If so, please give details:
We may consult with third parties if the information you have asked for originates from or affects their legal rights. Please tick this box if you would like your personal details withheld. <input type="checkbox"/> Yes, withhold my personal details

Data Protection Act 1998: your personal data will only be used to enable us to deal with your request and for no other purpose.

Please return this form to:

The Freedom of Information Officer, City of London Police, PO Box 36451
182 Bishopsgate, London EC2M 4WN or foi@city-of-london.pnn.police.uk

Fees & Charging

When dealing with FOI requests, the Police Service can charge for two types of fees:

- Marginal costs; and
- Disbursements

Marginal Costs

Where the cost of dealing with a request is less than £450, we will provide the information free of charge.

Costs that may be included in the £450 limit are:

- Time taken in determining whether the information's held;
- Time taken in locating and retrieving the information;
- The first full reading of the information by the FOI decision-maker;
- Time taken in extracting information to be disclosed from other information;
- Time taken in editing, summarising or redacting (making invisible) information which is covered by an exemption;
- Time taken in communicating information including time spent writing a response to the request; and
- Time spent making arrangements for an applicant to view documents, books, and videos or electronically held information.

The Police Service will charge a standard hourly rate of £25 when estimating the cost of an FOI request. This equates to approximately 18 hours of work.

Costs that are not included are:

- Time taken to make a decision as to whether the material should be exempt under the Act;
- Time taken in obtaining authorisation to send out the information;
- Time spent to obtain the consent for disclosure from another public authority or any other individual or organisation; and
- Any overheads.

If your request for information will exceed the £450 limit, there are a range of options available to the Police Service. These are:

- Declining to answer the request since the cost of compliance will exceed the limit;
- Answering the request but charging for the full cost. This means that where the cost of answering the request is £500, we can pass the full cost onto you and not just the £50 over and above the £450 limit;
- Answering the request and waiving the fee;

- Entering into a discussion with you to refine the question to a more manageable level that would fall within the fees limit;
- Contacting you to determine whether you would like part of the information up to the prescribed maximum;
- Discussing with you whether you would like your request to be dealt with outside the FOIA;
- Discussing with you whether you would like a summary or digest of the information you have requested; and
- Offering you the opportunity to view the information if the cost of providing it in permanent form be too costly.

Disbursements

The Police Service can pass on the full cost of disbursements incurred in responding to an application to the applicant.

The maximum amount that may be passed on is £50.

Disbursements include:

- Photocopying or printing material;
- Postage;
- Producing material in an alternative format, such as putting it onto CD-Rom, video, audio cassette or in Braille; and
- Translating information into a different language at the request of the applicant (not Welsh). If a public authority regularly works in the language requested and has an in-house translation service, it should consider waiving any translation costs.

The following charges for disbursements have been agreed:

Cost per photocopy	10p per page
CD-Rom Disk	Free
Postage	As per Royal Mail
Packing	At cost
Video	At cost
Floppy Disk	At cost

Fees Notices

Where the cost of the request will exceed the £450 limit, we will send out a fees notice. This will be within a maximum of 20 days.

Applicants will then have 3 calendar months to meet the fees notice so that the request may be processed.

Fees are not subject to VAT.

On occasions, fees may also be charged for information that appears on the force publication scheme. Details of any charges will be clearly stated on the publication scheme itself.

Transferring Requests

If we receive a request and do not hold the information, we will transfer the request on your behalf and with your prior agreement. If you would prefer, you will be given the option of re-submitting independently.

If we hold some but not all of the information you are asking for, we will provide what we can and transfer the remainder of the request to the relevant authority with your agreement.

If we receive a request, do not hold the information and are unsure as to where the information might be held or feel a transfer may be inappropriate, we will advise you accordingly.

Consulting with a Third Party

Where a request for information might impact the legal rights of a third party, we will consult with the third party prior to the release of any information. However, where the Police Service is the original receiving authority, we will take the ultimate decision on the release of information, whether that is in its entirety or as an edited version.

Providing Assistance

Having researched the experience in other countries with similar legislation, we are committed to providing the best service we can in respect of FOIA applications.

