



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Freedom of Information Act

Section 24: the national security exemption

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 aims to explain when a request can be refused on the grounds of national security.

Overview

- Information is exempt from disclosure if the exemption is required for the purpose of safeguarding national security.
- The authority may obtain a certificate from a minister certifying that the exemption is required.
- It is not sufficient for information to relate to national security matters; disclosure must pose a real threat to the interests of national security.
- Information which is exempt under section 23 cannot also be exempt under section 24. However, it may be necessary to use both exemptions when refusing to confirm or deny whether information is held.
- The exemption is subject to a public interest test.

What does the law say?

Section 24 of the FOIA gives an exemption from disclosing information where the exemption is “required for the purpose of safeguarding national security”. This exemption is subject to a public interest test.

National security

“National security” is not defined in law but it is capable of a wide interpretation. The interests of national security are not limited directly to preventing military and terrorist attacks on the UK but include the safety of UK citizens abroad, the protection of our democratic constitution, the effective operation of national security bodies, and co-operation with other countries in fighting international terrorism.

The House of Lords found that the government should have significant discretion in determining what is in the interests of national security. This discretion is recognised in the FOIA by making provision for a minister to issue a national security certificate.

Example:

In [Norman Baker MP v IC and Cabinet Office](#) (EA/2006/0045; 28 February 2007) the Information Tribunal judged that the Cabinet Office was not required to release information about the Wilson doctrine, which covers the interception of MPs' telephones. The tribunal found it helpful to refer to a decision by the House of Lords (HL): [Secretary of State for the Home Department v Rehman](#) ([2001] UKHL 47; [2003] 1 AC 153). This found that the interests of national security were not limited to preventing specific threats to the UK but included the protection of democracy, international co-operation and other aspects of the government's counter-terrorism policy.

When can the exemption be claimed?

The exemption is based on the effect that disclosure would have, not on the content or source of the information. Information is not automatically exempt because it relates to national security matters.

The exemption in section 24 of the FOIA can only be claimed for information that is **not** exempt by virtue of section 23. In other words, it does not apply to information which has been supplied by or relates to the security bodies specified in section 23. Please see our guidance on [Information supplied by or relating to security bodies](#) for more information.

Required for the purposes of safeguarding national security

The exemption provided by section 24 of the FOIA can only be relied upon when it is required for the purposes of safeguarding national security.

- It does not apply simply because the information relates to national security.
- The word "required" means "reasonably necessary". It may not be vital to apply the exemption but it must certainly be more than just useful or convenient.
- The exemption should not be applied in a blanket fashion. There must be evidence that disclosure of the information in question would pose a real and specific threat to national security.

Example:

The Commissioner agreed that the exemption was required for information on a major bank robbery in Northern Ireland. He found that disclosure "would have been a risk to national security" because of the potential impact on the Northern Ireland peace process. The Commissioner accepted that the term "required" is not defined in the FOIA but that it "means something more than desirable" and "in effect it must be necessary". The Commissioner's view is that this should be interpreted in the light of human rights law and implies a proportionate response to a pressing social need (ICO decision notice [FS50074788](#)).

Example:

The Metropolitan Police Service (MPS) refused to allow a researcher to view Special Branch records dating from 1888 to 1917. MPS argued that some of the material referred to the use of informants and that any disclosure would prejudice the police's ability to recruit informants in the future. The Information Commissioner rejected this argument as MPS had "not provided any evidence to demonstrate ... real and specific threats" (ICO decision notice [FS50106800](#)). MPS subsequently presented convincing evidence to the Information Tribunal demonstrating that the names of informants should be withheld, but accepted that the rest of the material did not pose any risk. [The Metropolitan Police v IC](#) (EA/2008/0078; 30 March 2009).

Even where the exemption is required for the purposes of safeguarding national security, the public interest test must be applied.

Ministerial certificate

A public authority can demonstrate that the exemption is required for the purposes of safeguarding national security by obtaining a signed certificate to this effect from a Minister of the Crown.

- A certificate is one way of demonstrating that the exemption is engaged, but it is not a requirement. The authority can make its own judgement as to whether the exemption is required.
- The certificate should state that an exemption is required in relation to certain information. A certificate does not have to refer to a specific request or to specific information that is held. It can refer to a category of information and can apply to future requests.
- It should specify what level of exemption is required. This may be an exemption only from the duty to disclose information or the certificate may state that a "neither confirm nor deny" response is required.
- A certificate is taken as conclusive evidence that the exemption is required. However, this certificate does **not** mean that the information can definitely be withheld. The exemption is still subject to the public interest test.

The Minister should have reasonable grounds for issuing such a certificate. It can be appealed to the Information Tribunal by the Information Commissioner or by any requester whose request for information is affected.

Confirm or deny

According to section 24(2) of the FOIA, an authority can give a "neither confirm nor deny" (NCND) response if, or to the extent that, this is required for the purpose of safeguarding national security.

- 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 exempt.

When giving an NCND response the authority will still need to specify which exemption it is relying on. However, when refusing a request which could cover information provided by the security bodies as well as other information, an authority may wish to consider stating that it is relying on one or both of section 23(5) and section 24(2), without specifying definitely which applies. This is because, if section 24 is the only exemption relied upon, the requester might infer that the authority holds no information supplied by the bodies listed in section 23.

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)

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

Refusing the request

An authority refusing a request is normally required to explain why the particular exemption applies and (if relevant) why the balance of the public interest favours maintaining the exemption and withholding the information. 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 the public interest test, even where this reasoning will not be disclosed to the requester. This should be recorded in case of a complaint to the Information Commissioner.

Example:

The Cabinet Office correctly refused to confirm or deny whether it held information relating to the bombing of the ship Rainbow Warrior in 1985, but did not explain its reasons to the requester. It later stated to the Commissioner that the information, if held, would relate to other countries with which the UK has a close relationship. It argued that confirming whether information was held in cases such as this could harm international co-operation. The Commissioner found that the Cabinet Office could have explained this to the requester without revealing whether any information was held. (ICO decision notice [FS50102023](#))

Applying the public interest test

The public interest test must be applied both when deciding whether to confirm or deny that the information is held and, when you have confirmed that information is held, whether to disclose it.

The exemption at section 24 only applies when it is necessary to safeguard national security. Therefore there are likely to be strong public interest factors in favour of maintaining the exemption and not disclosing the information. The information should nevertheless be released unless these factors **outweigh** the public interest in disclosure.

Other considerations

Additional guidance is also available if you need further information on the section 23 exemption for [Information supplied by or relating to security bodies](#).

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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