



EXEMPTION NOTE

The Public Interest

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.

FOI Provisions that relate to Public Interest

3 Purpose

The purpose of this Act is to enable persons who are resident in the Island to obtain access to information held by public authorities in accordance with the principles that —

- (a) the information should be available to the public to promote the public interest; and
- (b) exceptions to the right of access are necessary to maintain a balance with rights to privacy, effective government, and value for the taxpayer.

8 Right of access to information held by public authorities

Subject to this Act, every person who is resident in the Island has a legally enforceable right to obtain access, in accordance with this Act, to information held by a public authority.

11 Grant of requests for information

(1) A public authority must give the applicant the information requested in the applicant's request for information and must do so in accordance with this Act.

(2) However, a public authority may refuse to give the applicant the information requested if —

- (a) the information is absolutely exempt information or qualified exempt information;
- ...

“qualified exempt information” is information to which both of the following apply —

- (a) the information is covered by a provision of Part 4; and
- (b) the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

What is Public Interest?

Public interest is not defined in FOI but has been described as “something which is of serious concern and benefit to the public”, not merely something of individual interest. It has also been described as something that is “in the interest of the public”, not merely “of interest to the public.” That is, it serves the interests of the public.

The “public” in this context does not necessarily mean the entire population. It might relate to a relatively localised group (e.g. a small community or interest group) or to the wider public.

It is not possible to be definitive as to what constitutes public interest as it can take many forms and cover a wide range of values and principles relating to the public good, or what is in the best interests of society including, for example:

- Transparency,
- Accountability,
- Promoting Public Understanding
- Safeguarding Democratic Processes
- Good Decision-Making By Public Bodies,
- Upholding Standards Of Integrity,
- Ensuring Justice And Fair Treatment For All,
- Securing The Best Use Of Public Resources
- Ensuring Fair Commercial Competition

However, these examples do not in themselves automatically mean that information should be disclosed. For example, an informed and involved public helps to promote good decision making by public authorities (PA), but those PAs may also need space and time in which to fully consider policy options, to enable them to reach an impartial and appropriate decision, away from public interference. Similarly, revealing information about wrongdoing may help the course of justice, but investigations into wrongdoing may need confidentiality to be effective.

In each particular case, the public interest involves identifying and assessing the relevant competing public interests and deciding whether disclosing or withholding the information sought by the request best serves the interests of the public.

The principle behind the Act is to release information unless there is a good reason not to. To justify withholding information, the public interest in maintaining the exemption would have to outweigh the public interest in disclosure.

Note that the wording of the definition of qualified exemption refers to “the public interest in maintaining the exemption”.

In other words, you cannot consider all the arguments for withholding the information (or refusing to confirm whether it is held), only those which are inherent in the exemption, i.e. those which relate directly to what the exemption is designed to protect.

THE MAIN POINTS

1. Before considering the public interest, a PA must first establish that a qualified exemption set out in Part 4, applies to all or some of the information. (The public interest does not require consideration if an absolute exemption applies.)
2. The PA must, where required by the exemption and before considering the balance of public interest, determine that the disclosure of the information sought in the request would, or would be likely to cause the prejudice identified in the exemption.
3. The public interest requires the PA to undertake a balancing exercise between the benefits of disclosure and the prejudice or harm caused by disclosure and consider whether the public interest is best served by disclosing the information sought by the request or by applying the exemption to withhold all or part of the information sought.
4. In considering the public interest the PA is required to consider all the circumstances of the case. This may mean seeking additional information from the applicant that he or she may wish the PA to consider.
5. The UK Upper Tier Tribunal set out how it considered that a public interest test should be carried out in All Party Parliamentary Group on Extraordinary Rendition v the Information Commissioner & Foreign and Commonwealth Office stating:

"... when assessing competing public interests under FOIA the correct approach is to identify the actual harm or prejudice that the proposed disclosure would (or would be likely to or may) cause and the actual benefits its disclosure would (or would be likely to or may) confer or promote. This ... requires an appropriately detailed identification of both (a) the harm or prejudice, and (b) the benefits that the proposed disclosure of the relevant material in respect of which the exemption is claimed would (or would be likely to or may) cause or promote".
6. If the PA determines that the public interest in disclosing the information is greater than or equal to the public interest in applying the exemption then the information must be disclosed.
7. Only if the PA determines that the public interest in applying the exemption outweighs the public interest in disclosing the information can the information be withheld.
8. In its refusal notice and in addition to explaining why an exemption applies, the PA must fully explain to the applicant why, in all the circumstances, it has decided that the public interest is best served by applying the exemption and withholding all or some of the information sought by the request.
9. Where the PA has withheld information in the public interest and the applicant requests a review of that decision, the Information Commissioner will require the PA to provide a full copy of its public interest considerations.
10. Section 3 of the [Code of Practice](#) provides further information on determining the public interest.

OTHER CONSIDERATIONS

1. In the absence of a statutory prohibition on disclosure the PA cannot take a blanket approach to withholding certain types of information.

2. In all cases, the PA must objectively consider the competing public interest arguments in favour of disclosure and withholding information.
3. The public interest arguments must relate to the identified exemption. The PA must not consider public interest arguments that relate to another exemption.
4. Public interest changes over time. Therefore if a PA receives a request for information that is similar to a previous request which resulted in information being withheld, the PA must consider the public interest and all the circumstances afresh and not rely upon its previous decision. Usually the public interest will shift over time in favour of disclosure.

FURTHER RESOURCES

UK Information Commissioner's guidance: ["The public interest test"](#)

Scottish Information Commissioner's briefing: ["The Public Interest Test"](#)

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

Issue Date	Decision Number	Public Authority
26 October 2016	2016/0003	Cabinet Office
22 December 2017	2017/0002	Cabinet Office

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

Date	Case Reference	Parties
26 March 2013	FS50406024	Department of Health



Case law

Date	Case Reference	Parties
24 May 2017	2015 EWCA Civ 374	Department of Health v Information Commissioner & Lewis
		All Party Parliamentary Group on Extraordinary Rendition v the Information Commissioner & Foreign and Commonwealth Office

UK Tribunal decisions

Upper Tier Tribunal (Administrative Appeals Chamber)

Date	Case Reference	Parties
30 March 2015	2015 UKUT 159 AAC	Department of Health v Information Commissioner & Lewis
11 November 2013	2013 UKUT 0560 AAC	All Party Parliamentary Group on Extraordinary Rendition v the Information Commissioner & Foreign and Commonwealth Office

First Tier Tribunal (Regulatory Chamber)

Date	Case Reference	Parties
17 March 2014	EA/2013/0087	Department of Health v Information Commissioner