Where necessary, we will contact you to establish a rapport at an early stage and clarify exactly what information is required, particularly where the request is ambiguous or the information is unidentifiable.

If you are unable to make a request in writing – due to illiteracy, disability or illness, for example – we are committed to providing assistance.

Communicating Information

When requesting information, you may express a preference for the format in which you wish to receive the reply, whether that be in permanent form or in another form.

We will also provide:

- Reasonable opportunity for you to inspect a record containing the information; and/or
- A digest or summary of the information in permanent form or in another form acceptable to you

We will comply with your preferred form of presentation as far as it is reasonably practicable. In determining whether it is reasonably practicable, we will review all the circumstances, including the cost.

Where we are unable to comply with your preferred format, we will notify as to the reasons why. Where you have not specified your preferred method of communication, we will provide the information by any means reasonable in the circumstances.

Where a request for information has been made successfully, we will advise you in writing of the following:

- The decision;
- The date on which it was made;
- The name and designation of the person who dealt with the request;
- Form and manner of access; and
- Your right to complain, including details of the internal complaints procedure and the Information Commissioner's details.

Where a Request is Refused

Where we receive a request for information and its release is refused, we will advise you, the applicant, within 20 days, of the following:

- The decision;
- The day on which it was made;
- The name and designation of the person who dealt with the request;
- The grounds for refusing the request, e.g. the application of an exemption, in the public interest, cost of compliance;
- When exemption/s are used, the specific exemption used and the reasons for using the exemption;
- When the public interest test has been considered, the reasons why it was applied;
- Any other issues relevant to the decision or matters that were taken into consideration; and
- Details for the internal procedures for dealing with complaints and your right to apply to the Information Commissioner for a decision notice.

Note: The Police Service is not obliged to state why an exemption applies if by doing so, exempt information would be revealed.

Dealing with Vexatious or Repeat Requests

The Police Service can refuse to process an FOI request if we consider it to be either vexatious or repeated, or both.

If this is the case, we will inform you within 20 days of receiving the request. At the same time, we will provide details about our internal procedures for dealing with complaints and your right to apply to the Information Commissioner for a decision notice.

If a notice has already been issued that a request is repeated or vexatious, we will not send out a further notice.

Where a second request is received for information that has already been provided and the second request is identical or substantially similar, we will not comply with the request unless a reasonable time has elapsed between the two requests.

The Complaints Procedure

Our decisions and actions on any request will be logged and recorded. These will be retained, together with any other pertinent information in the event of a complaint.

Structure of Review

We have rigorous procedures in place to ensure that the original decision-maker will provide an independent reviewer with all the information relevant to processing the complaint.

We will review the following aspects of the request:

- Timescales.
- Was the applicant kept informed?
- Was the applicant helped to locate information if not held by Police Service?
- Was the response communicated in the format preference of the applicant? If not, why not?
- Was a transfer or partial transfer of request made? If so, was this handled correctly?
- Was a fees notice served and the principles of the charging regime applied?
- Was a refusal notice served?
- If the request appeared to be vexatious, was the correct procedure followed and the correct decision reached?
- Was the information requested sourced correctly?
- Was there a need to obtain additional information?
- Were all systems and information directories searched in response to the information requested?
- Were any problems encountered in obtaining the information from the information owners?

- Analysis of decisions made by the FOI decision-maker in relation to any exemptions applied.
- Analysis of the application of the public interest test and the resulting decision.
- Review of comments made by information owners (if any) regarding disclosure of the information.
- Discussion with the FOI decision-maker with regard to their decision logs (if appropriate).

Involving the Information Commissioner's Office (ICO)

The ICO will only accept complaints AFTER the complaint has been processed through the force's own internal complaints procedure.

Once the complaint has been reviewed by the ICO, it will be returned to the submitting force, at which point it becomes subject to that force's own internal processes once more.

The responsibility for monitoring the operation of the FOI Act and enforcing obligations placed upon public authorities lies primarily with Information Commissioner.

Failure to comply with notices issued will be treated as contempt of court.

The Information Commissioner has the power:

- To issue decision notices;
- To enforce the right of access to information; and
- Enforce sanctions.

Timing

It is the Police Service's policy to deal with complaints and appeals in a timely manner. Thus, the target time for responding to appeals and complaints should be *as soon as practicable and in any case within three months*.

