



EXEMPTION NOTE

Section 30 Economy and commercial interests

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 30 states:

30 Economy and commercial interests

- (1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice —
- (a) the economic interests of the Island;
 - (b) the financial interests of the Island; or
 - (c) the ability of the government to manage the national economy.
- (2) Information is qualified exempt information if —
- (a) it constitutes a trade secret; or
 - (b) its disclosure would, or would be likely to, prejudice the commercial interests of a person (including the public authority holding it).

THE MAIN POINTS

1. This is a qualified exemption.
2. Section 30(1) requires determination of a prejudice test (section 30(1))
3. Section 30(2) is a class-based exemption and only applies to the specified category or class of information.
4. 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.

5. The exemption consists of five distinct exemptions. A PA may refuse to provide some or all of the information sought by a request when that information:

- constitutes a trade secret

or disclosure of the information would, or would be likely, to prejudice:

- the commercial interests of a person (including the public authority holding it)
- the financial interests of the Island;
- the economic interests of the Island; or
- the ability of the government to manage the national economy

6. With the exception of information that constitutes a trade secret, the exemption requires the PA to establish that disclosure of the information would, or would be likely to, cause prejudice. This means the PA must establish that a significant probability of prejudice would occur by the disclosure of the information. A remote or hypothetical possibility of prejudice is not sufficient.
7. Only information that falls within the exemption can be withheld by the PA. For example an applicant has sought information about a contract; the PA may withhold the information that

constitutes a trade secret, but, unless another exemption applies, must disclose all other information sought by the request.

Trade secrets

8. There is no definition of trade secret in FOI, but the Courts have previously considered what types of information constitute a trade secret. Examples include:
 - Technical data relating to methods of design or construction
 - Technical knowledge connected to the manufacture of particular goods
 - Trade practices and processes which would be harmful in the hands of a competitor
9. Sometime trade secrets have legal protection such as a patent or copyright, but often the only protection is in maintaining their secrecy. To determine whether the information sought constitutes a trade secret, the PA should establish that:
 - the information is used for the purpose of a trade,
 - disclosure of the information would harm that trade,
and
 - the information is of commercial value.
10. Other factors to consider include whether:
 - the information is common knowledge,
 - a competitor could discover or reproduce the information for themselves,
and
 - the value of the information has decreased over time.

Commercial interests of a person

11. Commercial interests are not defined in FOI.
12. Commercial interests usually relate to the commercial trading activity of a person, for example the sale and purchase of goods or services usually within some form of competitive environment.
13. A person means a legal person and includes: a company, partnership or another public body, etc.
14. The exemption only applies to information held by the PA that was provided to it by the person whose commercial interests are being considered.

Financial Interests of the Island

15. Financial interests usually concern the management of a PA's financial resources.
16. Information may be withheld if disclosure would prejudice matters such as funding or the raising of revenue. However the prejudice would have to affect the Island as opposed to a department, statutory board, office or other public body.

The economic interests of the Island or the ability of the government to manage the national economy

17. The exemption applies to the economic interest of the Island or the management of the Island's national economy.
18. It does not apply to the economic interest of any other jurisdiction unless disclosure of the information would also prejudice the economic interests of the Island or the government's ability to manage the economy.

19. To withhold information, the PA must demonstrate how the economic interests of the Island or the government's ability to manage the national economy would be prejudiced.

OTHER CONSIDERATIONS

1. Interests may be time sensitive. For example, disclosure of information relating to a budget may be prejudicial to the government's ability to manage the national economy during preparation but no longer prejudicial after the budget has been presented.
2. The exemption does not apply in relation to the management of a PA's budget.

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

Decision Number	Parties	Summary
171/2012	Elekta Ltd and the Scottish Ministers	The SIC did not accept that disclosing information about a radiotherapy equipment contract would prejudice the Scottish Administration's financial interests.
074/2011	Caroline Gerard and the City of Edinburgh Council	The SIC did not accept that disclosing the fee paid to Experian for work done on an analysis of the Council's Council Tax debt would prejudice the Scottish Administration's financial interests.
104/2008	Streetwork UK and Glasgow City Council	The SIC did not accept that the whole of a successful tenderer's proposal was a trade secret, particularly in the absence of arguments as to which parts were considered secret and why. Given the passage of time, sensitivity in the information had reduced.
023/2008	Paul Drury and Glasgow City Council	The Council argued that disclosing travel and hotel costs associated with Glasgow's bid to stage the 2014 Commonwealth Games would be likely to damage Glasgow's chances of success, prejudicing the delivery of economic benefits to Glasgow, the West Coast of Scotland, and Scotland as a whole. The SIC did not accept that disclosure would damage Glasgow's chances of winning the bid, or have the consequences argued by the Council.
119/2007	Ms N and Common Services Agency for the Scottish Health Service	The SIC did not accept that disclosing information about compensation claims for Hepatitis C would substantially prejudice the Scottish Administration's financial interests.
180/2006	Alfred Weir and Fife Council	The Council refused to disclose pricing schedules submitted three years earlier as part of a tendering process. The SIC decided that the commercial sensitivity of the information had decreased significantly, and that the pricing schedules used would not guide future submissions. Any secrecy associated with the tender documents related to the way the prices were calculated, rather than to the prices themselves.
056/2006	MacRoberts and City of Edinburgh Council	Information could be compiled through publicly accessible Council registers, albeit at a cost. As the information could be reproduced by competitors, it did not constitute a trade secret.
052/2006	Mr K and the University of Aberdeen	The University's purchase of travel services did not represent a commercial interest: the University engaged in this activity only occasionally, and did so only in order to fulfil its core functions.

Case law

UK Tribunal decisions

