

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 December 2009

Public Authority: Youth Justice Board for England and Wales
Address: 11 Carteret Street
London
SW1H 9DL

Summary

The complainant requested a copy of the manual detailing the physical restraint methods that may be used on young people held in the custody of Secure Training Centres. The public authority refused to disclose this information, citing the exemption provided by section 31(1)(f) (prejudice to the maintenance of security and good order in prisons). The public authority also later cited the exemption provided by section 38(1)(a) and (b) (endangerment to health and safety). The Commissioner concludes that both of these exemptions are engaged, but that the public interest in the maintenance of these exemptions does not outweigh the public interest in disclosure. In failing to disclose the information requested within 20 working days of receipt of the request, the public authority breached sections 1(1)(b) and 10(1). The public authority also failed to comply with the requirements of sections 17(1)(b) and (c) and 17(3)(b) in its handling of the request and is required to disclose the information in question.

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 requested the following information on 10 May 2007:
"...a copy of the current Physical Control in Care (PCC) Prison Service manual."
3. The public authority responded to this on 8 June 2007. This response referred to the *"Physical Control in Care manual"* (the "manual") as having 114 pages. Pages

- 1 - 59 of the manual were disclosed, with pages 60 - 114 withheld. The public authority cited the exemption provided by section 31(1)(f) (prejudice to the maintenance of security and good order in prisons) in relation to the pages withheld.
4. The reasoning for the citing of this exemption was that this information contains detailed descriptions of the physical control methods and that knowledge of these detailed descriptions could be used to undermine security. The public authority did not address why it believed that the public interest favoured the maintenance of this exemption.
 5. The complainant responded to this on 15 June 2007 and requested that the public authority carry out an internal review of its handling of the request. The complainant referred to a previous disclosure of information that took place in November 2005 and stated that the information disclosed at that time was similar to the information now withheld. The complainant noted that it did not appear that the maintenance of security and good order in prisons had been prejudiced through the earlier disclosure of information. The complainant also believed that the public interest favoured disclosure owing to concerns arising from child deaths in custody and evidence of inappropriate use of physical restraint.
 6. The public authority responded with the outcome to the review on 17 July 2007. The public authority referred to the 2005 disclosure and stated that it was regrettable that this information was in the public domain. It acknowledged that this disclosure did not appear to have undermined security, but believed that there would be an increased risk of this through disclosure of the information requested by the complainant.
 7. The public authority believed that this risk would arise through young people within Secure Training Centres (STCs) learning the restraint techniques detailed within the withheld information and applying this knowledge to counteract these techniques. The public authority believed that this could also lead to other young people and staff being injured. The review concluded that the initial refusal should be upheld. The public authority again did not address why it believed that the public interest favoured the maintenance of the exemption.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner initially on 3 August 2007. The complainant disagreed both with the conclusion that the exemption provided by section 31(1)(f) is engaged and with the conclusion that the public interest favoured the maintenance of this exemption.
9. On the issue of the exemption being engaged, the complainant stated that the public authority had provided no evidence in support of its assertion that knowledge of the physical restraint techniques used could prejudice security and

good order. The complainant also referred to the November 2005 disclosure of similar information to that in question here and stated that there was no evidence that the disclosure of this information had resulted in prejudice.

10. On the issue of the balance of the public interest, the public authority referred to the continued use of “*distraction*” techniques, which it described as involving “...*the deliberate infliction of severe pain on children*”. The complainant believed that the regularity of the use of these techniques and the moral, ethical and legal issues surrounding these techniques meant that the public interest in disclosure of the information in question would outweigh the public interest in maintenance of the exemption.

Chronology

11. The Commissioner contacted the public authority initially on 7 April 2008. The public authority was asked to respond with further arguments for the citing of section 31(1)(f) and to provide to the Commissioner a copy of the information withheld from the complainant.
12. The public authority responded to this on 9 May 2008 and provided with this response a full copy of the Physical Control in Care Training Manual dated December 2005. In connection with section 31(1)(f), the public authority believed that prejudice would be likely to result due to the following.
 - Young people within STCs could learn the details of the restraint techniques used which may mean that they could not be restrained effectively. The public authority believed that this could have a detrimental effect on the maintenance of security and good order and on the health and safety of both staff and young people within STCs.
 - The public authority believed that individuals outside STCs may attempt to use the techniques detailed in the manual without training and that this could lead to injury.
13. On the issue of the public interest the public authority acknowledged that the treatment of young people in custody is the subject of much debate and that disclosure of the information in question would contribute to this debate. The public authority also recognised a public interest in ensuring public confidence that restraint techniques used on young people in custody do not cause physical harm.
14. However, the public authority believed that the public interest in ensuring the safety of young people in custody had been satisfied due to the techniques used having been scrutinised by experts and verified as safe. The public authority did not believe that releasing these details to non-experts would lead to restraint becoming safer.
15. The public authority also addressed the issue of the information disclosed in response to an information request from the complainant in 2005. It stated that this disclosure of “*a few pages*” from the manual was an error and stated that, whilst it did not appear to have undermined security by that stage, it had the