EXEMPTIONS

Introduction

When an FOI request is made, we will adopt the spirit of the legislation and look to release the information.

However, there will be occasions where exemptions contained within the Act must be applied. The purpose of these exemptions is to assist the Police Service in protecting information that, if released, may have a negative impact on our ability to fulfil our core functions of law enforcement, crime prevention and the protection of life.

There are 23 exemptions included under the FOIA. The exemptions are classified as either 'absolute' or 'qualified'.

Where an absolute exemption applies, no release is required under Freedom of Information legislation.

Where a qualified exemption applies, the public interest test must be considered. This gives the Police Service more time to make a decision about the release of information. Where there is a public interest in releasing information and a benefit to the community as a whole, the information will be disclosed. However, where the opposite is true, we will withhold the information.

The complete list of exemptions is as follows:

Section 21	Information accessible to applicant by other means
Section 22	Information intended for future publication
Section 23	Information supplied by, or relating to, bodies dealing with security matters
Section 24	National security
Section 26	Defence
Section 27(2)	International relations
Section 28	Relations within the UK
Section 29	The economy
Section 30	Investigations and proceedings conducted by the public authority
Section 31	Law enforcement
Section 32	Court records
Section 33	Audit functions
Section 34	Parliamentary privilege
Section 35	Formulation of government policy
Section 36	Prejudice to the effective conduct of public affairs

Section 37	Communication with Her Majesty etc and honours
Section 38	Health & safety
Section 39	Environmental information
Section 40	Personal information
Section 41	Information provided in confidence
Section 42	Legal professional privilege
Section 43(1)	Commercial interests
Section 44	Prohibitions on disclosure

It is the responsibility of the FOI decision-maker to provide a structured and valid argument to justify the non-release of information.

THE PUBLIC INTEREST TEST (PIT)

Introduction

The PIT is a centrally important to the application of qualified exemptions.

When we apply the PIT, it is not sufficient that the information will be of interest to the public: its release must be **beneficial to the community as a whole**.

There is no definition of the 'public interest' in the UK's FOI legislation. The definition will evolve and develop as cases are brought before the ICO.

At this stage, we will be applying the following criteria in favour of disclosure:

- **Accountability** – When information disclosed relates directly to the efficiency and effectiveness of the force or its Officers.
- **Public Participation** – Where disclosure would enhance informed debate and decision-making by the service.
- **Public Awareness** – Where disclosure of information about issues of general concern can assist individuals in making decisions about their own activities e.g. information about crime prevention methods, road safety/crime initiatives, trends of burglary etc.
- **Public Debate** – Where release of information would contribute to the quality and accuracy of public debate.
- **Justice to an Individual** – The public interest may be served by providing individuals with information of particular reference to them and their situation e.g. information that would assist the applicant to understand the steps taken by the service in dealing with their request/complaint, information which would assist them to assess whether to pursue a legal remedy or otherwise.
- **Research** – In appropriate cases providing information/records that assist in research could benefit the community at large.
- **Accountability for Public Funds** – Where public funds are being spent, there is a public interest in accountability and justification.
- **Public Safety** – There may be occasions when it is appropriate to disclose details of public safety, such as emergency contingency plans.

- **Improper Actions of Public Officials** – Disclosure of information relating to the abuse of office.

The following criteria will be applied by the Police Service in favour of non-disclosure:

- **Criminal Investigations** – Information relating to a criminal investigation will rarely be disclosed under FOIA and only where there is a strong public interest consideration favouring disclosure.
- **Exemption Provisions** – Where one or more of the exemption provisions applies and gives rise to a public interest consideration favouring non-disclosure.
- **Interests of Third Parties** – Where third party interests might be jeopardised by release of information that relates to personal affairs of individuals and/or sensitive commercial information held about business, financial, contractual or operational issues. See also Data Protection issues.
- **Efficient and Effective Conduct of the Service/a Force** – Where current or future law enforcement role of the force may be compromised by the release of information.
- **Flow of Information to the Service/Force** - Where releasing information would act as a deterrent to the public to provide information to the force. With this relationship impeded, it would be more difficult for the force to gather information required to perform its public service functions. An example of this would be to protect the flow of information from, and identity of, informants.
- **Fair Treatment of an Individual** – There can be public interest in non-disclosure of information that adversely affects the reputation of an individual e.g. where they have been the subject of unsubstantiated allegations.
- **Public Safety** – There may be occasions where the release of information relating to public safety e.g. emergency contingency plans, may not be in the public interest.
- **Current Investigations** – It would not be in the public interest to release information that may be of assistance to offenders/prevent an individual from being brought to justice.
- **Fishing Expeditions** – It would not be in the public interest to release all information relating to a vague 'catch all' type request. In these circumstances, the applicant should be contacted to determine exactly what information is required

