



Steven Dickinson

Policy Delivery knowledgebase About Contact team

ICON > Policy Delivery knowledgebase > **CWAN 011 evidence required to engage s30(1)(a)**

FOI POLICY INTERNAL KNOWLEDGE BASE		
FoI or EIR	Section/Regulation	Issue
FOI	s30(1)(a)	Evidence required to engage section 30(1)(a)
<p>Summary:</p> <p>Information held by the police about an investigation to establish whether an offence has occurred will fall within section 30(1)(a). This is on the basis that it is an investigation with a view to ascertaining whether to charge someone with an offence.</p> <p>Where it is unclear if an offence has actually occurred the police need to provide an indication, as far as is possible, of the offence or offences that are relevant in the circumstances.</p> <p>If a decision is reached that no offence has occurred any information generated after that point will not fall within section 30(1)(a).</p> <p>Public authorities with a duty to investigate a more limited number of offences will need to be more specific about the offence or offences relevant to the investigation.</p> <p>Case officers should consult with the public authority to ensure that any details of an offence being investigated which is to be included in a decision notice will not prejudice any on-going investigation.</p>		
<p>Further Information:</p> <p>The section 30 guidance explains that in order to demonstrate that section 30(1)(a) applies, public authorities need to explain how the duty to investigate with a view to ascertaining whether to charge someone with an offence arises and to identify the relevant offence or offences.</p> <p><u>Police forces</u></p> <p>Generally the Commissioner expects police forces to provide the information stipulated above in cases involving section 30(1)(a). In many cases forces will be aware at the outset of an investigation which offence or offences they are investigating and this should not present a particular problem.</p> <p>However, there will be instances where the police are under a duty to respond to an incident and to investigate whether an offence has actually occurred. For example, in the event of a suspicious death the police will start investigating with the mindset that an offence may have occurred even if it subsequently transpires that the person died as a result of an accident. The Commissioner accepts that information about such investigations will fall within section 30(1)(a) because the investigation is with a view to ascertaining whether to charge someone with an offence.</p> <p>As far as possible police forces need to indicate the type of offence or offences that are likely to be relevant (ie under consideration) in the circumstances. Given the breadth of offences within the police's remit the Commissioner accepts that where it is unclear if an offence has actually occurred it will be difficult to be very specific. However we would still expect police forces to provide an indication, based on the nature of the incident, of the types of offences under consideration.</p> <p>If, at the time of the request, a public authority has yet to conclusively rule out any offence having occurred- so that effectively the matter remains unresolved- section 30(1)(a) will apply.</p> <p>However, if by the time of the request, a decision has been made that there was no offence, section 30(1)(a) will apply to information created up to the point that decision was reached. However it will not apply to information created after that decision.</p> <p><u>Other public authorities</u></p> <p>Other public authorities have duties to investigate offences. Where they have a limited remit in terms of the offences they regulate, the Commissioner would expect them to be more specific about the nature of the offence or offences under investigation.</p> <p>Not all breaches of legislation will constitute offences for the purposes of section 30(1)(a). In contrast to police forces, the Commissioner is unlikely to regularly accept arguments from other public authorities that information about any investigation into compliance with statutory obligations is exempt under section 30(1)(a) because there is a possibility that an offence within the authority's remit may have been committed. To engage section 30(1)(a) public authorities need to provide evidence to demonstrate why, in the circumstances of the case, an offence may have occurred. In other words they need to explain why an investigation is likely to focus on determining whether to charge someone with an offence as opposed to simply determining compliance with statutory obligations.</p> <p>For example, where offences are only investigated by one department within an authority, it may be reasonable for it to argue that any information about investigations in that department is exempt under section 30(1)(a). However, the Commissioner is unlikely to accept that investigations by other departments into general compliance with other statutory obligations (not offences) will within section 30(1)(a).</p> <p><u>Details to be included in a decision notice</u></p> <p>Depending on the stage of any investigation, it may be harmful to reveal the offences under consideration in a decision notice. Case officers therefore need to take care and consult with the public authority about the level of detail that can be put in the published decision. As far as possible we should try to avoid using confidential annexes but there may be instances where this is necessary to explain our findings.</p>		
Source of Casework Advice Note	Policy Delivery	Details
Related Casework Advice Notes		
Related Documents	ICO guidance: Investigations and proceedings (section 30)	

Contact: Jo Pedder	
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- Information Commissioner's Office intranet