



EXEMPTION NOTE

Section 37 Research and natural resources

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).

While this note provides general guidance all 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 37 states:

37 Research and natural resources

- (1) Information is qualified exempt information if —
 - (a) the information relates to research being, or to be, carried out by, or on behalf of, a public authority; and
 - (b) disclosure before the completion of the research would, or would be likely to, prejudice —
 - (i) the public authority or a person who is, or will be, carrying out the research on behalf of the public authority; or
 - (ii) the subject matter of the research.
- (2) Information is qualified exempt information if the disclosure of the information would, or would be likely to, prejudice the well-being of —
 - (a) a cultural, heritage or natural resource;
 - (b) a species of flora or fauna; or
 - (c) a habitat of a species of flora or fauna.

THE MAIN POINTS

1. This is a qualified exemption.
2. It requires determination of a prejudice test.
3. If the PA determines that it can be applied to some, or all, of the information sought in a request, 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. This exemption is in two distinct parts: “research” and “natural resources”.
5. Section 37(1), ‘Research’, is intended to prevent prejudice to research that is being, or is to be, carried out by, or on behalf of, the public authority (PA).
6. This exemption does not apply to completed research.
7. To apply this part of the exemption the PA must be able to evidence that disclosing the information sought by the request would, or would be likely to, prejudice:
 - the subject matter of the research
 - the PA in carrying out the research
 - the person carrying out the research on behalf of the PA
8. Section 37(2), ‘natural resources’, is intended, in the absence of legislation equivalent to the EU Environmental Information Regulations, to prevent prejudice to the ‘well-being’ of particular natural resources.
9. The exemption could be applied if disclosure would, for example, disclose the exact location of the

nesting site of a protected bird and thereby prejudice that protection.

10. To apply this part of the exemption the PA must be able to evidence that disclosing the information sought by the request would, or would be likely to, prejudice:
 - a cultural, heritage or natural resource,
 - a species of flora or fauna, or
 - a habitat of a species of flora or fauna.
11. If a PA applies this exemption then it must provide the applicant with a refusal notice the content of which must accord with section 18 of FOI. See also Code of Practice <hyperlink>

OTHER CONSIDERATIONS

1. The PA must be able to evidence that prejudice will or is likely to occur as a result of the disclosure of the information.
2. The prejudice must be real and of demonstrable significance. A remote or hypothetical possibility will not engage the exemption.
3. Where a PA can demonstrate prejudice, it must also demonstrate that disclosure would not be in the public interest. It is feasible that prejudice may occur but the public interest is best served by disclosure.

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

None

Case law

UK Tribunal decisions