- potential to do so. The public authority believed that this potential would be heightened through the disclosure of the information in question.
16. The Commissioner contacted the public authority again on 5 February 2009. It was noted that some of the arguments that the public authority had advanced in connection with section 31(1)(f) in fact appeared more relevant to section 38(1) (endangerment to health and safety). The public authority was asked to respond confirming if it did wish to also cite section 38(1) and, if so, to explain why.
 17. It was also noted that a July 2008 Court of Appeal ruling appeared to have changed the law in the area of the use of physical restraint in STCs and that it now appeared that physical methods could no longer be used to maintain discipline. It appeared that physical methods could still be used where necessary to prevent escape, prevent harm inflicted by a trainee on themselves or others, or to prevent damage to property. It was not clear if distraction techniques remained lawful for any purpose. With a view to the possibility of an informal resolution to this case, the public authority was asked to respond confirming if it maintained that the information in question should not be disclosed given the changes in the law brought about by the Court of Appeal ruling.
 18. The public authority responded to this on 5 March 2009 and confirmed that it did wish to cite the exemption provided by section 38(1)(a) (health) and 38(1)(b) (safety). The public authority believed that the health and safety of young people and staff within STCs would be likely to be endangered through young people learning the details of the physical restraint techniques and thus being able to counteract these techniques and that the health and safety of individuals outside STCs would be likely to be endangered through members of the public attempting to use the techniques detailed within the information without training. The public authority also believed that the mental health (38(1)(a)) of those involved in violent situations within STCs would be likely to be endangered if these situations could not be controlled due to the ineffectiveness of physical restraint techniques. The public authority believed that the public interest favoured the maintenance of this exemption due to the risk to public safety through disclosure and as a result of the techniques having already been the subject of expert scrutiny.
 19. The Commissioner also contacted the complainant on 5 February 2009 for confirmation as to whether the complaint was maintained given the Court of Appeal ruling. The complainant responded on 5 March 2009 and confirmed that the complaint was maintained.

Findings of fact

20. The Parliamentary Joint Committee on Human Rights Eleventh Report states the following about the use of physical restraint in STCs:

“The type of restraint which may be used in STCs is known as Physical Control in Care. PCC restraint comprises holds and three “distraction” techniques; the latter involves inflicting pain to thumb, ribs or nose.”
21. In the internal review response, the public authority states that in the period

between February 2006 and March 2007, physical restraint was used on 2,574 occasions. Of these, 169 involved the use of a distraction technique.

Analysis

Procedural matters

Section 17

22. The public authority did not cite the exemption provided by section 38(1)(a) and (b) prior to the intervention of the Commissioner. In failing to cite this exemption at either the refusal notice or internal review stage the public authority did not comply with the requirement of section 17(1)(b) and (c), the full wording of which is given in the attached Legal Annex, as is the wording of all other sections of the Act referred to in this Notice.
23. At neither the refusal notice nor internal review stage did the public authority address why it believed that the public interest in the maintenance of the exemption outweighed the public interest in disclosure. In so doing the public authority failed to comply with the requirement of section 17(3)(b).

Exemption

Section 31(1)(f)

24. This provision provides that information is exempt if its disclosure *would, or would be likely to*, prejudice the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained. This exemption is qualified by the public interest, meaning that the information should be disclosed if the public interest does not favour maintenance of the exemption despite the prejudice that this would, or would be likely to, cause.

Prejudice to the maintenance of security and good order?

25. The public authority has specified that its stance is that prejudice *would be likely* to result through disclosure, rather than that it *would* result. The test that the Commissioner applies where a public authority has stated that prejudice would be likely to result is that the risk of prejudice must be real and significant, and certainly more than hypothetical or remote. This is in line with the approach taken by the Information Tribunal in the case *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) in which it stated:

“the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.” (paragraph 15)

26. Section 31(1)(f) refers specifically to *“prisons and other institutions where persons are lawfully detained”*. The information in question in this case, the manual,

relates specifically to STCs. The guidance produced on this exemption by the Ministry of Justice refers specifically to STCs as being institutions where persons are lawfully detained. On this basis the Commissioner accepts that STCs are valid institutions for the purposes of section 31(1)(f).

