



EXEMPTION NOTE

Section 32 Law enforcement

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 32 states:

32 Law enforcement

- (1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice —
- (a) the prevention or detection of crime;
 - (b) the apprehension or prosecution of offenders;
 - (c) the administration of justice;
 - (d) the assessment or collection of a tax or duty or of an imposition of a similar nature;
 - (e) the operation of immigration controls; or
 - (f) the maintenance of security and good order in institutions (within the meaning of the Custody Act 1995) where persons are lawfully detained.
- (2) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes mentioned in subsection (3) or any civil proceedings brought as a result of the exercise of such a function.
- (3) The purposes are —
- (a) to ascertain whether a person has failed to comply with the law;
 - (b) to ascertain whether a person is responsible for conduct that is improper;
 - (c) to ascertain whether regulatory action under any enactment is justified;
 - (d) to ascertain a person's fitness or competence in relation to —
 - (i) the management of bodies corporate; or
 - (ii) any profession or other activity that the person is, or seeks to become, authorised to carry on;
 - (e) to ascertain the cause of an accident;
 - (f) to protect a charity against misconduct or mismanagement (whether by trustees or other persons) in its administration;
 - (g) to protect the property of a charity from loss or mismanagement;
 - (h) to recover the property of a charity;
 - (i) to secure the health, safety and welfare of persons at work; and
 - (j) to protect persons, other than persons at work, against risk to health or safety where that risk arises out of, or in connection with, the actions of persons at work.

THE MAIN POINTS

1. This is a qualified exemption.
2. To apply the exemption requires determination of a prejudice test.
3. If the PA determines that the exemption 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”.
4. The exemption provides for a PA to withhold information when disclosure would, or would be likely to, prejudice one or more of a wide range of law enforcement functions and activities. The exemption can be applied to information held by a PA that relates to the detection and prevention of crime and prosecution of offenders, and to matters such as the operation of immigration controls, the assessment or collection of taxes and various regulatory functions.
5. The exemption is in two parts. Subsection 32(1) lists the various categories of law enforcement functions or activities that can give rise to exemption, while subsection 32(3) lists the law enforcement purposes which are relevant when an authority is relying on the exemptions in section
6. FOIA does not provide any further definition of the law enforcement activities and functions referred to in the exemption. As such, the following provides some broad guidance as to when a PA may apply the exemption.

Prevention or detection of crime

7. The term “prevention or detection of crime” is wide ranging. It encompasses actions taken to anticipate and prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for committing a crime. The exemption therefore could be applied by a PA to information relating to activities in relation to a specific or anticipated crime or wider strategies for crime reduction and detection. It could also include information which is received from an informant.

Apprehension or prosecution of offenders

8. At times there is likely to be an overlap between information relating to “the apprehension or prosecution of offenders” and information relating to “the prevention or detection of crime”. The “apprehension or prosecution of offenders” is narrower and focusses on the process of identifying, arresting or prosecuting anyone suspected of being responsible for unlawful activity. The exemption could be applied to information concerning the apprehension and prosecution of a specific offender, or to more general techniques (such as investigative processes used, information received, or guidance given) and strategies designed for these purposes.

Administration of Justice

9. Courts and tribunals are the main bodies responsible for administering justice but the exemption may apply to other bodies such as arbitrators. The exemption could be applied to information that relates to the working of these bodies. Examples might include the protection of basic principles such as the right to a fair trial and ensuring that individuals have access to justice.

Assessment or collection of taxes, duty etc.

10. This definition will include rates as well as national taxes such as vehicle excise duty (road tax), income tax and national insurance contributions.

Immigration controls

11. The term “immigration controls” will include information about the physical controls at points of entry to the Island or UK and the procedural mechanisms for controlling entry and residency, such as visa application or renewal processes and policies for preventing and investigating illegal immigration.

Security and good order in institutions

12. “Security” implies matters such as the safe, secure and effective custody of detainees and the safety of people in or around an institution. “Good order” suggests information about the smooth running of institutions, and about promoting a safe and orderly regime. People can be lawfully detained in prison, young offender’s institutions, secure accommodation or secure hospitals.

13. The use of the word “and” means that both conditions must be fulfilled before this exemption can be relied on.

Public authority functions

14. A public authority’s functions are those things it has the power, or an obligation, to do. Usually the PA’s functions will be set out in statute but the functions may also derive from the powers of the Crown, i.e. functions carried out by the PA on behalf of the Lieutenant Governor.

15. To apply the exemption, a PA must be able to show that it has the power or obligation to carry out the relevant function and the information is held by the PA is for the exercise of that function and one of the purposes set out in subsection 32(3).

Civil proceedings

16. Civil proceedings” can refer to any non-criminal case heard before a court or tribunal. The civil proceedings must have brought :

- by or on behalf of the PA
- and
- resulted from the PA exercising a function for one of the purposes set out in subsection 32(3)

Subsection 32(3) purposes

17. The “purposes” in set in subsection 32(3)

- *“To ascertain whether a person has failed to comply with the law”*
The exemption may be applied to information held by the PA for the purpose of an investigation it has undertaken in relation to a criminal matter, such as a theft by an employee, or into a civil matter, such as whether a body has complied with its legal duties.
- *“To ascertain whether a person is responsible for conduct that is improper”*
The exemption may be applied to information held by the PA for the purpose of an investigation undertaken into whether someone’s actions have met an expected standard, including a legal requirement or a standard set for public office holders. This might include investigations under the Code of Conduct for Public Servants.
- *“To ascertain whether circumstances whether regulatory under any enactment is justified”*
Regulatory action is normally carried out by a person with specific powers to do so. The exemption may be applied to information held by a PA that obtained or created that information in considering whether or not to take regulatory action.

