



## EXEMPTION NOTE

### Section 22 Parliamentary privilege and business

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 22 states:

### 22 Parliamentary privilege and business

- (1) Information is absolutely exempt information if —
  - (a) exemption from the obligation to disclose it under this Act is required to avoid an infringement of the privileges of —
    - (i) Tynwald;
    - (ii) the Legislative Council; or
    - (iii) the House of Keys; or
  - (b) its disclosure under this Act would, or would be likely to, in the reasonable opinion of the appropriate person specified in subsection (3), prejudice the effective conduct of parliamentary business.
- (2) A certificate signed by the appropriate person specified in subsection (3) certifying that the exemption is required to avoid —
  - (a) in a case to which subsection (1)(a) applies, that infringement of privileges; or
  - (b) in a case to which subsection (1)(b) applies, that prejudice,is conclusive evidence of that fact.
- (3) The appropriate person is —
  - (a) the President of Tynwald, in the case of the privileges of Tynwald or the Legislative Council; and
  - (b) the Speaker of the House of Keys, in the case of the privileges of the House of Keys.
- (4) In any proceedings under this Act, a document purporting to be a certificate under subsection (2), or a document purporting to be a certified copy of the certificate, is to be treated as the certificate or copy unless the contrary is proved.
- (5) In relation to statistical information, subsection (1)(b) has effect with the omission of the words “in the reasonable opinion of the appropriate person specified in subsection (3)”.

## THE MAIN POINTS

1. PAs may refuse to give the applicant the information requested if the information is absolutely exempt information.
2. This exemption is intended to prevent an infringement of the privileges of parliament or prejudice the effective conduct of parliamentary business.
3. To apply the exemption the PA must be satisfied and be able to demonstrate that an infringement of a privilege or prejudice to the effective conduct of parliamentary business would or would be likely to occur as a result of the disclosure of the information sought by the request.
4. 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.
5. If the PA is satisfied that this exemption applies, it should obtain a certificate as conclusive evidence of that fact from the appropriate person.
6. The certificate signed by the appropriate person means that the Information Commissioner (IC), as set out in section 42(2) of the Act, cannot make a decision that challenges the conclusiveness of the certificate.

7. However, while the IC cannot make a contrary decision in respect of the 'conclusiveness of a certificate' (section 42(4)), the IC can still review the decision to apply the exemption and the considerations made and make a decision as to whether or not the PA has responded to the request in accordance with Part 2 of the Act.
8. The PA must issue a refusal notice in accordance with Part 2 of the Act and a copy of the certificate should be provided to the applicant as it specifies the reason why the PA may refuse to give the information requested and why the exemption applies.

### **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 PA refuses a request and issues a certificate, whilst the IC cannot challenge the 'conclusiveness' of the certificate, it should advise the applicant of their ability to challenge the decision making process of the PA, for example by making a Petition of Doleance application to the Court.

### **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

None

### 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**



## Case law

### UK Tribunal decisions