27. The complainant has argued that the exemption is not engaged on the basis that similar information to that requested in this case was disclosed in November 2005 and that this disclosure has not caused prejudice. The public authority has acknowledged that prejudice does not appear to have resulted through this previous disclosure, but argues that this does not indicate that a further disclosure at this stage would be unlikely to result in prejudice.
28. The Commissioner notes this previous disclosure and the acknowledgement from the public authority that this does not appear to have resulted in prejudice. He also notes, however, that this disclosure was of information contained in a previous version of the manual and so was not the same information as that in question here. He also notes that it does not appear that the information disclosed previously was of the same detail as that in question, the volume of information disclosed previously having been described by the public authority as a “few pages”. For these reasons, the Commissioner does not believe that the previous disclosure precludes the exemption being engaged in this case.
29. The basis for the stance of the public authority is that young people who may be subject to the techniques for physical restraint detailed within the manual could learn the details of these techniques. This could, in turn, enable these young people to counteract these techniques. If it were not possible to effectively restrain young people through the use of these techniques, this would be likely to prejudice security and good order.
30. Focussing on the wording of the exemption, this provides first that information likely to prejudice security is exempt. The Ministry of Justice guidance suggests that security for the purposes of this exemption refers to:

“...all matters related to the secure custody of those detained, [including] the safety of all persons in the institution...”
31. Secondly, the exemption provides that information likely to prejudice good order is exempt. The Ministry of Justice guidance states that good order will include:

“...all matters addressing disobedience on the part of individuals or concerted indiscipline by groups of persons in the institution, and promoting a safe and orderly regime.”
32. The argument of the public authority is relevant to both parts of the exemption. In relation to security the public authority argues that being capable of counteracting physical restraint would be likely to place at risk both young people and staff within STCs. In relation to good order, the public authority suggests that if physical restraint was rendered ineffective, this would be likely to prejudice the ability to maintain the discipline of young people within STCs.

33. The argument of the public authority is supported by the content of the manual, which includes great detail about the physical restraint techniques and how to become competent in performing these. Whilst unable to give an expert opinion on the possibility of being capable of counteracting these techniques as a result of familiarity with the manual, the Commissioner accepts that, given the level of detail within the manual, the possibility is sufficient to meet the would be likely to prejudice test.
34. As to the likelihood of this possibility actually occurring, as noted above at paragraph 21, the public authority stated in the internal review response that physical restraint was used on 2,574 occasions between February 2006 and March 2007. This suggests that physical restraint is used regularly. This also suggests that any prejudice likely to result through the inability to use physical restraint effectively would occur relatively frequently.
35. The conclusion of the Commissioner is that the likelihood of prejudice to the maintenance of security and good order in STCs resulting from disclosure would be real and significant. The exemption provided by section 31(1)(f) is, therefore, engaged. This conclusion is based on the level of detail included within the content of the information withheld and on the statistic suggesting that physical restraint is used frequently. The Commissioner has also established that the prejudice likely to occur would be relevant to the matters mentioned in this exemption.

The public interest

36. Having concluded that the exemption is engaged, it is necessary for the Commissioner to go on to consider whether the public interest in the maintenance of this exemption outweighs the public interest in disclosure. When considering where the balance of the public interest lies, the Commissioner will take into account the conclusion that prejudice would be likely to occur to the matters specified in section 31(1)(f) and the public interest inherent in the exemption; this being the public interest in the maintenance of security and good order in STCs. The specific circumstances relevant to the information in question will also be taken into account.
37. Covering first those factors that favour disclosure, the use of physical methods of restraint on young people in STCs is the subject of controversy and debate. In particular, the use of distraction techniques attracts much debate. Part of this debate focuses of the legality of these techniques; the complainant believes that the use of distraction techniques is in breach of obligations imposed on the UK by the European Convention on Human Rights and the United Nations Convention on the Rights of the Child. The Commissioner also notes that the complainant is far from alone in questioning the legal basis for the use of distraction techniques, with debate on this particular issue being widespread.
38. Debate and controversy also surrounds the ethical issues of the use of distraction techniques. The complainant is amongst those who question the morality and ethics of techniques designed to inflict pain upon children. The Commissioner again notes that the complainant is not isolated in holding this opinion, rather is

part of a significant body of organisations and individuals who argue against the use of distraction techniques on moral and ethical grounds.