- *"To ascertain a person's fitness or competence "*
The exemption may be applied to information held by the PA for the purpose of assessing the fitness and competence of individuals such as company directors, shadow directors and company secretaries, involved in the management of corporate bodies or any profession or other authorised activity.
- *" To ascertain the cause of an accident"*
The exemption may be applied to information held by the PA for the purpose of an investigation into any sort of accident, regardless of whether it was minor workplace accident or a major accident investigations.
- *"To protect a charity against misconduct or mismanagement (whether by trustees or other persons) in its administration"*
The exemption may be applied to information held by the PA for the purpose of the investigation or assessment of the fitness and competence of the Officers responsible for the management of the charity or the conduct of any person representing the charity.
- *"To protect the property of a charity from loss or mismanagement"*
The exemption may be applied to information held by the PA for the purpose of taking enforcement action to protect charity funds from mismanagement.
- *"To recover the property of a charity"*
The exemption may be applied to information held by the PA for the purpose of proceedings against anyone responsible for breaches of trust causing loss to a charity.
- *" To secure the health, safety and welfare of persons at work"*
The exemption may be applied to information held by the PA in relation to its legal obligations to ensure the health and safety of its employees at work. "Health" refers to employees' health, whether physical or mental, as it is affected by work activities. "Safe" could be interpreted as "not dangerous:" "safety extends to preventing risk of injury arising from the state or condition of the workplace. "Welfare" in the workplace covers amenities such as heating and lighting, the lack of which may not be directly damaging to health, but may in the long term have cumulative ill effects on health.
- *" To protect persons, other than persons at work, against risk to health or safety where that risk arises out of, or in connection with, the actions of persons at work"*
The exemption may be applied to information held by the PA in relation to its legal obligations to protect third parties from health and safety risks connected with the actions of people at work.

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
037/2009	The Daily Record and the Chief Constables of Central Scotland Police, Lothian and Borders Police, etc.	The Daily Record asked each police force for the total amounts paid to informants over a three year period. The SIC accepted that, in smaller force areas, a payment could (rightly or wrongly) be linked with a specific event or the disruption of criminal activity. This would affect the Police's ability to recruit informants in these areas. The SIC therefore accepted that the exemption applied. However, for larger forces, the SIC did not accept that disclosure would result in harm; their larger budget head and crime statistics would allow them to mask any potential spikes in payments.
035/2009	Cllr Danny Carrigan and the Assessor of Lanarkshire Valuation Joint Board	The applicant wanted the dates and value of property transactions as a constituent wanted to have their property's valuation band lowered. The Assessor argued that the information was exempt because disclosure in this context would circumvent the formal appeals process and undermine the efficient and effective disposal of appeals. The SIC did not accept this.
071/2008	Mr S and the Chief Constable of Strathclyde Police	Disclosing the number of police officers on duty at a particular football match would not prejudice substantially the Police's activities or functions. The SIC accepted that "hooligan" groups are capable of using information on police planning to their advantage, and that the disclosing information of this kind into the public domain <i>could</i> harm law enforcement. However, the circumstances of this particular match were unique: it was a cup semi-final where special permission had been granted for the game to be held at a much smaller stadium than was usual for this type of match.
059/2008	Richard Cookson and the Scottish Prison Service	The SIC agreed that disclosing parts of an Office of Surveillance Commissioners report on the inspection of the SPS and the SPS's response to the report would prejudice substantially the maintenance of good order and security in prisons. Should prisoners become aware of the techniques specifically employed (or not employed), they were likely to take measures to avoid those techniques or take advantage where they were not deployed. Also, the disclosure of information about the use of intelligence and information gathering might reasonably be expected to affect the safety and wellbeing of prisoners, staff and visitors.

186/2007	Richard Haley and the Chief Constable of Tayside Police	Disclosing a report about the prevention of terrorism would prejudice substantially the Police's activity in relation to the prevention and detection of crime. In respect of intelligence gathering, there was an expectation that the information gathered would not be disclosed to a third party other than in the course of criminal proceedings. Disclosure might deter people from providing information in future and this would harm the prevention or detection of crime.
166/2007	Mr A and the University of Paisley	The SIC did not accept that information about a grievance procedure was information gathered either for (1) the purpose of ascertaining whether a person had been responsible for conduct which was improper or (2) the purpose of ascertaining a person's fitness or competence in relation to any profession or other activity which the person was, or sought to become, authorised to carry on.
045/2007	Blochairn Housing Co-operative Limited and Communities Scotland	The SIC agreed that the information about Blochairn had been gathered by Communities Scotland for the purposes of its statutory regulatory functions. However, the information was largely factual and disclosure would not cause substantial prejudice to this function.
222/2006	Scotland on Sunday and the Chief Constable of Northern Constabulary	The SIC disagreed that disclosing the number of sex offenders of no fixed abode within a particular area would prejudice substantially the Police's activities or functions. Disclosure would not lead to the identification (or misidentification) of any individual. The SIC did not accept that disclosure of the information would lead offenders to lose confidence in the Police's ability to protect them, or would result in the sort of public disorder that would drive offenders underground.
097/2006	Mr H and the Scottish Prison Service	Disclosing health and safety policies for HMP Dumfries would prejudice substantially the maintenance of good order and security in the prison; the effective working of personnel involved in carrying out key tasks in the event of, for example, a fire would be prejudiced substantially should this information be disclosed. The SIC also accepted that disclosing the information might lead to the targeting and intimidating of named staff, prejudicing substantially the maintenance of security and good order in the prison.
047/2006	E Sutherland- Loveday and Scottish Borders Council	The SIC was not satisfied that the inspection the applicant was seeking information about was one which had been conducted under the Council's statutory powers.

Case law

UK Tribunal decisions

