



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

Freedom of Information Act 2000

The exemption for law enforcement

The Freedom of Information Act 2000 (FOIA) gives a right 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 under the FOIA and to promote good practice.

This guidance will help public authorities to apply the exemption for law enforcement in section 31 of the FOIA.

This guidance replaces Awareness Guidance 17.

Overview

Section 31 of the FOIA creates an exemption from the right to know if releasing the information would or would be likely to prejudice:

- the prevention or detection of crime;
- the apprehension or prosecution of offenders;
- the administration of justice;
- the assessment or collection of tax, duty or similar imposition;
- the operation of immigration controls;
- the maintenance of security and good order in prisons and similar institutions;
- exercising functions for specified purposes; or,
- civil proceedings, or a fatal accident inquiry in Scotland, arising from investigations carried out for the specified purposes.

The exemption is qualified, which means it is subject to a public interest test.

General principles of exemption

As stated, section 31 is a qualified exemption. If information falls within the exemption, public authorities must then apply the public interest test set out in section 2(2)(b). The information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

You will therefore need to apply a two-stage test in order to withhold information. Firstly, can you establish that disclosure of the information would prejudice, or would be likely to prejudice, any of the areas of law enforcement listed in section 31 so that the exemption is engaged? Secondly, if so, is the public interest in favour of

maintaining the exemption and therefore withholding the information? These questions are considered in more detail below.

If the answer to both questions is yes, you can withhold the information if you wish, although you should remember that there is no obligation to use the exemption.

Relationship with section 30

Section 31 makes clear that in cases where information engages section 30, section 31 cannot be used. This does not mean that a public authority cannot consider both exemptions in relation to the same information. It does mean that an authority should make it clear in any refusal notice when both exemptions have been considered that section 31 can apply only to the extent that the information does not fall within the definition in section 30.

There are areas of overlap between sections 30 and 31. For example:

- Section 30 provides an exemption for information held in connection with particular criminal investigations and proceedings brought by public authorities (as well as information about some confidential sources). Section 31 provides an exemption where prejudice could be caused to other investigations and to general steps taken in relation to law enforcement.
- There is also potential for overlap between the two exemptions regarding **historical records**. Section 63 of the FOIA states that section 30(1) cannot apply to records that are over 30 years old, whereas section 31 can apply until the records are 100 years old. This means that it may be possible for a public authority that carries out criminal investigations to apply section 30 to information until it is 30 years old, and then seek to apply section 31 (which would be available for the next 70 years) to the same information after that.

Find out more about section 30 in our [guidance on the exemption for criminal investigations, criminal proceedings and confidential sources](#).

What information might be covered?

Information falls within the exemption if disclosure would, or would be likely to, prejudice a range of law enforcement functions and activities.

In considering the application of the exemption, a public authority should concentrate on the effect of disclosure in order to assess whether there is any likely prejudice to any of the law enforcement activities listed in the exemption. There is no need to consider why the information is held. This contrasts with the class-based exemption in section 30 which only applies to information that is held for specific purposes or functions. This also means that the exemption can be applied by a public authority even though it does not itself carry out the law enforcement activity. For example,

where it holds information whose disclosure would affect the law enforcement or regulatory activities of another organisation.

The exemption covers nine areas of activity. These are divided into two:

- section 31(1)(a) – (f) cover broad areas of law enforcement;
- section 31(1)(g) – (i) relate to specific law enforcement purposes.

General areas of law enforcement

Information is exempt if its release would, or would be likely to, prejudice any of the general law enforcement activities referred to in section 31(1)(a)-(f). Even if it is exempt, authorities must still go on to consider the public interest test (see page 6 for further information). These activities are as follows:

- **Preventing or detecting crime**

This includes not only the procedures followed by the police, Her Majesty's Revenue and Customs and other investigatory bodies, but also crime prevention measures in general. For example, information about the physical security of buildings, or the security of IT systems is likely to be covered. There is no requirement for the information to have been obtained specifically for the purpose of prevention or detection of crime.

Example

In the case of [Mr C P England and London Borough of Bexley v Information Commissioner \(EA/2006/0060, 0066; 10th May 2007\)](#) the Information Tribunal said that it was "satisfied that section 31(1)(a) is applicable to information, even if the purpose of the collation of the information was not the prevention of crime per se."

The Tribunal decided that releasing information about empty properties was likely to prejudice the prevention of crime as it would make it easier to identify them. Empty properties are more likely to be targeted for theft and vandalism for example.

- **Apprehending or prosecuting offenders**

This is not restricted to information held by investigating bodies, nor restricted to individual offenders. This activity is wide enough to cover any situation that could lead to penalties for criminal behaviour or for breaking military law. It could cover activities both in relation to specific instances of the apprehension and prosecution of offenders and to general strategies, techniques, processes and policies established for these purposes.

