

EXEMPTION NOTE

Section 38

Qualified exempt communications with the Crown

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 38 states:

38 Qualified exempt communications with the Crown

- (1) Information is qualified exempt information if it relates to communications —
 - (a) with a member of the Royal Family or the Royal Household (other than a communication covered by section 23 (absolutely exempt communications with the Crown)); and
 - (b) made or received on behalf of —
 - (i) the Sovereign for the time being of the United Kingdom;
 - (ii) the heir to, or the person who is for the time being second in line of succession to the Throne; or
 - (iii) a person who has subsequently acceded to the Throne or become heir to, or second in line of succession to, the Throne.
- (2) Information is qualified exempt information if it relates to the conferring by the Crown of an honour or dignity.
- (3) The definitions of "His Majesty", "Her Majesty", "the King", "the Queen" and "the Crown" in section 3 of the Interpretation Act 1976 do not apply to this section.

THE MAIN POINTS

1. This is a qualified exemption.
2. There is no requirement to demonstrate that disclosure would cause harm or prejudice to apply the exemption.
3. If the PA determines that the exemption can be applied to some, or all, of the information sought in a request, 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.

4. The exemption may be applied by the AP to information which relates to:
 - communications' with the Royal Family or Royal Household
or
 - the conferring of an honour or dignity by the Crown
5. The exemption cannot be applied to information held by a PA in communications with the Queen .the heir to the throne, second in line of succession or the Lieutenant Governor as these are covered by the absolute exemption set out in section 23 of FOI.

Communications with the Royal Family or Royal Household

6. The exemption may be applied to information held by a PA contained in communications with the Royal Family or the Royal Household, and information relating to those communications. For example, the exemption could be applied to information in a letter sent from the Royal Household discussing an upcoming visit.
7. Information relating to communications could include drafts of letters, whether or not they are finalised or sent.

Conferring honours

8. The exemption may be applied by a PA to information it holds about the conferring of any honour. This includes information in documents naming individuals to be considered for nomination for an honour, discussing the merits and achievements of those who might be nominated for an honour, and setting out reasons why specific individuals were, or were not, ultimately nominated to receive an honour.

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
130/2009	David Rule and the Scottish Ministers	Mr Rule asked for communications between the First Minister's Office and Visit Scotland relating to communications with the Queen or another member of the Royal Family. The SIC found there was little public interest in disclosing the communications, and recognised the importance of maintaining relations between the Royal Household and the Government.
221/2007	Alistair Gemmell and the Scottish Ministers	Mr Gemmell asked for the names of the people who had recommended that Paddy Tomkins, former HM Chief Inspector of Constabulary for Scotland, receive a Queen's Police Medal. The SIC found that the information was covered by the exemption and that the public interest lay in withholding the information; the request related to a recent award to a person who still held a high-ranking role. Those involved in the deliberations concerning the award were likely to still be in post and involved in similar future deliberations.
105/2007	Paul Hutcheon and the Scottish Ministers	Mr Hutcheon asked the Ministers for minutes of their management group meetings. The SIC ordered the Ministers to disclose the information. The SIC did not agree that disclosing the information in question would harm the political neutrality of the monarchy and decided that the public interest in transparency in government, outweighed the public interest in withholding the information.
079/2007	Kathleen Nutt and the Keeper of the Records of Scotland	Ms Nutt asked the Keeper for a file which contained deliberations as to whether the late Jock Stein should be nominated to receive an honour. The Commissioner was satisfied that the exemption in section 41(b) applied. However, the Commissioner concluded that the public interest favoured disclosing the information: the documents were created around 40 years earlier; Jock Stein had died in 1985 and the individuals involved in discussions about the award almost certainly no longer had such a role. The Commissioner also commented that the status of the individual being considered for an award was relevant when considering where the public interest lay; Jock Stein had been a well-known public figure and remained a figure of interest.
051/2006	Peter MacMahon and the Scottish Ministers	Mr MacMahon asked about the attitude of the Royal Family and Royal Household to the Holyrood Project. The SIC concluded that, in this case, the public interest in protecting personal communications outweighed the public interest in disclosing them.

Case law

UK Tribunal decisions

