

EXEMPTION NOTE

Section 24

Absolutely exempt information under international agreements about exchange of information

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 24 states:

24 Absolutely exempt information under international agreements about exchange of information

- (1) Information is absolutely exempt information if it is, or relates to, confidential information obtained, provided or dealt with under an international agreement providing for the exchange of information for a purpose mentioned in section 32(3) with any of the following —
 - (a) the United Kingdom;
 - (b) any other State;
 - (c) an international organisation; or
 - (d) an international court.
- (2) In this section, information obtained from a State, international organisation or international court is confidential while —
 - (a) the terms on which it was obtained, provided or dealt with require the person who holds it to do so in confidence; or
 - (b) the circumstances in which it was obtained, provided or dealt with make it reasonable for the State, organisation or court to expect that it will be held in confidence.
- (3) In this section “international agreement” includes (but is not limited to) an international arrangement for the purposes of Part 9 of the *Income Tax Act 1970*.

THE MAIN POINTS

1. This is an absolute exemption which means the PA does not have to consider whether disclosure of the information would be in the public interest.
2. The exemption can only be applied by the PA to confidential information which was obtained or provided for the purposes of law enforcement, as defined in section 32(3) under an international agreement providing for an exchange of information with:
 - the UK
 - any other state
 - an international organisation ,or
 - an international court
3. The following definitions set out in section 5 of FOI are relevant:
 - “**any other state**” includes references to a territory of the United Kingdom outside the United Kingdom and the Crown Dependencies;
 - “**State**” includes the government of a State and any organ of its government or administration;
 - “**international organisation**” means an international organisation whose members include any 2 or more States, or any organ of such an organisation;
 - “**international court**” means an international court that is not an international organisation and that is established —
 - (a) by a resolution of an international organisation of which the United Kingdom is a member; or

(b) by an international agreement to which the United Kingdom is a party.

4. The PA must be able to evidence which international agreement providing for an exchange of information applies.
5. To apply the exemption the PA must be satisfied that the information is confidential. Where necessary, a PA should take appropriate legal advice on general questions of law, such as the law of confidence and the interpretation of international agreements.
6. The circumstances or express terms under which the information was obtained and the conditions placed upon it by the supplier will usually evidence whether or not the information is confidential.
7. Information will remain confidential for as long as the terms on which it was obtained require it to be held in confidence. There is no requirement that an actionable breach of confidence would occur for the exemption to apply.
8. The exemption may also apply to information where there is an implied confidence. For example, although not expressed, there may be an expectation placed on the information by an international organisation, non-UK state or international court, that it will be held in confidence by PA.
9. The information will remain confidential for as long as the state, organisation or court expect it to be so held.

OTHER CONSIDERATIONS

1. If the information requested is already in the public domain, either partially or fully, it is unlikely to be confidential although exceptions are possible. For instance, if the reliability of that information is uncertain but disclosure under the Act would confirm its authenticity then it may be reasonable to refuse a request.
2. If information has been put in the public domain by the state or international organisation which supplied it or might be obtained on request, for instance, under the FOI legislation of the other state, then it could not be considered confidential.

FURTHER RESOURCES

APPENDIX 1: IOM Commissioner Decisions & IOM Case law

APPENDIX 1 IOM Commissioner Decisions & Case law

IOM Commissioner Decisions

None

IOM Case law

None

