FOI Exemptions: Investigations, Crime and Law Enforcement

Sections 30 and 31 of the Freedom of Information Act 2000 protect information linked to investigations, prosecutions and the enforcement of the law. They are not limited to the police. Councils, regulators, NHS bodies and other authorities with investigatory or enforcement functions can use them. Both are qualified, so the public interest test applies.

AT A GLANCE

	Section 30	Section 31
Subject	Investigations and proceedings conducted by public authorities	Prejudice to law enforcement
FOISA equivalent	Section 34	Section 35
Environmental information	Regulation 12(5)(b)	Regulation 12(5)(b) and (a)
Type	**Qualified**	**Qualified**
Test	Class based. Was the information held for a specified investigation or proceeding	Prejudice based. Would disclosure, or would it be likely to, prejudice a listed matter
Neither confirm nor deny	Section 30(3)	Section 31(3)

1. Which authorities can use section 30?

Section 30 applies to information held at any time for the purposes of an investigation the authority has a duty to conduct to decide whether someone should be charged with an offence or is guilty of one, an investigation that may lead to criminal proceedings the authority has the power to bring, or criminal proceedings the authority has the power to conduct. It also covers information obtained from confidential sources in connection with those functions and with investigations for the purposes listed in section 31(2).

It is a class based exemption. If the information was held for one of those purposes, it is exempt, and you do not need to show harm. But the authority must itself have the relevant duty or power. A council that prosecutes fly tipping or trading standards offences can use it for those files. A body that merely reports a concern to the police cannot.

It applies to information held at any time for the purpose, so closed investigations are still covered. The passage of time is dealt with in the public interest test.

2. What does section 31 protect?

Section 31(1) covers information that is not exempt under section 30 and whose disclosure would, or would be likely to, prejudice any of the following.

- The prevention or detection of crime.
- The apprehension or prosecution of offenders.
- The administration of justice.
- The assessment or collection of tax or duty.
- The operation of immigration controls.
- Security and good order in prisons and other places of lawful detention.
- The exercise of a public authority's functions for the purposes in section 31(2), such as checking whether someone has broken the law, whether there is improper conduct, whether grounds for regulatory action exist, or securing the health, safety and welfare of people at work.
- Civil proceedings brought by or on behalf of a public authority arising from those investigations.
- Certain inquiries in Scotland into fatal accidents and sudden deaths.

Because it is a prejudice test, you must evidence the harm. State which limb applies, how disclosure would cause it and how likely it is. Statements that disclosure would help criminals are not enough without a link to the specific information.

3. How do you weigh the public interest?

Reasons that favour disclosure include accountability for how enforcement is carried out, public confidence in investigations and the public interest in understanding why a decision was made. Reasons that favour withholding include protecting a live investigation, protecting witnesses and sources, preserving the ability to prosecute and the risk that disclosure would reveal methods and make enforcement harder.

The age of the information often decides the balance. A closed investigation with no prospect of further action carries much less weight than a live one.

4. Can you refuse to confirm or deny?

Yes. Sections 30(3) and 31(3) remove the duty to confirm or deny. It is useful where confirming that an investigation exists would itself prejudice it. Apply it consistently, as with any neither confirm nor deny response, so that the pattern of replies does not give the answer away.

WORKED EXAMPLE (ILLUSTRATIVE)

A county council receives a request for all documents relating to a trading standards investigation into a local retailer, which has been closed with a warning.

- **Case file and witness statements.** The council has the duty and power to investigate and prosecute these offences, and the file was held for that purpose. Section 30(1) applies as a class based exemption.
- **Public interest.** The investigation is closed, the retailer has been warned and there is public interest in how the council handled it. Against that, the file contains the identities of complainants and the techniques used to establish evidence, and disclosure could discourage people from coming forward. The council weighs both and withholds the witness statements while releasing a summary of the outcome.
- **Information held on a related inspection that did not lead to proceedings.** The council applies section 31(1)(g), in conjunction with section 31(2)(c), explaining how disclosure would prejudice its regulatory functions.

The case record notes each section, the harm identified and the public interest reasoning.

5. Managing sensitive cases: spreadsheet or structured case workflow

Task	Spreadsheet and email	Structured case workflow
Keeping a sensitive file under control	Copies across shared drives and inboxes	Documents collated within one managed case
Withholding witness identities	Manual redaction, hard to evidence	Redaction tool with exemption reasons recorded
Recording the public interest balance	Drafted outside the case	Public interest delay management and decision notes in the case
Releasing the response securely	Email attachments	Secure, time bound download portal, with access closing once delivery is confirmed

Frequently asked questions

Can only the police use these exemptions?

No. Any authority with investigatory or enforcement functions of the relevant kind can use them.

Do we need to show harm for section 30?

No, it is class based. Harm is relevant to the public interest test.

Can section 31 apply to information we hold for a different purpose?

Yes, if disclosure would prejudice a matter listed in section 31(1), whatever the original purpose.

Does section 31 apply once an investigation is closed?

It can, but the prejudice test must be met on the facts, and the public interest balance usually shifts towards disclosure over time.

THE PITFALL

Relying on section 30 when your authority has no duty or power to investigate or prosecute.

THE REMEDY

Check your functions first. If section 30 is not available, use section 31 and evidence the harm.

KEY TAKEAWAYS

- Both are qualified. Weigh the public interest each time.
- Section 30 is class based and needs the right duty or power. Section 31 is prejudice based and needs evidence of harm.
- Section 30 and section 31 are mutually exclusive in that section 31 applies only to information that is not exempt under section 30.
- Time matters. Live investigations and closed ones carry different weight.
- Use neither confirm nor deny where confirming would itself cause the harm.

Conclusion: prioritise your functions, evidence of harm and the age of the case

Before you cite either section, confirm what duty or power your authority has. Then record how disclosure would cause harm, and how the passage of time changes the balance.

HOW PROVEPRIVACY HELPS

ProvePrivacy DSAR & FOI (Lite) brings the documents for a request together in the Disclosure workflow, from collation and scoping through redaction, exemptions and results. The redaction tool can protect witness identities and sensitive methods across large sets of documents, the exemptions you rely on and your reasons are added to the audit log, and the response goes out through a secure portal that requires the recipient to confirm their identity before any file is shown.

Where this fits in the FOI process

Sections 30 and 31 are applied at the decision stage, usually in consultation with the investigating team. See our FOI process hub for the whole journey.

SCOTLAND AND ENVIRONMENTAL INFORMATION

In Scotland, sections 34 and 35 of the Freedom of Information (Scotland) Act 2002 cover investigations and law enforcement. Under the Environmental Information Regulations 2004, the closest provision is regulation 12(5)(b), which covers the course of justice, the ability of a person to receive a fair trial, and the ability of an authority to conduct an inquiry of a criminal or disciplinary nature. It is subject to the public interest test. See our guides on EIR exceptions and on FOISA and the EIRs in Scotland.

Related guides

- DSAR Exemptions: Crime, Law and Public Protection
- FOI Exemptions: Legal Privilege and Confidence
- FOI Exemptions: Health and Safety and Statutory Bans on Disclosure

Sources

- Freedom of Information Act 2000, sections 2, 30 and 31 (legislation.gov.uk)
- Freedom of Information (Scotland) Act 2002, sections 34 and 35
- Environmental Information Regulations 2004, regulation 12(5)
- ICO guidance: Investigations and proceedings (section 30), and Law enforcement (section 31)
- Scottish Information Commissioner guidance: Investigations and law enforcement

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