



EXEMPTION NOTE

Section 39 Qualified exempt personal 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 39 states:

39 Qualified exempt personal information

- (1) Information is qualified exempt information if —
 - (a) it constitutes personal data of which the applicant is not the data subject; and
 - (b) under section 8 of the Data Protection Act 2002 (processing likely to cause damage or distress), the data subject would be entitled to prevent disclosure of the information to a member of the public otherwise than under this Act.
- (2) Words and phrases defined in the Data Protection Act 2002 have the same meaning in this section as they have in that Act.

THE MAIN POINTS

1. This a qualified exemption and, therefore, if the PA decides that it does apply to all or some of the information sought by a request, the information must be disclosed unless the public interest in withholding the information 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.

2. The exemption may be applied by a PA to information which constitutes the personal data of a data subject who is not the applicant
3. Section 8 of the DPA provides a data subject with a right to object to processing likely to cause unwarranted substantial damage or unwarranted substantial distress.
4. A data subject has the right to send a notice in writing to the PA (the data controller) requiring it to stop, or not to begin, the processing (or specified processing) of their personal data if that processing would, or would be likely, to cause substantial damage or distress.
5. Where a public authority has previously accepted such a notice, and provided the notice is related to the information sought by a request then a PA may apply the exemption.
6. Such a notice can be issued "at any time". A PA may apply the exemption if it accepts a notice after receiving the FOI request, provided the notice relates to the information sought.

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.

The UK information Commissioner has produced guidance on when names should be disclosed:
www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/whenshouldnamesbe_disclosed.pdf

UK Information Commissioner Decisions

The ICO's decisions database can be accessed at:
www.ico.gov.uk/tools_and_resources/decision_notices.asp



Scottish Information Commissioner (SIC) Decisions

The SIC's decisions are available at: www.itspublicknowledge.info/decisions

Decision Number	Parties	Summary
054/2005	Paul Hutcheon The Sunday Herald and the Central Scotland Police	The applicant sought the names of police officers who had had race-related complaints made against them. Following receipt of the request, notices seeking to prevent the release of the names were received and accepted by the Chief Constable. On consideration, the SIC accepted that the Chief Constable was entitled to apply the exemption even though the notices had not been received until after the request was made.
054/2005	Paul Hutcheon The Sunday Herald and the Central Scotland Police	The SIC found that the public interest lay in maintaining the exemption. In coming to this view, the SIC expressed concerns that ordering the release of the names of the officers involved might reduce the likelihood of race-related complaints being made in the future.

Case law

UK Tribunal decisions

