



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

Freedom of Information Act 2000 Awareness Guidance Number 17

Law enforcement (Section 31)

The ICO has produced this guidance as part of a series of awareness guidance designed to help understand and apply the Freedom of Information Act 2000 (FOIA).

We will develop the guidance over time as we determine applications under the FOIA and the courts make decisions.

It is not a comprehensive statement of the exemption and does not constitute legal advice.

The aim of this guidance is to help the staff of public bodies involved in carrying out law enforcement and other regulatory functions, and members of the public seeking information from authorities involved in these activities.

A What does the Act say?

General

Section 31 of the FOIA creates an exemption from the right to know if releasing the information would or would be likely to cause significant harm to the purposes of law enforcement, taxation, and various types of regulatory activity as defined in the section. This test of prejudice is considered in section C below.

Type of exemption

The exemption is a qualified exemption. This means that even if information is exempt under this section of the FOIA, the public authority must consider whether it is in the public interest to disclose it. The public interest test is considered in section D below.

Relationship with section 30 (Investigations)

There are areas of overlap between sections 30 and 31. Section 30 provides an exemption in relation to particular criminal investigations and proceedings brought by public authorities (as well as some information received in confidence). Section 31 provides an exemption for general steps taken in relation to law enforcement.

Section 31 makes clear that in cases where section 30 applies, section 31 cannot be used. In areas such as policing or investigations carried out by, for example, local authority trading standards or environmental health departments, section 30 covers particular investigations, whereas section 31 covers investigative procedures. The law enforcement exemption is also much wider and includes crime prevention, taxation and other regulatory matters.

The duty to confirm or deny

The right to know places two related duties on public authorities:

- the duty to confirm or deny that the information requested is held; and
- if the information is held, the duty to communicate the information to the person requesting it (the applicant).

Both duties must be considered separately, although clearly if it is decided that there is an exemption from the duty to confirm or deny holding the information, there will be no obligation to provide it.

In section 31, public authorities have no duty to confirm or deny the existence of information requested if that disclosure is likely to prejudice any of the matters covered by the section.

Public authorities are often likely to refuse to confirm or deny if they hold information for the purposes of investigations, whether or not any particular investigations are in fact underway, since even that limited disclosure might help those who are under investigation. It is less likely that public authorities could legitimately refuse to confirm they hold information about their investigative procedures. That type of information is likely to become public knowledge when cases are brought to court or regulatory action is taken against organisations and individuals.

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, if confirming or denying that the information is held would prejudice those efforts.

It is not acceptable to provide no response. Section 17 of the FOIA requires public authorities to explain their reasons for refusing a request for information. 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, consider preparing a statement of policies about disclosure which they can then provide to applicants without the risk of implying comment on particular requests.

You can find further information on the duty to confirm or deny in Awareness Guidance 21 on our website.

B What information is covered?

The exemption is divided into two parts. The first part covers general activities and the second part more specific areas of law enforcement. The first part lists stand-alone activities which are clearly defined as such; the second part qualifies functions of public authorities by referring to specific activities.

The stand-alone activities

Information held for any of the stand-alone activities is exempt if its release would prejudice (or would be likely to prejudice) that activity. The stand-alone activities are as follows.

- Preventing or detecting crime. This includes not only the procedures followed by the police, customs and excise and other investigatory bodies, but also the crime prevention measures taken by public authorities in general. For example, information about the physical security of buildings, or the security of IT systems would be covered.
- 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.
- Administering justice. This covers a wide variety of matters that surround any type of judicial body and its administrative support. It will include the administrative arrangements of the courts and tribunals, the appointment of magistrates and judges and the requirement to conduct proceedings fairly. It will cover arrangements for the care of witnesses, the transport of defendants in custody and the service and execution of process and orders in civil cases. Consideration of the many Administration of Justice Acts gives an indication of the size of the area this covers.
- Assessing and collecting taxes or any similar duty. This is also very wide and will include not only income and company tax, VAT and National Insurance contributions, but also local charges such as Council Tax.
- Immigration controls. This includes not only information about the physical security of entry points to the UK, but also information about issuing and approving visas, work permits and so on, and processing asylum applications.
- Security and good order of prisons and other similar institutions. This includes both external security and internal disciplinary matters.