39. Part of the basis for the complainant's position is the frequency with which distraction techniques are used. As noted above at paragraph 21, distraction techniques were used on 169 occasions between February 2006 and March 2007. The complainant argues that the frequency of the use of distraction techniques revealed through this statistic should be a cause for alarm.
40. The complainant and numerous others also argue against the use of physical restraint on the basis of the physical harm that these can cause to young people. In support of this argument the public authority referred to the death of two young people in STCs in 2004, which were linked to the use of physical restraint, and quoted a total figure of 29 deaths of children in custody in the 17 years preceding the request. The complainant also referred to a Hansard extract which stated that oxygen had been administered to young people in STCs following physical restraint on four occasions in 2005 and once in 2006.
41. Given the level of debate and controversy surrounding the use of physical restraint, on both legal and ethical grounds, and the evidence that these techniques can result in physical harm, the Commissioner believes there is a significant public interest in full disclosure of information about these techniques. The information in question includes detail about the techniques, including how they are performed, the circumstances in which it is anticipated it may be necessary for them to be deployed and how STC staff are trained in their use. This information would add to that already in the public domain relating to this subject and would inform both the legal and ethical debate about this issue. The Commissioner believes that this is a public interest factor that adds substantial weight in favour of disclosure.
42. Turning to those factors that favour maintenance of the exemption, as noted above there is a public interest inherent in the exemption in that the maintenance of security and good order in STCs is in the public interest. Whilst the Commissioner has not commented on the severity of the prejudice he has accepted is likely to occur, he has accepted that this would be relatively frequent given the regularity with which evidence suggests physical restraint is used. The Commissioner accepts that this is a valid factor in favour of maintenance of the exemption.
43. In mitigation of the public interest factor in favour of disclosure that is related to the physical harm that evidence suggests may result through the restraint techniques, the public authority referred to the oversight of the use of physical restraint techniques. The public authority stated that this was provided by the Independent Review of Restraint. However, only those factors current at the time of the request and refusal can be taken into account in this Notice. This review was dated June 2008 and so has no bearing here.
44. In terms of the oversight of restraint methods that were in place at the time of the request, the Commissioner notes the following from the Independent Review of Restraint that appears to describe the situation as it was at the time of the

request:

“There is currently no overall central regulatory framework for assessing the safety of restraint methods and the effectiveness of training and trainers in the secure estate.” (paragraph 11.1, *Independent Review of Restraint in Juvenile Secure Settings*, P Smallridge and A Williamson)

45. Given this and the evidence that there are examples of physical restraint resulting in physical harm, the Commissioner does not believe that the argument of the public authority about oversight of the use of physical restraint has any notable reductive effect on the public interest in favour of full disclosure of information relating to physical restraint techniques. Indeed, this apparent lack of oversight can be cited as a public interest factor in favour of disclosure.
46. The Commissioner concludes that the public interest in maintaining the exemption does not outweigh the public interest in disclosure. Whilst the Commissioner acknowledges the public interest in the maintenance of security and good order in STCs, he considers that this is significantly outweighed by the public interest in full disclosure of information about the use of physical restraint techniques in order to inform the debate about the legal and ethical concerns that surround this issue.

Section 38(1)(a) and (b)

47. This provision provides that information is exempt if its disclosure *would*, or *would be likely to*, endanger the physical or mental health of any individual (38(1)(a)) and / or the safety (38(1)(b)) of any individual. This exemption is qualified by the public interest, meaning that the information should be disclosed if the public interest favours this despite the endangerment that this would, or would be likely to, cause.

Endangerment to health and / or safety?

48. The public authority has specified that it believes that endangerment would be likely to result. The test to be applied here is the same as that outlined above at paragraph 25; that is, that the likelihood of endangerment must be real and significant and certainly more than hypothetical or remote.
49. The public authority has identified two parties in relation to whom it believes the endangerment would be likely to occur. First, the public in general. The public authority believes that disclosure would be likely to lead to individuals outside STCs attempting the techniques outlined in the manual. The public authority further believes that attempting these techniques without appropriate training would be likely to endanger the physical health and safety of those individuals.
50. Secondly, the public authority has argued that endangerment would be likely to result to staff and young people within STCs. As argued in connection with section 31(1)(f), the public authority believes that disclosure of the contents of the manual would be likely to enable young people to counteract the techniques and thus it may not be possible for a violent young person to be effectively restrained.

The public authority further argues that this lack of effective restraint of a violent young person would be likely to endanger the physical health and safety of both staff and young people, including both the young person who cannot be restrained and other young people, within STCs. The public authority also argues that an uncontrolled violent situation would be likely to endanger the mental health of those present.