- **Existing Procedures** – It would not be in the public interest for Freedom of Information to be used to obtain information which is already available under existing procedures.
- **Tortious Duty** – In circumstances where the Service/force is under a legal obligation to maintain confidences, it would not be in the public interest to release the information if the grounds for this duty can be shown to be valid.

In addition, there are a number of criteria that may be not be considered as part of the public interest test or may be applied only in limited circumstances:

- **Embarrassment** – To the force, Police Service or an individual is not a valid public interest consideration favouring non-disclosure. Potential embarrassment to the force, Police Service or an individual officer does not prohibit disclosure of information
- **High Public Office** – Where the subject of the information, the giver or the recipient of the information holds high office, this is not in itself sufficient to weigh against disclosure; an assessment of the consequences of the disclosure of the particular issue is required.
- **Policy Development** – Even where information relates to policy development, this does not establish a public interest consideration favouring non-disclosure. Even if policy is under review, it still may be in the public interest to release.
- **Candour and Frankness** – Claims that disclosure would prejudice the supply of frank and candid information in the future can only be considered where there is a very particular factual basis to support this view. The possibility of future publicity through disclosure may deter immediate release and should provide an incentive to improve the quality of the information/record prior to disclosure.
- **Disclosure of Confusing or Misleading Information** – In most cases, the force would have a means of avoiding such a prejudicial effect by releasing new or revised information to rectify any inaccuracies or clarify the situation. If a certain course of action hasn't been considered and should have been, this is not enough to withhold.
- **Information/Records Held do not Fairly Reflect the Reasons for a Decision** – Where this occurs, the force would have the opportunity to provide additional information that accurately explains the reason for the decision.
- **Draft Documents** – There may be benefits of public access to draft material, to further the accountability and public planning process. Draft documents may therefore be disclosed. Disclosure of this kind allows

members of the public to examine the process by which a decision has been reached, thus serving the public interest.

- **Government Protective Marking Scheme (GPMS)** –The marking of material under the GPMS will not, in itself, be valid grounds for withholding information. GPMS indicates how a document should be transported and stored. The content of the material should be examined and the relevant exemptions applied only after discussion with the data owner and other relevant parties. Time elapsed since the document was marked under GPMS may also be factor in any decision to release or withhold.

Where the public interest test is applied to a request for information, we will provide a review of the reasons why we believe a decision to release or withhold information is or is not in the public interest.

KEY POLICING EXEMPTIONS

Introduction

The Police Service theoretically has the right to use any of the listed exemptions. However, in practise, there are a number of key exemptions that are particularly relevant to the types of information we hold that we will cite regularly.

These are:

Section 21	Information accessible to applicant by other means
Section 22	Information intended for future publication
Section 23	Information supplied by, or concerning, certain security bodies
Section 24	National security
Section 30	Investigations and proceedings conducted by the public authority
Section 31	Law enforcement
Section 32	Court records
Section 36	Disclosure prejudicing the effective conduct of public affairs
Section 38	Health & safety
Section 40	Personal information
Section 41	Information provided in confidence
Section 43(1)	Commercial interests

We have provided detailed guidance on each of these key exemptions in this document.

SECTION 21 INFORMATION REASONABLY ACCESSIBLE BY OTHER MEANS

Introduction

This is an absolute exemption that we may apply if the information you request is available, or is published, elsewhere.

Under s21, we are required to confirm to you that the information you've requested can be found somewhere else and explain where it is and how you can go about obtaining it.