The qualified purposes

Information is exempt if releasing it would (or would be likely to) prejudice the specified purposes listed below in carrying out any of these three functions.

- Exercising public authorities' functions for the specified purposes set out below.
- Civil proceedings brought by or on behalf of a public authority, arising from investigations conducted under Royal prerogative, under powers set out in legislation, or for the specified purposes set out below.

- Inquiries held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 arising from investigations conducted under Royal prerogative, under powers set out in legislation, or for the specified purposes set out below.

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 risk to health or safety arising relating to the actions of persons staff.

Information will only be covered in this part of the exemption if disclosing it might cause harm to the exercise of the functions of a public authority if the function is carried out for a purpose appearing on this list.

In all cases, public authorities will be performing functions with a clear basis in law. Public authorities relying on this exemption must be able to explain the legal basis of their functions both to applicants requesting information and, when required, to the Information Commissioner.

Historical records

This exemption does not apply to information in records that are more than 100 years old.

C The test of prejudice

Section 31 is subject to the prejudice test. This means that a public authority cannot withhold information, or refuse to confirm or deny that it holds information, unless this disclosure would, or would be likely to, prejudice any of the purposes listed in the exemption. There should be evidence of a significant risk of harm to the subject of the exemption. Whether prejudice exists must be decided on a case by case basis.

For further information on the prejudice test please refer to Awareness Guidance 20 on our website.

D The public interest test

Section 31 is a qualified exemption. This means that even if the information requested is exempt, the public authority must decide whether the public interest in applying the exemption and refusing disclosure outweighs the public interest in disclosing it.

Applying the public interest test means weighing the harm that is identified in a particular exemption against the wider public interest that may be served by disclosing it. The test must be applied on a case-by-case basis and it is only possible to give a general indication of the approach to take.

In cases where a public authority has decided that releasing the information would prejudice the prevention of crime, they should not assume that it could not be in the public interest to release the information. It may be that in the vast majority of instances this would be the case, but a public authority must consider the public interest test as a separate issue.

An example might be a request for information about aspects of the work of the Immigration and Nationality Department (IND) at the Home Office. The exemption covers the operation of immigration controls and there will be many disclosures of information which would prejudice the work of the IND and would help people evade immigration controls.

In this case, the public interest test would involve weighing the interest of the state (and the public) in being able to prevent illegal immigration, illegal working and overstaying a permission to enter the country, against the public interest in making sure that the system is operated fairly and within budget, and that applications for asylum status are handled properly. Although it is easy to see that there will be many instances where the disclosure of operational or tactical information would help those trying to evade immigration controls, there will be other cases where disclosing the information will be necessary to demonstrate fairness and to promote public confidence in the system.

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

We strongly advise public authorities to put procedures in place to identify the difficult cases and to take appropriate legal advice.

For further information on the public interest test please refer to Awareness Guidance 3 on our website.

Examples	
<p>We are a police force and have been asked to provide details of all speed cameras in a defined part of the force area, together with the number of fixed penalty tickets that have been issued from each one. We are concerned that this information will prejudice the effectiveness of the cameras in reducing traffic speed to within the speed limits, particularly as it might indicate which cameras are used infrequently.</p>	<p>If you have real and genuine concerns that this information would prejudice the prevention of crime it will be covered in this exemption. It is an offence to break the speed limit and steps you take to prevent this is crime prevention. You would also need to be satisfied that it is not in the public interest to disclose this information.</p>
<p>We are a police force in a large metropolitan county and have been asked to provide information about:</p> <ul style="list-style-type: none"> - the number of police officers on duty at each football ground in the county on each Saturday of the last football season; and - current plans for police attendance at football grounds for the coming season. <p>We are concerned that releasing this information will indicate the reduced level of police cover around the county for other purposes and will affect crime rates on Saturday afternoons.</p>	<p>If you are satisfied that releasing this information may well prejudice the force's efforts to prevent crime, this information will be covered by this exemption.</p> <p>In applying the public interest test you will need to take into account the public interest in the use of public resources, openness and accountability to the public, and the current level of debate on police effectiveness.</p>

More information

You can get this and other guidance on exemptions from our website or in hard copy form. Advice is also available on the website of the Department for Constitutional Affairs (www.dca.gov.uk).

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

Phone: 01625 545700

E-mail: please use the online enquiry form on our website

Website: www.ico.gov.uk