51. The Commissioner accepts the argument of the public authority in relation to the likely endangerment of the physical health and safety of all individuals within STCs as a result of disclosure. Similarly to the conclusion reached in connection with section 31(1)(f), the Commissioner accepts the possibility that, given the level of detail within the manual, learning how to counteract the techniques detailed within is a possible outcome of disclosure, and that the evidence of the frequency with which physical restraint techniques are utilised means that the likelihood of this outcome is real and significant. The exemption provided by section 38(1)(a) and (b) is, therefore, engaged.
52. However, the Commissioner does not accept the arguments provided by the public authority in relation to the mental health of those within STCs or in relation to the general public aside from individuals within STCs. On the basis of the arguments provided by the public authority the Commissioner does not believe that the likelihood of endangerment occurring in either of these ways is real and significant. Had these arguments alone been advanced, the conclusion of the Commissioner would have been that this exemption is not engaged.

The public interest

53. When considering the public interest in connection with this exemption, the public interest inherent in the exemption is an important factor. There is a clear public interest in avoiding endangerment to health and safety. In this case the Commissioner has accepted as a likely consequence of disclosure endangerment to the health and safety of staff and young people within STCs. There is a public interest in avoiding this endangerment and this is a valid factor in favour of maintenance of the exemption.
54. The frequency of the likely endangerment is relevant when considering what weight this factor carries in favour of maintenance of the exemption. On this point the Commissioner refers to the evidence of the frequency with which physical restraint methods are used. As noted above at paragraph 21, the public authority states that in the period between February 2006 and March 2007, physical restraint was used on 2,574 occasions. Given this evidence that physical restraint is used regularly, the frequency of the likely endangerment would be relatively high. The weight of the public interest in favour of maintenance of the exemption in order to avoid frequent endangerment to health and safety is significant.
55. Turning to those factors that favour disclosure, that disclosure may also serve to protect the health and safety of young people within STCs runs directly counter to the argument above. The Commissioner has previously referred in this notice to evidence of physical restraint leading to physical harm to young people within STCs and it is of note that there is actual evidence of this endangerment having

- occurred, unlike the theoretical endangerment that would be likely to result through disclosure.
56. Without repeating the wording of the section 31(1)(f) public interest consideration, the Commissioner considers that the evidence of the frequency with which physical restraint is used, the apparent lack of oversight of the use of these techniques at the time of the request and the evidence of physical harm provided through the statistic relating to the administration of oxygen and the reports of deaths of young people in custody, to also be relevant when considering the balance of the public interest in connection with section 38(1)(a) and (b). That disclosure would reveal the detail of physical restraint techniques that evidence suggests can lead to endangerment to health and safety, with the result that these techniques would be subject to public scrutiny that may result in changes to these techniques with the aim of protecting health and safety, is a valid public interest factor in favour of disclosure that carries significant weight.
57. That disclosure in this case would increase the transparency and accountability of the public authority in an area of debate and controversy is also a valid factor in favour of disclosure. The comments made in the section 31(1)(f) public interest consideration about the volume and nature of the debate surrounding the legal and ethical issues regarding use of physical restraint, including distraction techniques, within STCs are also relevant here. The information in question includes a level of detail about these techniques that is not available in the public domain.
58. The conclusion of the Commissioner is that the public interest in maintenance of the exemption does not outweigh the public interest in disclosure. This conclusion is based on the benefit to the health and safety of young people within STCs that may result through disclosure and the additional information that disclosure would add to that already available about an issue of debate and controversy. Whilst the Commissioner recognises the public interest in avoiding the relatively frequent endangerment to health and safety likely to result through disclosure, the Commissioner does not consider this factor to carry sufficient weight to tip the balance of the public interest in favour of maintenance of the exemption.

The Decision

59. The Commissioner's decision is that the public authority did not respond to the request for information in accordance with the Act in that it concluded incorrectly that the public interest in the maintenance of the exemptions provided by sections 31(1)(f) and 38(1)(a) and (b) outweighed the public interest in disclosure and in so doing failed to comply with the requirement of section 1(1)(b). The public authority also failed to comply with the requirement of section 10(1) in not disclosing the information within 20 working days of receipt of the request. The Commissioner also finds that the public authority failed to comply with the procedural requirements of sections 17(1) and 17(3)(b) in its handling of the request.

Steps Required

60. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - Disclose to the complainant the information withheld, that is pages 60 - 114 of the Physical Control in Care Training Manual dated December 2005.
61. The public authority must take the step required within 35 calendar days of the date of this notice.

Failure to comply

62. 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

63. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 10th day of December 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

Section 1

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 10

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 17

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(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 31

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 38

Section 38(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”