



EXEMPTION NOTE

Section 29 International relations

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).

All 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 29 states:

29 International relations

- (1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice relations between the Island and —
 - (a) the United Kingdom;
 - (b) any other State;
 - (c) an international organisation; or
 - (d) an international court.
- (2) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice
 - (a) any interests of the Island abroad; or
 - (b) the promotion or protection by the Island of any such interest.
- (3) Information is also qualified exempt information if it is confidential information obtained from —
 - (a) the United Kingdom;
 - (b) any other State;
 - (c) an international organisation; or
 - (d) an international court.
- (4) In this section, information obtained from a State, international organisation or international court is confidential while —
 - (a) the terms on which it was obtained require it to be held in confidence; or
 - (b) the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.

THE MAIN POINTS

1. This is a qualified exemption.
2. The exemption also requires determination of a prejudice test.
3. This exemption provides for a public authority to withhold information when disclosure of that information would not be in the public interest as it would:
 - prejudice international relations,
 - prejudice the island interests abroad, or
 - result in confidential information obtained from an international body being disclosed.
4. If the PA determines that the exemption can be applied to some, or all, of the information sought by the request, then the PA must still go on to consider the public interest in the information and determine whether “the public interest in maintaining the exemption outweighs the public interest in disclosing the information”.

The Information Commissioner has published guidance on the public interest and further advice is contained in Section 3 of the Code of Practice.

Prejudice international relations

5. To apply the exemption the PA must demonstrate that disclosure of all or some of the information would prejudice relations with:
 - the UK
 - any other state
 - an international organisation ,or
 - an international court

6. The following definitions set out in section 5 of FOI are relevant:

“any other state” includes references to a territory of the United Kingdom outside the United Kingdom and the Crown Dependencies;

“State” includes the government of a State and any organ of its government or administration;

“international organisation” means an international organisation whose members include any 2 or more States, or any organ of such an organisation;

“international court” means an international court that is not an international organisation and that is established —

- (a) by a resolution of an international organisation of which the United Kingdom is a member; or
- (b) by an international agreement to which the United Kingdom is a party;

7. The PA will be expected to evidence that the prejudice has some realistic prospect of occurring.

Prejudice the island interests abroad

8. To apply the exemption the PA must demonstrate that disclosure of all or some of the information would prejudice the interest of the Island or the promotion or protection of those interests abroad.
9. The PA will be expected to evidence that the prejudice has some realistic prospect of occurring.

Confidential information obtained from an international body

10. To apply the exemption the PA must demonstrate that the information was obtained from:

- the UK
- any other state
- an international organisation ,or
- an international court

11. The PA must demonstrate that the information is confidential. Where necessary, a PA should take appropriate legal advice on general questions of law, such as the law of confidence and the interpretation of international agreements.

12. The circumstances or express terms under which the information was obtained and the conditions placed upon it by the supplier, is likely to evidence whether or not the information is confidential.

13. Information will remain confidential for as long as the terms on which it was obtained require it to be held in confidence. There is no requirement that an actionable breach of confidence would occur for the exemption to apply

14. The exemption may also apply to information where there is an implied confidence. For example, although not expressed, there may be an expectation placed on the information by an international organisation, non-UK state or international court, that it will be held in confidence by PA.

15. The information will remain confidential for as long as the state, organisation or court expect it to be so held.

OTHER CONSIDERATIONS

1. If the information requested is already in the public domain, either partially or fully, it is unlikely to be confidential although exceptions are possible. For instance, if the reliability of that information is uncertain but disclosure under the Act would confirm its authenticity then it may be reasonable to refuse a request.
2. If information has been put in the public domain by the state or international organisation which supplied it or might be obtained on request, for instance, under the FOI legislation of the other state, then it could not be considered confidential.

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

Decision Number	Parties	Summary
022/2008	Peter McMahon and the Scottish Ministers	This considered communications relating to the removal of asylum seekers from Scotland. Not all of the information originating from the Home Office was exempt under section – e.g. a press release and documents simply informing the UK Government of representations that had been received.
057/2005	William Alexander and the Scottish Ministers	The case concerned exchanges between the UK and Scottish Governments concerning the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. The SIC noted that the Ministers had applied the exemption in a very general manner rather than considering the actual information withheld and made it clear that the exemption should be considered on a case-by-case basis. The SIC found that the exemption did not apply to all the documents - some of the content was uncontroversial and administrative in nature, and disclosure would be unlikely to damage relations between the administrations.
036/2009	Rob Edwards and the Scottish Ministers	The SIC found that the public interest lay in favour of disclosing the information. Disclosure would give the public information about measures, procedures, arrangements and discussions within government relating to protection from disasters and attacks.

Case law

UK Tribunal decisions

