



# EXEMPTION NOTE

## Section 21 Court 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 21 states:

### 21 Court information

- (1) Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document of the following kind for the purposes of legal proceedings —
  - (a) filed with, or otherwise placed in the custody of, a court;
  - (b) served upon, or by, a public authority.
- (2) Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document created by a person of the following kind for the purposes of legal proceedings —
  - (a) a court;
  - (b) a member of the administrative staff of a court.
- (3) Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document —
  - (a) placed in the custody of; or
  - (b) created by,  
a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.
- (4) In this section —

“arbitration” means any arbitration to which Part I of the *Arbitration Act 1976* applies;  
“court” includes a tribunal or other body exercising judicial power;  
“inquiry” means an inquiry or a hearing held under a provision contained in, or made under, an enactment; and  
“legal proceedings” includes —

  - (a) a cause or matter within the meaning of the *High Court Act 1991*; and
  - (b) an inquest or post-mortem examination.

## THE MAIN POINTS

1. PAs may refuse to give the applicant the information requested if the information is absolutely exempt information.
2. This exemption is intended to ensure that a request for information under FOI cannot be used to circumvent or override existing procedures governing access to information created for the purpose of court or other legal dispute resolution proceedings. The exemption does not negate the rights an applicant may have to access the information under court disclosure rules.
3. Where a PA holds the information sought by a request only because of its involvement in court proceedings, an inquiry or arbitration, then the PA may refuse to disclose that information in response to a request.
4. The reference to information contained in a document includes information held in electronic documents. In addition, the nature of documents lodged with a court, inquiry or arbitration service can be varied, and may include formal and procedural documents as well as other documents in

support of a case. The exemption can be applied to information contained in any such document.

5. If a PA is satisfied that this exemption applies, it does not have to consider whether disclosure of the information would be in the public interest.
6. However, the exemption does not apply to information that is held or was created by the PA for purposes other than, or in addition to , or in contemplation of, legal proceedings an inquiry or arbitration.
7. 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>

## **DUTY TO ADVISE AND ASSIST**

Section 15 requires PAs to provide reasonable and advice and assistance to persons who wish to make, or have made, requests for information.

Where court disclosure rules apply it is the duty of the PA to advise the applicant how and where to access that information and provide assistance, such as links to online information, to do so. Further advice can be found in the Code of Practice <hyperlink>

## **OTHER CONSIDERATIONS**

1. The exemption will apply to information held by a PA only by virtue of being contained in a document which has been served on the PA by another party. Similarly the exemption will apply to information held by the PA only by virtue of being contained in a document created by a court, or a person carrying out an inquiry or arbitration.
2. However, when the PA has lodged a document with the court, inquiry or arbitration service, then to apply exemption the PA must establish whether the information is held or created solely for that purpose or whether it is also held for another business purpose. The following scenarios may help illustrate the distinction:-
  - (i) An applicant requests a copy of a contract between an PA and a service provider. The contract is the subject of a legal dispute between the two parties and, as a result, has been lodged with the court by the PA. The information in the contract would not be exempt as it is held by the PA for a purpose other than the legal action that led to the contract being lodged with the court.
  - (ii) An applicant requests for a copy of the initial writ that the PA lodged with the court because the contractor has not complied with the contract. The information in the writ would be exempt as it is held by the PA solely for the purpose of lodging it with a court.
3. In determining whether a PA holds information solely because it is contained in a relevant document, it may be necessary to consider the statutory functions and duties of the PA.

## **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 is 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
089/2015	Leslie Mitchell and the Risk Management Authority (the RMA)	The SIC did not accept that information was solely held by the RMA for the purpose of court proceedings. The information had been derived from a spreadsheet of statistical data created by the RMA for the purpose of its own administrative functions.
012/2015	Mr A and the Scottish Court Service	The SIC accepted that a report by a sentencing judge to the Parole Board of Scotland was created by a court for the purposes of a cause or matter.
046/2012	Tom Taylor and the Standards Commission for Scotland	The SIC accepted that inquiries under the Ethical Standards in Public Life etc. (Scotland) Act 2000 were inquiries for the purpose of the exemption.
116/2008	Andrew Montgomery and Glasgow City Council	Mr Montgomery asked the Council for a copy of its statements of reasons in two cases involving the refusal of a licence for a house in multiple occupation. The Council considered the information to be exempt as, by the time Mr Montgomery made his request, the statements had been lodged in court for the purposes of an appeal. However, the SIC could not accept that the Council held the information solely because it was contained in a document which had been lodged in court. The Council held the information because it had been required to create it prior to the appeal, and in response to a request made under the Civic Government (Scotland) Act 1982. Lodging the document with the court did not alter the fact that the Council held it previously, and for purposes which were not directly connected to actual court proceedings.
001/2007	Lynn Fulton and West Dunbartonshire Council	Falling within the scope of Ms Fulton's request was a draft of an initial writ served on a defender to a court action. The SIC accepted that the information was exempt as it was included in the initial writ served by the Council for the purposes of the proceedings.
087/2006	Elizabeth Marriott and Glasgow City Council	Ms Marriott was pursuing a legal action against the Council at the time she made her request. One of the documents she asked for was the initial writ served on the Council. The SIC accepted that this was exempt from disclosure and commented that this document was, in any event, available to her through her solicitors.

## Case law

### UK Tribunal decisions

#### Upper Tier Tribunal

<b>Date</b>	<b>Citation</b>	<b>Parties</b>
25 May 2016	[2016] UKUT 0255 (AAC)	Brown v Information Commissioner & Ministry of Justice