We are not, however, obliged to communicate the information to you as long as it's 'reasonably accessible'.

It may even be that we refer you to another public authority's website or to a website or source external to the Police Service and maintained by another individual or organisation.

Information is not 'reasonably accessible' if:

- You live a considerable distance away from the location where the information is held;
- You have mobility or other disability issues;
- There are other factors that may influence your ability to view the information ie. if it is available in one location only;
- You don't have access to an Internet connection and are therefore unable to access websites; or
- The cost of accessing or obtaining the information is inordinately high.

Where a request is received in another language, the Police Service should translate the request, assuming this is practicable. We may ask you to visit your Citizens Advice Bureau or a community leader to provide us with an English version of the request.

We are not, however, under an obligation to translate information released in response to a request into another language, though this does not preclude us from doing so.

Where an applicant has a disability or may require the information in an alternative form – such as in Braille or an audio-tape – the onus is on the Police Service to consider providing it in the format requested, again assuming that it is 'reasonably practicable' to do so.

One of the key sources for information available by other means will be the force's publication scheme. We will use our publication scheme to proactively

publish frequently requested – and released – information. The aim of this is to provide applicants with easy access to key information classes and to simplify the request process for both you and us.

There may be occasions when we charge for information on our publication scheme but any fees will be clearly indicated to you. We will not use this exemption if the fee to access the information you've requested is inordinately high.

In Summary

This is an absolute exemption and as such, there is no requirement for us to apply the public interest test.

If we cite s21, we will provide you with the following information:

- How and where the information you've requested can be found. If this is the force publication scheme, we will state the Internet address and also give details, when we are able, to the nearest public access to the Internet can be found (usually public libraries);
- Details of any specific procedure that you will need to follow; and
- Details of any relevant legislation and fees.

SECTION 22 INFORMATION INTENDED FOR FUTURE PUBLICATION

Introduction

We will use this exemption where we receive a request for information and the decision has already been taken to publish the information.

We cannot use this exemption if the decision to publish is taken only AFTER we receive the request.

When applying this exemption, a firm publication date does not necessarily have to have been set and the proposed publication may be via our publication scheme. We can also use this exemption where another authority or individual intends to publish.

s22 is a qualified exemption and therefore subject to the application of the public interest test.

There may be occasions when it's in the public interest to bring forward a publication date. This is the case even if the document in question is still in a draft form, so long as the message or information imparted is likely to remain unchanged. There may even be occasions when we publish parts of a document earlier than planned.

There may be occasions when the Police Service might wish to control the release date of certain information to ensure all parties that have an interest in it have equal access to it. Again, if the public interest dictates the date be brought forward, we are obliged to publish earlier than we may have intended.

In Summary

s22 is a qualified exemption and therefore subject to the application of the public interest test.

This exemption is concerned with the TIMING of the release of information. It is not concerned with the suitability of the CONTENT for release.

Whilst the decision to publish has been taken in principle, the public interest will dictate whether the publication date should be brought forward. To use this exemption, the Police Service doesn't necessarily have to have a set date in mind for publication: however, the Act states that this date must be 'reasonable'.

There may be occasions when publication of certain information may be delayed to ensure a reasonable return from commercial publication: in these cases, we will apply a s22 exemption. However, we will not use this exemption to hide political embarrassment and administrative inefficiency to delay publication.

When we apply this exemption, we will confirm to you that the information will be published at a future date and if the date is known, we will provide details. We will also inform you of where the information will be published.

SECTION 23 INFORMATION PROVIDED BY SECURITY SERVICES

Introduction

Security bodies are not public bodies under the Act. As such, they are exempt under Freedom of Information legislation and will not receive any applications for access to their information.

However, there are bodies that fall outside the scope of the FOIA who generate confidential and sensitive information that may be held by the Police Service.

Where we receive requests for their information, we will apply a s23 exemption.

When citing a s23 exemption, we may use a standard form of words to neither confirm nor deny the existence of the information. This is designed to protect those occasions when, whichever we respond, we may inadvertently answer the enquiry, confirming the existence of the information or confirming the involvement of the Security Services.

