

Freedom of Information Act
Policy and Procedures

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Freedom of Information Act

Policy

Introduction to the Freedom of Information Act

Individuals already have the right of access to information about themselves under the Data Protection Act 1998. The Freedom of Information Act 2000 established a general right of access to all types of 'recorded' information held by public authorities. Under the terms of the Act every public authority is required to adopt and maintain a *publication scheme*, in order to make a significant amount of information available, and also respond to *specific requests for information* not listed in the scheme.

The *publication scheme* sets out the classes of information the public authority holds, the manner in which it intends to publish the information, and whether a charge will be made for the information. The publication schemes also provide an opportunity for public authorities to publish more information proactively and to develop a greater culture of openness. The information listed in the Royal Armouries' *publication scheme* has been available since 30 November 2002.

Where a *specific request for information* is made which is not listed in the scheme the public authority is required to inform the individual making the request whether it holds that information, and, subject to exemptions, supply that information. The public authority is required to respond to such requests promptly and in any event, within 20 working days. The public authority may charge a fee, which is calculated according to Fees Regulations, and if a fee is required, the 20 working days is extended by up to 3 months until the fee is paid. If a document is requested to which one of the 23 exemptions listed in the Act applies, then only those specific pieces of information to which the exemption applies are withheld, not the whole document, and the public authority is required to consider whether or not the exempt information should be released. Individuals have had the right to make a *specific request for information* not included in the Royal Armouries since 1 January 2005.

The Freedom of Information Act (and the Data Protection Act) are enforced by the Information Commissioner. The Commissioner is responsible for promoting good practice, approving and advising on the preparation of publication schemes, providing information as to the public's rights under the Act, and enforcing compliance with the Act. Copies of the Freedom of Information Act can be purchased from The Stationary Office or can be read free of charge on the HMSO website.

Introduction to the Royal Armouries' Freedom of Information Policy

The Museum is a Public Authority and is therefore required to comply with the terms of the Freedom of Information Act. The Museum's Publication Scheme was submitted to the Information Commissioner for approval in September 2002, and was made available from the end of November 2002. Requests for information not included in the scheme have been answered since the beginning of January 2005.

Contents

- Purpose of the Policy
- Responsibility
- Publication Scheme
- Specific Requests for Information (i.e. Information not listed in the Publication Scheme)
- Charges
- Exemptions
- Appeals and Complaints

Purpose of the Policy

The purpose of the Royal Armouries' Freedom of Information Act Policy is to ensure that the provisions of the Freedom of Information Act are adhered to, in particular that:

- a significant amount of information about the Museum is made available to the public as a matter of course through the Publication Scheme
- other information not included in the Publication Scheme is readily available on request, and
- in cases where information is covered by an exemption, consideration is given as to whether or not the information should be released

Responsibility

The Head of Administration (FOI Champion)

The Board of Trustees has nominated a Freedom of Information Champion who is responsible for:

- dealing with any appeals or complaints received

The Head of Collections (FOI Officer)

The Board of Trustees has nominated a Freedom of Information Officer who is responsible for:

- ensuring that the Museum complies with the terms of the Freedom of Information Act
- maintaining the Museum's Publication Scheme on a day-to-day basis, and

- arranging for the FOI Champion to deal with any appeals or complaints received
- providing advice on the Freedom on Information Act, and the Museum's FOI Policy and Procedures to members of staff and the public

Review and Appeals Board

The Review and Appeals Board is responsible for reviewing requests for information which includes exemptions, and will consider:

- the test of prejudice. Some exemptions can only be claimed if the release of information would or would be likely to prejudice the purpose to which the exemption relates
- the public interest test. Does the public interest in maintaining the exemption in question outweigh the public interest in disclosing the information

Head of Departments, Committee Secretaries and Project Managers

Head of Department, Committee Secretaries and Project Managers are responsible for ensuring that:

- information required by the FOI Officer for the maintenance of the Museum's Publication Scheme is supplied promptly and in the format requested, and any additional information that may be requested, that is not listed on the Museum's Publication Scheme, is readily and easily available

Staff

Members of staff are responsible for:

- ensuring that the records they create are registered (see: *Records Management Procedures*)
- answering requests for information
- forwarding requests for information where an exemption may apply to the FOI Officer
- recording requests received

Library & Archives Department

The Library and Archives Department is responsible for:

- maintaining hard copies of information to be made available through the Publication Scheme
- answering requests from information held in the public records
- forwarding requests for information to the relevant department/member of staff

Website Manager

The Website Manager is responsible for ensuring that:

the copy of the Publication Scheme on the Museum's website is up-to-date
the links to documents provided by the website are current
where possible the links to documents provided by other organizations websites
function

Publication Scheme

The Publication Scheme specifies:

- what information the Museum will make available to the public as a matter of course
- how and when it will do so, and
- whether or not this information will be made available free of charge or on payment of a fee

The publication scheme contains the most current and up-to-date information available. Policies and similar documents are removed when they are no longer current; information relating to a specific date, such as summaries of meetings, is removed after five years. Requests for non-current and out-of-date information can be made to the Museum's Library and Archives Department.