- **Administering justice**

This covers a wide variety of matters that surround any type of judicial body and its administrative support. For example, it includes the administrative

arrangements of the courts and tribunals, the appointment of magistrates and judges and the requirement to conduct proceedings fairly. It also covers arrangements for the care of witnesses, the transport of defendants in custody and the service and execution of process and orders in civil cases.

Example

Releasing a report into safety at a marina was correctly withheld while it formed part of the evidence to be considered by a coroner. It would have prejudiced the administration of justice to release it prior to the completion of the inquest.

ICO decision notice [FS50082845](#)

- **Assessing and collecting taxes or any similar duty**

This too is very wide and will include not only income and company tax, VAT and National Insurance contributions, but also local charges such as Council Tax.

Example

Her Majesty's Revenue and Customs (HMRC) was correct to apply this part of the exemption to information it held about a company's corporation tax payments. HMRC indicated that not only would releasing the information prejudice this particular investigation but would also prejudice future investigations by revealing procedures. This would prejudice the collection of taxes generally.

ICO decision notice [FS50089784](#)

- **Immigration controls**

As well as information about the physical security of entry points to the UK, this also includes information about issuing and approving visas and work permits, and processing asylum applications.

- **Security and good order of prisons and other similar institutions**

This includes both external and internal security matters as well as internal disciplinary matters.

Law enforcement related to specific purposes

Section 31(1) sub-sections (g)-(i) relate to the specified purposes listed in section 31(2) and must be read together.

The specified purposes are:

- determining whether a person has broken the law;

- determining whether a person is responsible for improper conduct;
- determining whether there are or may be circumstances which would justify regulatory action;
- determining a person's fitness or competence to manage a corporate body or to continue in any profession or other activity which they are, or would like to become, authorised to carry on;
- determining the cause of an accident;
- protecting charities against misconduct or mismanagement in their administration (whether by trustees or others);
- protecting the property of charities from loss or misapplication;
- recovering the property of charities;
- securing the health, safety and welfare of staff; and
- protecting people other than staff against a risk to health or safety arising from the actions of persons at work.

Information is exempt if releasing it would, or would be likely to, prejudice:

- the exercise by a public authority of its functions for the specified purposes;
- civil proceedings brought by or on behalf of a public authority arising from an investigation conducted for the specified purposes by virtue of royal prerogative, or under powers set out in legislation; or
- an inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises from an investigation conducted for the specified purposes by virtue of royal prerogative, or under powers set out in legislation.

It is important to note that, in relation to the first of the above three bullet points, information will only be covered by this part of the exemption if disclosing it would, or would be likely to, prejudice the exercise of the functions of a public authority, if the function is carried out for a purpose appearing on this list. A public authority cannot just say that disclosure might prejudice one of the listed purposes.

Example

The Department for Business, Enterprise and Regulatory Reform was correct to withhold a report into the published accounts of the Rover Group on the basis that this would prejudice the exercise of its functions (relating to inspections under the Companies Act 1985) for

the purpose of ascertaining whether any person has failed to comply with the law.

[ICO decision notice FS50176388](#)

In the same way, in respect of the civil proceedings and inquiries referred to above, any prejudice caused by disclosure must be to the proceedings and inquiries themselves rather than the purpose for which they are brought or held.

In all cases, public authorities will be performing functions with a clear basis in law. Where this part of the exemption is relied on, the legal basis of the activities of the public authority – whether this is the authority receiving the request or another authority whose functions would be prejudiced by disclosure of the information requested – may need to be explained in order to demonstrate that they are part of its functions.

The test of prejudice

A public authority cannot withhold information, or refuse to confirm or deny that it holds information, unless the disclosure would, or would be likely to, prejudice any of the purposes or activities listed in the exemption. The prejudice must be genuine and of substance and its likelihood must be decided on a case-by-case basis. A public authority must therefore explain why the disclosure of the specific information requested would, or would be likely to, cause prejudice. It is not acceptable to say that disclosure of that type or class of information would, or would be likely to, cause prejudice.

It is important to recognise that there are two alternative parts to the prejudice test. If a public authority considers that prejudice ‘would be likely’ to occur, there is no need for the prejudice to be more probable than not, but the authority will need to show that it is real and significant and not merely a remote possibility. However, if an authority decides to say that prejudice ‘would’ occur, it will need to show that the prejudice is at least more probable than not.

The prejudice test has been considered by the Information Tribunal on several occasions. For more advice see [Prejudice and Adversely Affect \(Awareness Guidance 20\)](#).

The public interest test

Section 31 is a qualified exemption, and so, even if disclosure would be likely to prejudice one of the law enforcement activities or purposes, a public authority must still go on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The test must be applied on a case-by-case basis to the information actually requested. In this guidance it is only possible to give a general indication of the approach to take.

For more advice see [The Public Interest Test \(Awareness Guidance 3\)](#).

A useful summary of how to approach the public interest test was provided by the Information Tribunal in the [England/Bexley](#) case. The Tribunal recognised that when considering public interest factors in favour of maintaining the exemption, a public authority should only consider the particular interest which the exemption seeks to protect, for example the prevention of crime. In contrast, the public interest factors in favour of disclosure are not restricted in this way, and can include the general public interests in the promotion of transparency, accountability, public understanding and involvement in the democratic process.