Under this exemption, a Minister of the Crown may sign a certificate stating that requested information has originated from, or relates to, any of the security bodies listed under s23 and therefore is precluded from disclosure. However, this certificate can be appealed under the provisions of s60 of the Freedom of Information Act.

In Summary

This is an absolute exemption. There is no requirement, therefore, for the Police Service to apply the PIT.

Should we cite this exemption, we will use a standard form of words that will neither confirm nor deny the existence of the material requested. This is standard practice and will state that, if the information were to exist, the exemptions we would apply to safeguard it, **even if we do not hold the information.**

SECTION 24 NATIONAL SECURITY

Introduction

We will apply a s24 exemption if the disclosure of requested information would have an adverse effect on national security.

S24 goes hand in hand with s23 and we will often apply these exemptions together.

As with s23, we will provide a standard form of words that will neither confirm nor deny the existence of the information requested and will list the exemptions that would be enforced if the information were to exist.

Similar to s23, a certificate signed by a Minister of the Crown may be obtained to protect information and the Act offers the opportunity of appeal under s60.

In Summary

If we apply s24 to a request, we will use a standard form of words. If a Ministerial Certificate has been issued, we will provide details, together with information relating to the how the applicant can appeal against the certificate.

We will explain how the disclosure of the information would have an adverse effect on national security, unless doing so would disclose any of the information itself. We will also provide details of the application of the PIT.

**SECTION 30
CRIMINAL INVESTIGATIONS AND PROCEEDINGS
BY PUBLIC AUTHORITIES**

Introduction

s30 has two distinct subsections, both of which are relevant to the Police Service.

s30(1) covers information held **at any time** for the purposes of a **specific** investigation.

s30(2) covers information held for a variety of general functions such as investigations, criminal or civil proceedings and any information obtained from confidential sources.

s30(1)

We will apply s30(1) to any information that has been held at any time as part of a specified investigation. This will include unused material that's held on file and **is not** limited to criminal investigations.

This section will be applied by the Police Service to:

- An investigation carried out to determine whether a person should be charged with an offence, or whether a person who has been charged with an offence, is guilty of it;
- An investigation carried out to decide whether to institute criminal proceedings; and
- Any criminal proceedings that the force has the power to conduct.

Although this exemption is qualified and the Police Service is obliged to consider requests for information about investigations on a case-by-case basis, it would be exceptional for information relating to any investigation to be released under FOIA.

Information Concerning Police Investigations

Police investigations are conducted with due regard to the confidentiality and privacy of victims, witnesses and suspects. Such investigations may also frequently involve the use of policing tactics or techniques that, if widely known, would hinder the ability of the police service to prevent and detect crime. It is further recognised that the release of information concerning current investigations may compromise any subsequent court proceedings. For these reasons the police service will, in most cases, seek to apply an exemption to prevent the release of information concerning investigations when requested under the Freedom of Information Act, 2000.

Whilst adopting this general position, there is full recognition that in some cases there will be significant and compelling issues of public interest that require the disclosure of information. However, to override issues of personal privacy and possible harm to individuals involved in the investigation, this public interest must be significantly more than mere curiosity or interest in a particular investigation.

In order to ensure that these public interest issues are fully considered, all applications for information concerning investigations will be considered on a case-by-case basis in accordance with the requirements of the Act.

s30(2)

s30(2) is another key exemption for the Police Service.

Information will be exempt under this subsection if obtained or recorded for the purposes of any criminal or civil proceedings **and** obtained from a confidential source.

We will apply s30(2) in all cases involving how and when we deal with Covert Human Intelligence Sources.

However, this is subject to the application of the public interest test.

Under both s30(1) and s30(2), there is no duty for the Police Service to confirm or deny the existence of the information requested where doing so would, by implication, involve the disclosure of information or would inform the applicant that the information is held.

In Summary

If we apply this exemption, we will inform of the relevant subsection(s) that is/are being enforced.

For both subsection 1 and 2, we are required to apply the PIT and we will justify to the applicant why we feel release is not in the public interest. If the

PIT favours non-disclosure, relief is also given from the duty to 'confirm or deny'.

This exemption covers information relating to open and on-going investigations **and** also post-investigation.

Information relating to investigations will be released only in **exceptional circumstances** and where there is a **strong public interest**.

