



Freedom of Information Act

Information supplied by or relating to security bodies

The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

This guidance outlines the exemption at section 23 of the FOIA for information supplied by or relating to specified bodies dealing with security matters.

Overview

- The FOIA gives an absolute exemption for information supplied by or relating to certain specified security bodies.
- This exemption only applies to information supplied by or relating to bodies listed in the Act or added by subsequent legislation. It does not apply to all national security information.
- There is usually no need to carry out a public interest test. However, the exemption is subject to a public interest test if the information is contained in an historical record held by the National Archives (TNA) or the Public Record Office for Northern Ireland (PRONI).
- A public authority can refuse to confirm or deny whether it holds information of this description.
- It may be necessary to mention more than one exemption so as not to give any indication as to what information may be held.

What does the law say?

Section 23 of the FOIA gives an exemption for information “if it was directly or indirectly supplied to the public authority by, or relates to” any of the security bodies listed in section 23(3). This is an absolute exemption and is not subject to a public interest test.

Bodies dealing with security matters

This exemption can only be claimed for information supplied by or relating to the following bodies:

- The Security Service (MI5) and the Secret Intelligence Service (MI6).
- The Government Communications Headquarters (GCHQ) including any part of the armed forces which is for the time being assisting GCHQ in its functions.
- The special forces, such as the Special Air Service (SAS).
- The Investigatory Powers Tribunal.
- The Security Commission and the Security Vetting Appeals Panel.
- The Serious Organised Crime Agency (SOCA).

Note that this is an updated list correct as of January 2009.

This exemption is not based on the content of the information or the likely effect of disclosure. It applies to all information supplied by or relating to one of these bodies, even if it does not relate to national security, or would not have a damaging effect if disclosed.

It will not apply to all information with a national security element or to all information received from a body with some national security responsibilities, such as the police. Where section 23 does not apply, but an exemption is required for the purpose of safeguarding national security, an alternative exemption is available at section 24. See our guidance on [The national security exemption](#) for more details.

When can the exemption be claimed?

The exemption applies to any information which:

- was directly supplied to the public authority by one of the specified security bodies;
- was indirectly supplied by one of the specified security bodies; or,
- relates to one of the specified security bodies.

The Information Tribunal has not yet had to make a decision about the scope of this exemption. It would be reasonable to assume that information is covered by this exemption where it originates with one of the specified security bodies, even if the public authority did not directly obtain it from this body. Whether information “relates to” one of the specified bodies will be a matter of judgement in each particular case, based on the content of the information.

Example:

The Cabinet Office refused to release a report relating to an incident in 1972, and three paragraphs which had been redacted from memoranda in the same file. The Information Commissioner determined that the Cabinet Office had been correct to rely on section 23. The report and one memorandum were exempt because they had been produced by Sir Michael Hanley, then Director General of the Security Service. The Commissioner found that the other information discussed the report and therefore “relates to information created by the Security Service” (ICO decision notice [FS50163794](#)).

This exemption is a class-based, absolute exemption. Therefore, if the information is supplied by or relates to one of the bodies specified, no further steps need to be taken to establish that the information can be withheld (but see the section on historical records below).

However, this does not mean that information supplied by or relating to one of the security bodies can never be released. An authority may sometimes receive information from a security body which is not (or is no longer)

sensitive, or is intended for publication. The exemption in the FOIA does not prevent this.

Example:

In the case above, the Cabinet Office had already transferred other information to the National Archives, including information received from the Security Services, and this information was accessible to the public. The requester argued that there was likewise no rational reason to withhold the redacted information, since it could no longer be sensitive. The Commissioner found that this was irrelevant to the application of section 23 (ICO decision notice [FS50163794](#)).

Ministerial certificate

The government traditionally has significant discretion in matters of national security. This discretion is recognised in the FOIA by making provision for a minister to issue a national security certificate.