Given the strong public interest in protecting the activities listed in section 31, it is likely that this will often outweigh the public interest in releasing the information. However, it is important that a public authority does not adopt this as its default position as the public interest must always be considered as a separate issue on a case-by-case basis. This should be reflected in an authority's refusal notice, with the public interest factors clearly set out as they apply to the specific case.

Examples of public interest considerations

Applying the public interest test in relation to this exemption is likely to involve a number of considerations, including human rights issues and an assessment of the impact of disclosure on the success of particular investigations, and more generally on investigative procedures.

For example, the Information Tribunal has considered the public interest test in cases involving prejudice to the prevention or detection of crime (section 31(1)(a)):

In the [England/Bexley](#) case the applicant made a request for the addresses, including ownership details, of all empty properties in the borough.

Factors in favour of disclosure included:

- the possibility that this would lead to a reduction in the number of empty properties;
- providing the public in the local area with the opportunity to challenge the council on its policies and activities relating to the issue; and
- raising the profile of the issue in order to encourage public debate.

Factors in favour of maintaining the exemption included:

- the strong public interest in avoiding likely prejudice to the prevention of crime (which is increased where the evidence of the prejudice is stronger);
- the public interest in avoiding damage to property;
- the efficient use of police resources;
- the potential for indirect consequences of crime, for example the impact on neighbouring properties of crimes perpetrated on the empty properties; and
- the impact of crime on individuals.

This last factor was central to the conclusion of the tribunal that the public interest in preventing crime against individuals is greater than that in preventing crime against public authorities or other corporate bodies. Consequently it decided that the information relating to properties owned by individuals should be withheld, but information relating to properties not owned by individuals should be disclosed.

The implication of this is that there is a stronger public interest in the prevention of crime that would cause harm or distress to individuals. This does not mean that there is no public interest in protecting public authorities or corporate bodies; rather that there is a heightened public interest in protecting individuals.

In [Mr C M Hogan and Oxford City Council v Information Commissioner \(EA/2005/0026 & 0030; 17 October 2006\)](#) the Information Tribunal was considering a case where the applicant had requested information regarding vehicles which the council operated, including vehicle identification numbers (VINs).

Two important factors to be taken into account in considering where the balance of the public interest lay were highlighted by the Tribunal in this case:

- the extent to which the information is already in the public domain; and
- the general rule that the public interest in preventing disclosure diminishes over time, particularly where the information becomes more widely available.

The duty to confirm or deny

Public authorities should also remember the duty to confirm or deny whether they hold the information. Even if the information itself is exempt from disclosure, authorities still need to confirm that they hold it unless the confirmation itself would prejudice one of the law enforcement activities or purposes. In the same way, if they do not hold the information, they must say this unless the denial itself would prejudice law enforcement. Any refusal to confirm or deny is also subject to the public interest test. (See above for more information on the public interest test.)

Section 31(3) sets out the exemption from the duty to confirm or deny the existence of information requested if that confirmation or denial is likely to prejudice any of the matters covered by the section.

Public authorities may refuse to confirm or deny that they hold information in connection with investigations carried out for the purposes listed in section 31(2), whether or not any particular investigations are underway, since even that limited disclosure might help those who are under, or who are due to be the subject of, investigation. For example, in ICO decision notice [FS50150268](#) the Commissioner decided that the Office of Fair Trading was correct to rely on section 31(3) to neither confirm nor deny that it held information regarding investigations into a particular company. It is less likely that public authorities could legitimately refuse to confirm that they hold information about their investigative procedures.

However, it would be legitimate to refuse to confirm or deny holding information about, for example, steps being taken to detect a particular type of offence, or to apprehend a suspect, if confirming or denying that the information is held would prejudice those efforts and the public interest test favoured maintaining the exemption.

It is not acceptable to provide no response – in accordance with section 17 a public authority must issue a refusal notice. This requires public authorities to explain which exemption applies to the information. Section 17(4) indicates that fuller explanation is not required if this in itself would involve the disclosure of exempt material. As a matter of good practice, we strongly recommend that those authorities who are likely to want to neither confirm nor deny that they hold the information requested, prepare a statement of policies about disclosure. This can then be provided to applicants without the risk of implying comment on particular requests.

For more advice see [The duty to confirm or deny \(Awareness Guidance 21\)](#).

Other considerations

In many circumstances authorities may also need to consider the section 40 exemption for personal information, as reference will frequently be made to living individuals. We have produced detailed guidance on how to use [the exemption for personal information](#).

If the information requested is environmental information, the most relevant exception is that in regulation 12(5)(b) which applies when disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature. For more advice see our guidance [An Introduction to the EIR Exceptions](#).

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 to this area, 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.

Phone: 08456 30 60 60
01625 54 57 45

Email: please use the online [enquiry form](#) on our website

Website: www.ico.gov.uk