

Annex B - Exemptions

As noted, information is being withheld under sections 30 and 31 of the Act. Further context and details about our use of these exemptions are provided below.

Context

The NFCU has the remit within the FSA for tackling serious fraud and related criminality within food supply chains. It will normally investigate offences appropriate for prosecution under the Fraud Act 2006 or as conspiracy to defraud under Common Law. The unit covers England, Wales and Northern Ireland, but not Scotland.

It will lead on a small number of the most serious and complex investigations each year and will have some capacity to support and coordinate investigations led by partners.

In considering whether to lead, support or coordinate an investigation the Head of the NFCU will take into account:

- the strategic priorities of the NFCU as set out in its control strategy,
- the geographical scope and scale of the suspected offending and,
- the nature and extent of the actual, potential or intended harm to:
 - the public,
 - a food business operator,
 - confidence in the UK food industry.

These factors will inform an assessment of the seriousness of each case and the decision to lead, support or coordinate an investigation. The Head of the NFCU will also consider, where appropriate, any representations made by any partner that may be impacted by their decision.

The NFCU receives information about food crime from a variety of sources. However, a report which is recorded on the Food Crime Intelligence database may result in the NFCU deciding not to lead, support or coordinate an investigation, if the information in the report does not meet the threshold described above.

Other courses of action available to the NFCU include disseminating intelligence to partners, anonymising the source of the initial report where appropriate to protect the identity and safety of that source. The recipients of NFCU intelligence may subsequently decide to act on that intelligence but there is no obligation for feedback to be provided to the NFCU about any action taken. As such there may be instances where partner agencies have taken action as a result of receiving intelligence from the NFCU, including investigations and prosecutions, but the outcome of that action has not yet been provided to the NFCU.

Where the NFCU does lead, support or coordinate an investigation as a result of receiving a report about food crime, information about the outcome of that investigation is held by the NFCU. However, for the reasons explained below, the FSA is not disclosing that information under Section 30 and 31 of the Act.

Section 30 (Investigations and proceedings)

The FSA is withholding information falling within the description specified in your request under section 30(1) and (2) of the FOI Act.

The relevant section of the Act is as follows:

30 – (1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of –
(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained - (i) whether a person should be charged with an offence, or (ii) whether a person charged with an offence is guilty of it,
(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
(c) any criminal proceedings which the authority has power to conduct.

(2) Information held by a public authority is exempt information if –
(a) it was obtained or recorded by the authority for the purposes of its functions relating to – (i) investigations falling within subsection 1(a) or (b), (ii) criminal proceedings which the authority has power to conduct

Section 30 is a qualified exemption, and as required by the Act we have undertaken a public interest test to ascertain whether, on balance, the public interest favours disclosing the information that is held.

We recognise that there is a public interest in accountable, open and transparent regulation. We also recognise that there is a public interest in the work of the NFCU, especially because the NFCU relies on the cooperation of the public in reporting suspicions about food crime.

However, we consider that there is a stronger public interest in withholding any information that is held. This is to preserve the integrity and effectiveness of the work the NFCU does to protect consumers from serious criminal activity that impacts on the safety or authenticity of the food and drink they consume.

The work of the NFCU is intelligence led and it provides confidentiality for sources as part of its investigative process. Disclosing such information that is held could deter potential intelligence sources from sharing information in the future. Therefore, we have determined that the balance of the public interest favours withholding the information that is held.

Section 31 (Law enforcement)

The FSA is withholding information falling within the description specified in your request under section 31(1)(a), (b) and (g) and (2)(a) and (c) of the FOI Act.

The relevant section of the Act is as follows:

31 - (1) 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*
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)*

(2)(a) the purpose of ascertaining whether any person has failed to comply with the law;

(2)(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

Section 31 is also a qualified exemption, and as required by the Act we have undertaken a public interest test to ascertain whether, on balance, the public interest favours disclosing the information that is held.

Once again, we recognise that there is a public interest in accountable, open and transparent regulation. We have also considered the public interest particularly in relation to the enforcement of food safety issues. However, there is a stronger public interest in ensuring that other regulatory authorities' ability to take future enforcement action to secure compliance with the law is not prejudiced by the inappropriate disclosure of information.

The FSA is reliant on retaining the confidence of other authorities that information supplied to the FSA will be used appropriately and proportionately. Disclosing the information that is held could undermine the regulatory and enforcement role of other enforcement authorities. Therefore, we have determined that the balance of the public interest favours withholding the information that is held.