



EXEMPTION NOTE

Section 20

Information accessible to applicant by other means

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 20 states:

20 Information accessible to applicant by other means

- (1) Information is absolutely exempt information if it is reasonably accessible to the applicant, whether free of charge or on payment, other than by requesting it under section 9(1) (requests for information).
- (2) Without limiting subsection (1), information is taken to be reasonably accessible if —
 - (a) it is available in public libraries or archives;
 - (b) it is available on the internet or from any other reasonably accessible source;
 - (c) it is made available under a publication scheme; or
 - (d) the public authority that holds it, or any other person, is obliged by or under any enactment to supply it to members of the public on request.
- (3) Information is not reasonably accessible merely because it is made available voluntarily by a public authority, otherwise than under a publication scheme (if any).

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 when information sought is reasonably accessible to the applicant by other means, even if there is a requirement to pay a fee.
3. The exemption applies to any information which is reasonably accessible to the applicant, although some sources are specified, i.e. :-
 - public libraries or public archives
 - the internet
 - a publication scheme adopted by the public authority in accordance with section 59 of FOI, or
 - the public authority (or other party) must, under another law, make it publicly accessible.
4. PAs must ascertain that the information is accessible from a particular source and not assume that it is.
5. If the information is available from one of the specified sources it is reasonable to assume that the information is 'reasonably accessible to the applicant' as a general member of the public, until the PA becomes aware of any particular circumstances or evidence to the contrary. For example, even though information is fully in the online public domain, the applicant may not have reasonable access to the internet.
6. However if the information is not accessible from a specified source then, to apply the exemption, the PA must have satisfied itself that the information is otherwise 'reasonably accessible to the applicant'.
7. The key point is, in all cases, that the PA must be able to direct the applicant to the information.

8. 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.
9. If a PA applies this exemption it must provide the applicant with a refusal notice the content of which must accord with section 18 of FOI. See also Code of Practice <http://www.tynwald.org.im/business/opqp/sittings/Tynwald%2020142016/2015-GD-0068.pdf>

DUTY TO ADVISE AND ASSIST

Section 15 requires PAs to provide reasonable advice and assistance to persons who wish to make, or have made, requests for information.

If a public authority refuses a request on the basis that the information is reasonably accessible to the applicant by other means, it must not assume that the applicant will know how to obtain the information.

The PA must advise the applicant how and where to access that information and provide assistance, such as direct links to online information, to do so. Further advice can be found in the Code of Practice.

OTHER CONSIDERATIONS

1. Is the information reasonably accessible to the applicant?

Information may be generally accessible to the public but personal circumstances may mean the information is not accessible to the applicant. Personal circumstances could include a disability, such as a visual impairment, or, an inability to pay a large fee due to a lack of means. In such instances, in considering whether the information is readily accessible the PA may make enquiries of the applicant.

2. Alternatively, information may be accessible to the applicant but not the general public.
3. Where legislation only requires a PA to make information available for inspection, the exemption does not automatically apply. The PA must determine whether the information is reasonably accessible to the applicant. For example, information in a public register only available to view during working hours in Douglas may not be 'reasonably accessible to the applicant' if they live and work in Ramsey.
4. If the PA has adopted and maintains a publication scheme in accordance with section 59 of FOI and the information requested is published under that scheme, then the exemption will apply.

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

Issue Date	Decision Number	Public Authority
26 August 2016	2016/0001	Cabinet Office
26 October 2016	2016/0003	Cabinet Office

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

Date	Reference	Public Authority
1 March 2017	FS50621841	Crown Prosecution Service
1 February 2016	FS50599228	Manchester City Council
21 January 2016	FS50601984	Ministry of Justice
6 January 2016	FS50589743	Bradford Metropolitan District Council

Scottish Information Commissioner (SIC) Decisions

The SIC's decisions are available at: www.itspublicknowledge.info/decisions

Decision Number	Parties	Summary
039/2007	Michael Matheson and the Scottish Executive	The SIC accepted that the information Mr Matheson had requested was available online and was exempt. However, the Ministers had failed to tell Mr Matheson where to locate the information online. This meant the Ministers had not discharged their duty to provide advice and assistance.
162/2014	Mr Q and the Scottish Prison Service	The SIC accepted that the information requested by Mr Q, which was accessible in the prison library, was reasonably obtainable and therefore exempt. However, the Scottish Prison Service failed to comply with their duty to provide advice and assistance, by not giving Mr Q sufficient advice and assistance to allow him to locate the information readily within the library.
013/2007	Mr D and the Chief Constable of Strathclyde Police	The Police argued that because Mr D could seek a court order to obtain the information, the information was otherwise reasonably obtainable by him. The SIC disagreed.
206/2010	Ian Benson and the University of Glasgow	Although the email addresses requested by Mr Benson were all available through the University website, each one had to be accessed individually. The SIC did not accept that information which would take around 25 hours to obtain could be described as "reasonably obtainable".
059/2010	John McKnight and Glasgow City Council	The SIC could not accept the Council's argument that the information was accessible under its publication scheme: it had no approved publication scheme in force and, in any event, its last approved publication scheme made no reference to information of the type Mr McKnight was seeking. The SIC had not been given sufficient evidence that the information was fully obtainable elsewhere – and even to the extent that some of it could be obtained elsewhere, the effort involved in searching for it meant that it was not reasonably obtainable.
196/2014	Mr R and Scottish Prison Service	An exemption can only be applied if the authority actually holds the information the requester is looking for. The Scottish Prison Service purported to apply the exemption to information in a number of publications. These were publicly available, but were not held by the authority – the proper course of action was to give the requester notice that the information was not held.

271/2016	Daniel Sanderson and The Scottish Ministers	The exemption does not apply simply because the same information appears, in another context, in documents which are publically available. The key question is whether the information withheld under the exemption is "otherwise accessible" to the applicant, and can be reasonably obtained by them other than under an FOI request. In deciding this, the context created by the documents in which the information appears must be taken into account: the context may give the information a particular significance which may not be obvious if the same information appeared in a completely different document. It is critical that a PA gives the requester sufficient information to enable them to find the information and it is vital for the PA to comply with the duty to advise and assist.
014/2017	Townsend-Rose and The Scottish Ministers	Links to online information must be precise and must contain the information sought

Case law

UK Tribunal decisions

