



## EXEMPTION NOTE

### Section 36 Health and Safety

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 36 states:

### 36 Health and safety

Information is qualified exempt information if its disclosure would, or would be likely to —

- (a) endanger the physical or mental health of an individual; or
- (b) endanger the safety of an individual

## THE MAIN POINTS

1. This is a qualified exemption.
2. To apply the exemption the PA must be satisfied that disclosure of the information sought by the request would, or would be likely to, result in endangerment to the health or safety of an individual. This means the PA will be expected to evidence that endangerment has some realistic prospect of occurring.
3. If the PA determines that the exemption can be applied to some, or all, of the information sought by the request, then the PA must still go on to consider the public interest in the information and determine whether “the public interest in maintaining the exemption outweighs the public interest in disclosing the information”.

The Information Commissioner has published guidance on the public interest and further advice is contained in Section 3 of the Code of Practice.

4. Endangerment to physical health could mean danger to someone as a result of physical injury, illness or disease. It could also mean damaging someone's mental health.
5. “Safety” refers to a person's wellbeing or to their security. It suggests freedom from danger as well as protection from the risk of harm or injury.
6. It may be a single individual whose health or safety is likely to be endangered or it may be a group of people.
7. A PA must be able to evidence that there will be some endangerment to the health or safety of the person(s) in question. The wider the group which it is claimed will be endangered, the more difficult this is likely to be. This is particularly the case when dealing with endangerment to mental health.
8. The exemption should not be used to withhold information a PA considers to be “distasteful”, on the basis that one or more members of the public may be distressed by the disclosure of the information.

## 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**



## Scottish Information Commissioner (SIC) Decisions

The SIC's decisions are available at: [www.itspublicknowledge.info/decisions](http://www.itspublicknowledge.info/decisions)

Decision Number	Parties	Summary
200/2014	Eddie Nisbet and Police Scotland	Mr Nisbet asked the Police about incidents which had taken place at a night club which had since closed. The Police argued that disclosing information would endanger health or safety – they were concerned that licensees would be less likely to work with them in the future, for fear of giving their premises a bad reputation. In turn, safety in licensed premises would decrease. The SIC recognised the concerns raised by the Police, but did not agree that disclosing the particular information Mr Nisbet had asked for would cause the necessary harm.
182/2014	Andrew Picken and the Scottish Ministers	Mr Picken wanted to know about Scottish Government Ministers' (excluding the First Minister) travel and subsistence. The Ministers argued that this could endanger their (and others') safety, given that they often used the same hotels when travelling. This could allow patterns of movement to be identified. The SIC recognised that, where potential security risks are concerned, it is appropriate to take a cautious approach. However, the Ministers did not satisfy the SIC that disclosure would increase the risk of endangerment.
034/2007 & 041/2008	The Sportsman's Association of Great Britain and Northern Ireland and the Chief Constable of Central Scotland Police & William Scott and the Chief Constable of Central Scotland Police	The SIC considered whether disclosing photographs taken in Dunblane Primary School following the shootings in 1996 (which killed 16 pupils and a teacher) would endanger mental health. The Police argued that disclosure would cause enormous distress to those affected by the shootings and to the wider Dunblane community. This distress would endanger mental health. The SIC accepted that the exemption applied, noting that the photographs revealed the scene of a crime that caused shock and revulsion, and which remained an emotive subject for the people directly involved.
030/2006	David Ewen and the Chief Constable of Grampian Police	Mr Ewen made a request for the number of drivers caught speeding at fixed camera locations, where road users don't know if a camera is operational. The Police argued that revealing the number of drivers caught by individual cameras would allow drivers to assess their chances of being caught and encourage them to drive at excessive speeds. The SIC agreed that disclosing the figures would encourage drivers to drive at excessive speed and endanger the health or safety of road users.

055/2005	Russ McLean and Caledonian MacBrayne (CalMac)	Mr McLean asked for the detailed plans of a vehicle and passenger ferry. CalMac argued that disclosing the information could reveal sensitive areas of the vessel and could endanger the health or safety of passengers and crew by risking the security of the vessel. The SIC was satisfied that disclosing the information could undermine the operator's responsibilities to ensure the safety and security of the vessel.
----------	--	--



## Case law

### UK Tribunal decisions