The publication scheme is selective. The scheme does not list all of the information that is available, and, generally, does not contain information that is retrospective (for example, summaries of past meetings may not be available). Specific requests for information not listed in the scheme can be made to the Museum's Library and Archives Department.

Specific Requests for Information

The Freedom of Information Act establishes two related rights:

- the right to be told whether information exists, and
- the right to receive the information (subject to exemptions)

These rights can be exercised by anyone – natural or legal persons, worldwide.

Specific requests for information not listed in the publication scheme are dealt with initially by the Library and Archives Department.

Applicants are not required to mention the Freedom of Information Act when making a request for information. However, any request must be made in a permanent form (for example in writing or by email). A charge may be made for dealing with any request, and the details of any charges are set out in 'Fees Regulations'.

Where possible the information must be provided to the applicant in the manner requested. This may be in the form of a copy or summary, or the applicant may ask to inspect the record.

Applicants are not entitled to information to which any of the exemptions in the Act applies. However, only those specific pieces of information to which the exemption applies should be withheld, and information covered by an exemption is subject to review by the Review and Appeals Board. Where information is not released following a review the Museum must inform the applicant of its reasons, unless to do so would mean releasing the exempt information.

In general, a response must be provided within 20 working days. The Museum may ask for further details which it reasonably requires in order to identify and locate the information requested. If a fee is required, the period of 20 working days is extended by up to 3 months until the fee is paid.

The Museum does not have to comply with vexatious or repeated requests if it has recently responded to an identical or substantially similar request from the same person.

Charges

Unless otherwise specified information made available through the Publication Scheme will be free of charge.

Information supplied as a result of a specific request for information may be subject to a charge for research time, and this is calculated according to the Fees Regulations laid down by the Information Commissioner.

Some information is available free; for others a charge will be made to cover the cost of materials, postage and packing, etc. The charges will vary according to how the information is made available:

- By email. Information is provided free of charge.
- By post. Information provided by post will be charged at the cost of 10p per sheet plus postage and packing.
- From the Royal Armouries' Library (Leeds, Tower of London and Fort Nelson). Information can be viewed free of charge, copies are available at the cost of 10p per sheet (unless otherwise specified).

Exemptions

Some of the information held by the Royal Armouries may be regarded as exempt information. Where a request is made for information which includes exemptions the Royal Armouries will consider:

The test of prejudice. Some exemptions can only be claimed if the release of information would or would be likely to prejudice the purpose to which the exemption relates

The public interest test. Does the public interest in maintaining the exemption in question outweigh the public interest in disclosing the information

The Act sets out 23 exemptions.

Absolute Exemptions

Absolute exemptions do not require the Museum to consider disclosure in the public interest nor is it required to state whether or not the information in question is held.

- s21 Information accessible to applicants by other means
- s23 Information supplied by, or relating to, bodies dealing with security matters (a certificate signed by a Minister of the Crown is conclusive proof that the exemption is justified. There is a separate appeals mechanism against such certificates)
- s32 Court records, etc
- s34 Parliamentary privilege (a certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliaments, in respect of the House of Lords is conclusive proof that the exemption is justified)
- s36 Prejudice to effective conduct of public affairs (only applies to information held by the House of Commons or the House of Lords)
- s40 Personal information (where the applicant is the subject of the information. The applicant already has the right of 'subject access' under the Data Protection Act 1998; where the information concerns a third party and disclosure would breach one of the Data Protection Principles)
- s42 Information provided in confidence
- s44 Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court

Qualified Exemptions

Qualified exemptions are exemptions where the Museum has to consider the public interest in confirming or denying that the information exists and in disclosing information.

- s22 Information intended for future publication
- s24 National security (other than information supplied by or relating to named security organizations, where the duty to consider disclosure in the public interest does not arise)
- s26 Defence
- s27 International relations
- s28 Relations within the United Kingdom
- s29 The economy
- s30 Investigations and proceedings conducted by public authorities
- s31 Law enforcement
- s33 Audit functions
- s35 Formulation of government policy, etc
- s36 Prejudice to effective conduct of public affairs (except information held by

- s37 the House of Commons or the House of Lords)
- s37 Communications with Her Majesty, etc., and honours
- s38 Health and safety
- s39 Environmental information
- s40 Personal information (an authority is only required to consider release in the public interest: where the information concerns a third party and a ‘Section 10 Notice’ under the Data Protection Act 1998, applies to that information; where the information concerns a third party, who would not be entitled to access that information himself because a ‘subject access exemption’ applies to it under the Data Protection Act 1998)
- s42 Legal professional privilege
- s43 Commercial interests

Appeals and Complaints

Applicants who are dissatisfied with the response they have received from the Museum in respect of a request for information may invoke the appeals and complaints procedures.

The first step is to seek an internal review. Requests for internal review will be dealt with by the Head of Administration (FOI Champion).