- A public authority can demonstrate that certain information was directly or indirectly supplied by, or relates to, one of the specified bodies by obtaining a certificate to this effect from a Minister of the Crown.
- However, there is no requirement to obtain a certificate. The authority can make its own judgement as to whether the exemption applies.
- If a certificate is provided, this is taken as conclusive evidence that the information is covered by the exemption. No further steps need to be taken to establish that the information can be withheld.

The Minister should have reasonable grounds for considering that the information was indeed supplied by or relates to one of the security bodies. A certificate can be appealed to the Information Tribunal by the Information Commissioner or by any requester whose request for information is affected.

Historical records

The FOIA contains special rules for historical records which:

- are at least thirty years old (if not in a file) or are contained in a file in which the most recent record is at least thirty years old; **and**
- are in TNA or PRONI.

Information supplied by or relating to one of the security bodies, which is contained in this type of record, is subject to a qualified rather than an absolute exemption. This means that you must also apply the public interest test, as well as establishing that the information is supplied by or relates to one of the specified bodies. More guidance can be found in our guidance on the [Public interest test](#).

Note that this will only apply where the record is over 30 years old and **also** in TNA or PRONI. It does not apply to all historical records.

Confirm or deny

According to section 23(5) of the FOIA, an authority can give a “neither confirm nor deny” (NCND) response if confirming or denying that information is held would reveal information (including unrecorded information) supplied by or relating to one of the specified security bodies.

- An authority may have a policy of giving an NCND response to requests for certain types of information.
- In order to be effective, such a policy should be applied consistently to requests for certain types of information, both when the information is held and when it is not.
- However, the authority should always ascertain what information (if any) it holds and examine it in order to determine what exemptions may apply. The “neither confirm nor deny” response can only be given if any information held is correctly withheld under an exemption.

For more information, see our guidance on the [Duty to confirm or deny](#)

When giving an NCND response the authority will still need to say which exemption it is relying on. In some circumstances, we would advise an authority to state that it is relying either on section 23(5) or on 24(2) without specifying which. This is because, if section 23 is the only exemption relied upon, the requester might infer that information is held and that it was provided by one of the security bodies.

Example:

An MP asked the Cabinet Office for any information it held on the tapping of MPs’ phones. The Cabinet Office refused to confirm or deny whether the information was held and relied on both sections 23 and 24. This was because it was “not possible to say categorically that a section 23 body would be involved in communications interception, were any to have taken place” and therefore “where section 23(5) was relied upon alone, that reliance could itself reveal the information that one of the bodies listed in section 23(3) was involved.” The Information Tribunal found that it was correct to rely on both sections. [Norman Baker MP v IC and Cabinet Office](#) (EA/2006/0045; 28 February 2007).

You should word a NCND response carefully to avoid revealing exempt information. How best to do this will depend on how the request was phrased. Relying on both exemptions will only be necessary where the request could cover information provided by the security bodies as well as other information.

For more information see our guidance on [The national security exemption](#).

Example:

“Please provide me with any report produced by GCHQ on the attempted bombing of Anytown shopping centre”

“In accordance with section 23(5) of the FOIA we are not required to confirm or deny whether we hold information of this description.”

“Please provide me with any information you hold on the bombing of Anytown shopping centre”

“We are not required to confirm or deny whether we hold information of this description, because *either*

i) we are exempt from the duty to confirm or deny by virtue of section 23(5) as confirming or denying would involve the disclosure of information supplied by or relating to any of the security bodies

or

ii) we are exempt from the duty to confirm or deny by virtue of section 24(2) because the exemption from this duty is required for the purpose of safeguarding national security. The public interest in maintaining this exemption outweighs the public interest in confirming whether any information is held.”

Refusing the request

An authority refusing a request is normally required to explain why the particular exemption applies. According to section 17(4), the authority does not have to give an explanation which would involve the disclosure of exempt information.

- When an authority refuses to confirm or deny that information is held, it is often not possible to provide an explanation without revealing whether information is held.
- However, an authority should explain as much as possible. It should not have a blanket policy of refusing to explain when giving a NCND response.
- The authority should still carry out a full consideration of the exemption and record the reasons for its decision in case of a complaint to the Information Commissioner.

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

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