SECTION 31 LAW ENFORCEMENT

Introduction

s31 is an important exemption for the Police Service. We will use it to protect information that that would, if released, prejudice:

- The prevention and detection of crime;
- The apprehension and prosecution of offenders; and
- The administration of justice

Crime prevention will cover steps taken on a local level to prevent crime and can cover a whole host of activities. Covered under this heading are activities such as specific deployment of officers patrolling certain areas and the times they are present. We will protect this type of information under s31.

Crime detection is less general and covers any activity that takes place to link offenders with incidents. It may cover aspects such as the collation of detection data to create a policing strategy.

Prior to the release of any information, we will automatically refer to this exemption since it underpins everything we do. We will not release any information that might impact operational effectiveness, reveal police tactics or affect our ability to fulfil our key functions of law enforcement and crime prevention.

Any information, therefore, that would highlight methods of prevention or detection of crime would be subjected to a rigorous public interest test.

In Summary

s31 is a qualified exemption and therefore subject to the application of the public interest test.

If we apply this exemption to information requested, we will explain why we believe that it would, or would be likely to prejudice our ability to fulfil our core function. We will also explain our application of the PIT and our justification for withholding all, or a part of, the requested information.

We are absolved of the duty to confirm or deny under this exemption if, by doing so, we would reveal exempt information.

**SECTION 36
DISCLOSURE PREJUDICING THE
EFFECTIVE CONDUCT OF PUBLIC AFFAIRS**

Introduction

We will use this exemption sparingly and only when the information requested is likely to cause harm to the Police Service but isn't covered by any other the other key exemptions.

Information may be exempted under this section if, in the reasonable opinion of a 'qualified' person, its disclosure would prejudice or would be likely to prejudice interests relating to public affairs.

For the Police Service, this is a qualified exemption and the onus is on the Police Service to establish and catalogue the prejudice that the release of information would have under the public interest test.

For the Police Service, it has been agreed that the 'qualified' person under this legislation is the Chief Constable.

In Summary

For the Police Service, this exemption is qualified and will therefore require the application of the PIT. We will cite s36 in exceptional circumstances only and on the advice of the Chief Constable.

When we do use this exemption to protect our information, we will inform the applicant which function would be prejudiced, which function would be inhibited or how the effective conduct of public affairs would be otherwise prejudiced.

This does not have to be done if, by providing an explanation, we would disclose exempt information.

SECTION 38 HEALTH & SAFETY

Introduction

s38 is another key exemption that is of relevance to the Police Service.

Information would be exempt from disclosure under the FOIA if the release of the information may put the physical or mental health or safety of any individual in danger. The individual can be anybody – a police officer, a victim of crime, the requester – and the harm may be real or perceived.

The Police Service will use this exemption vigorously in certain situations.

In particular, we will use it to protect the identity and the safety of Covert Human Intelligence Sources or informants.

We will also cite it to protect photographs and videos showing post-mortems, injuries, accidents, crime scene images and similar material that would be likely to affect the mental health of those affected if released into the public domain. It is our belief that the release of this type of information would never be in the public interest.

In Summary

We will use this exemption if we believe actual or perceived harm to the physical or mental health of any individual would be threatened if it were to be released.

In keeping with other qualified exemptions, the public interest test will be applied to consider the course of action, either release or retention, is in the public interest and therefore of benefit to the community,

The Police Service is relieved of its duty to 'confirm or deny' where confirmation or denial would imply the existence of the material requested.

SECTION 40 PERSONAL INFORMATION

Introduction

This is a complicated exemption but one that will apply to the Police Service. There are two elements to it:

1. Where an individual requests information about themselves; and
2. Where an individual requests information about a third party

In the first case, where an individual is requesting information about themselves, this is automatically exempted under the FOIA. This is a request for personal data and becomes a Subject Access Request, thus falling automatically under the Data Protection Act.

In the second example, where an application is made by an individual for information about somebody other than themselves, this is a third party application and falls under the FOIA. Where the release of information would breach any of the Data Protection Principles, as would be the case in the majority of examples, this information will probably not be released.

In Summary

This exemption is complex and has elements that are absolute and elements that are qualified.

