

## EXEMPTION NOTE

### Section 27 Information the disclosure of which is restricted by law

This note is one of a series intended to provide practical guidance on the exemptions set out in the Isle of Man Freedom of Information Act 2015 (FOI).

Requests for information must be considered on a case by case basis and the Information Commissioner will review decisions on the facts of each case.

## THE EXEMPTION

Section 27 states:

### Information the disclosure of which is restricted by law

- (1) Information is absolutely exempt information if its disclosure by the public authority holding it —
  - (a) is prohibited by or under any statutory provision;
  - (b) is incompatible with an EU obligation that applies to the Island; or
  - (c) would constitute or be punishable as a contempt of court.
- (2) In subsection (1), “EU obligation” has the same meaning as it has in the *European Communities (Isle of Man) Act 1973*.

## THE MAIN POINTS

1. PAs may refuse to give the applicant the information requested if the information is absolutely exempt information.
2. This exemption applies where the information sought is prohibited from disclosure by or under any statutory provision.
3. “Statutory provision” means any primary legislation, including an Act of the UK Parliament that extends to the Isle of Man, and any secondary legislation, such as Orders or Regulations.
4. The exemption also applies to a disclosure of information which would be incompatible with an EU obligation that applies to the Island.
5. In this instance an “EU Obligations” has the meaning set out in the European Communities (Isle of Man ) Act 1973 and refers to any obligations created or arising from the various treaties set out in that Act. For further information see:  
[http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1973/1973-0014/EuropeanCommunitiesIsleofManAct1973\\_2.pdf](http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1973/1973-0014/EuropeanCommunitiesIsleofManAct1973_2.pdf)
6. European Directives, Regulations and decisions that apply to the Island are examples of EU obligations.
7. “Contempt of court” is not limited to the Courts and includes matters before certain Tribunals or bodies or inquiries made by a Department under a statutory provision.
8. Disclosures in response to a request could lead to a contempt of court where:-
  - there is an order of the Court preventing disclosure  
or
  - publication could be prejudicial to an active or imminent court proceeding.
9. If a PA is satisfied that this exemption applies, it does not have to consider whether disclosure of the information would be in the public interest.
10. If a PA applies this exemption then it must provide the applicant with a refusal notice the content of which must accord with section 18 of FOI explaining why the exemption applies. See also Code of Practice <hyperlink>

## **OTHER CONSIDERATIONS**

1. Does a statutory provision prohibit disclosure of the information sought?

A statutory provision may not always prohibit disclosure but instead require a condition or test to be met to withhold information. For example, information may be withheld where disclosure is “likely to cause significant harm.”

Where a statutory provision requires a Public Authority to decide whether information should be withheld, as opposed to a prohibition on disclosure, then the exemption will not apply.

2. EU obligations, and therefore the exemption, do not extend to Recommendations, Opinions, or other European or International obligations such as Council of Europe Conventions.

## **FURTHER RESOURCES**

**APPENDIX 1: IOM Commissioner Decisions & IOM Case law**

**APPENDIX 2: Other Commissioner Decisions & Case law**

## APPENDIX 1 IOM Commissioner Decisions & Case law

### IOM Commissioner Decisions

None

### IOM Case law

None



## **APPENDIX 2**

### **Other Commissioner Decisions & Case law**

#### Note

Neither the Commissioner nor the Court are obliged to follow decisions or case law from other jurisdictions.

#### **UK Information Commissioner Decisions**



## Scottish Information Commissioner (SIC) Decisions

The SIC's decisions are available at: [www.itspublicknowledge.info/decisions](http://www.itspublicknowledge.info/decisions)

Decision Number	Parties	Summary
132/2007	John Stewart and the Scottish Ministers	The UK Agriculture Act 1947 require farmers to give Ministers certain information. Under section 80, Ministers were prohibited from disclosing information unless they considered disclosure to be in the public interest. As there is a discretion to disclose information, the exemption in section could not apply.
161/2006	Mr Q and the Scottish Legal Aid Board (SLAB)	Section 34 of the Legal Aid (Scotland) Act 1986 (LASA) makes it a criminal offence for anyone employed by, or acting on behalf of, SLAB to disclose information provided to them without the consent of the person who provided the information. Consent was not given and the SIC therefore concluded that LASA prohibited disclosure and the SLAB had correctly applied the exemption.
269/2013	David Wilson and the Scottish Public Services Ombudsman (SPSO)	Mr Wilson asked the SPSO about information on which it had based its conclusions about a complaint it had received. The SIC agreed that the SPSO was prohibited from disclosing the information under section 19 of the Scottish Public Services Ombudsman Act 2002.

## Case law

### UK Tribunal decisions