When we receive a request from an individual about themselves, we will automatically refer it on to Data Protection. This is because it falls outside the remit of the FOIA. In this case, the Police Service does not need to confirm or deny the existence of the information.

If a request is received from an individual requesting information about somebody else, this is called third party data. This falls within the scope of the FOIA. However, it will be rare that this type of information would be released. In addition, the Service is not required to confirm or deny the existence of any information if doing so would contravene Data Protection Principles or imply the existence of requested information.

SECTION 41 INFORMATION PROVIDED IN CONFIDENCE

Introduction

We will use this exemption to protect information that has been provided in confidence.

Under the conditions of this exemption, we will be required to demonstrate that the information requested has certain characteristics that may be attached to it. These characteristics include the following:

- The information must have been obtained from another person or public authority; and
- Its disclosure would mean that the Police Service would be open to legal action for a breach of confidence.

Information that might be exempted under s41 will include:

- Information received from another body or person;
- Information that is commercial, personal and official in nature and of a confidential nature; and
- Information provided by informants, subject to breach of confidence.

Significantly, information that we consider to be 'confidential' is not necessarily covered by this exemption. In addition, this exemption does not apply to information that has been generated internally.

This exemption may be enforced only where an actionable breach of confidence would occur should the information be disclosed. In light of this, we will consider the following when taking a decision as to whether this exemption may be cited:

- Does the information have the necessary quality of confidence about it?
- Was the information imparted in circumstances that imply an obligation of confidence?
- If released, would there be an unauthorised use of that information to the detriment of the person communicating it?

The Police Service is relieved of the duty to 'confirm or deny' whether the information is held if doing so would result in a breach of confidence as outlined above.

In Summary

This is an absolute exemption that does not require the application of the public interest test.

When we apply this exemption, we will need to demonstrate the following:

- That the information has the 'necessary quality of confidence';
- That the information was imparted in circumstances implying an obligation of confidence;
- That disclosure of the information would be to the detriment of a party; or
- That the party who gave the information objects to disclosure.

The duty to 'confirm or deny' is relieved if doing so would reveal any of the confidential information.

SECTION 42 LEGAL PROFESSIONAL PRIVILEGE

Introduction

The Police Service can use this exemption to withhold information that is covered by legal professional privilege.

Legal professional privilege is a mechanism by which the confidentiality of documents can be maintained. It is divided into two sections:

- (i) Advice privilege
- (ii) Litigation privilege

Advice privilege extends to correspondence between a party and their legal advisor which relate to the giving or receiving of legal advice.

Litigation privilege extends to correspondence between a party and their legal advisor which relate to a contemplated or impending legal action. It also extends to the collection of evidence to support or defend a contemplated or impending legal action.

The Police Service is not required to 'confirm or deny' whether such information is held if doing so would involve the disclosure of information which is privileged, or would be privileged if it was held.

In Summary

This is a qualified exemption that require the application of the public interest test.

We will use this exemption where information has been requested that may be defined as advice privilege or litigation privilege.

The Police Service is relieved of its duty to 'confirm or deny' if this action would disclose exempt information.

This exemption is only valid for 30 years following the creation of the information.

SECTION 43 COMMERCIAL INTERESTS

Introduction

The Police Service will use this exemption to prevent the release of information that is a trade secret.

Whilst there is no strict definition of the meaning of what constitutes a 'trade secret', there are a number of factors that we will consider when making our decision. These are:

- (a) Is the information commercially sensitive and does it give a company a 'competitive edge' over its rivals?
- (b) Is it obvious from the nature of the information that its release would cause harm and erode competitive advantage? Has the owner of the information stated this?
- (c) Is the information already in the public domain?
- (d) How easy would it be for others to discover or reproduce the information themselves?

The information is also exempt if its disclosure would have an adverse effect on the commercial interests of any person.

In Summary

This is a qualified exemption. As such, the public interest test will be considered prior to the release or retention of any relevant information.

Integral to this exemption is the assessment of whether the information is a trade secret and that, as such, its disclosure would reveal a secret and if a commercial interest would or could be prejudiced if the requested information were to be released.

The Police Service is not required to 'confirm or deny' if doing so would have an adverse effect on the commercial interests of any person.