If applicants are dissatisfied with the outcome of the handling of the internal review conducted by the Museum they may seek an independent review from the Information Commissioner. Requests for review by the Information Commissioner should be made in writing to:

The Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel. 01625-545-700
Fax. 01625-545-510

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Freedom of Information Act

Procedures

Introduction

The Freedom of Information Act (2000) established a general right of access to all types of 'recorded' information held by public authorities. Members of the public have the right:

- to be told whether the information is held by a public authority
- to receive the information, unless it is subject to an exemption, within 20 working days
- the applicant does not have to mention the Freedom of Information Act when they making their request
- the applicant does not have to give a reason for asking to see the information, and members of staff are not allowed to ask the person their reason for asking for it

Contents

Receiving a Request for Information
Receiving an Appeal
Receiving a Complaint
Recording Requests, Appeals and Complaints

Part One. Receiving a Request for Information

1. Valid Requests

Requests are not restricted to those that relate specifically to the Museum's statutory duties as set out in the National Heritage Act 1983. Any request for information that is

received in writing (by letter, fax or email) *
that relates to the Museum's activities, and is
capable of being answered using information held in the Museum's records **

qualifies as a valid request under the Freedom of Information Act.

* If somebody asks for information in person or by telephone they should be asked to make their request in writing, and be given any help or assistance they require to make their request.

** In practice a member of staff answering a request may consider it more appropriate in the first instance to give either an expert opinion or to supply copies of information from a published source, in which case it should be made clear to the applicant that further information may be/is available.

2. Invalid Requests

The following do not qualify as requests:

- Requests received by telephone or from visitors that do not require a written response.
- Requests for personal information, which are dealt with under the terms of the Data Protection Act 1998.
- Requests for environmental information, which are dealt with under the terms of the Environmental Information Regulations, 2004
- Requests for film, video or images that are answered by the Film & Image Library
- Requests for information that do not relate to the Museum's activities.

3. Receiving Requests

A request for information can be received by any member of staff. However, it is important that requests should be answered by the department or member of staff responsible for the particular activity referred to in the request.

A member of staff receiving a request should seek to determine what information is required, and to direct the applicant to the most appropriate department or member of staff.

Staff should remember that the applicant does not have to give a reason for asking for the information, and members of staff are not allowed to ask the person their reason for asking for it. However, most applicants will tell you if the information is required for a particular purpose (e.g. school project, academic dissertation, etc).

In the case of simple enquiries... A single member of staff will be responsible for finding the information and answering the request.

In the case of complex enquiries... A single member of staff shall be made responsible for coordinating the work of other departments/staff and for answering the request.

4. Advising Applicants of their Rights

It is the duty of members of staff to assist the public by:

- Making people aware of their rights
- Explaining what information is available in the Museum's publication scheme
- Explaining the procedures for asking for information, and helping applicants to put their requests in writing
- Helping applicants to track the progress of their request
- Helping applicants to identify the exact information they need

5. Processing Requests for Information

If the terms of the request are unclear, then the member of staff should contact the applicant and establish what information is required.

If the terms of the request are clear, but the information is not held by the Museum, then the member of staff should either write to applicant to inform him that the information is not held, or refer the request to another institution.

If the terms of the request are clear, and the information is held by the Museum, then a member of staff should write to the applicant to acknowledge receipt of the request. A copy of 'Access to Information about the Royal Armouries' should be included with the acknowledgement.

6. Target for Answering Requests

Members of staff must respond to a request within 20 working days, and either:

- Refer the applicant to another organization
- Forward the request to another organization
- Provide the applicant with the information they have requested
- Advise them that the information will not be available within 20 working days as it involves a significant search or collation of material
- Inform them that the information may be exempt and subject to a review, or
- Tell them that the information is exempt and will not be released

7. Searching for Information

In the case of simple enquiries... It is the responsibility of the member of staff dealing with the request to identify all of the information relevant to answering the request must be identified, and to identify any information which may be subject to an exemption.

In the case of complex enquiries... It is the responsibility of the member of staff dealing with the request to contact any other departments who might hold relevant information. Thereafter all departments/members of staff have a responsibility for ensuring that all information relevant to answering the request is identified, and for identifying any information which may be subject to an exemption.

8. Exemptions

There are two categories of exemption:

1. Absolute exemptions are those where the Museum does not have to release the information, and does not have to confirm or deny whether it has the information.
2. Qualified exemptions are those where the information, even though it falls into an exempt category, may still have to be released if it is considered to be in the 'public interest' to do so.

If a document contains some exempt information, only those pieces of information can be withheld, but the remainder of the document must be released.

It is the responsibility of the member of staff dealing with the request to ask for a review of exempted information from the FOI Officer.

9. Destroying Information

It is a criminal offence to destroy information that is the subject of a request under the Freedom of Information Act.

10. Reviewing the Information (1st Review)

The FOI Officer is responsible for calling a meeting of the Review and Appeals Board.

The Review and Appeals Board is responsible for deciding whether it is in the 'public interest' to release the information, or if the information is exempt.

The FOI Officer is responsible for keeping a record of any reviews, and for informing the member of staff dealing with the request of the result.

A review should be completed within 20 days.

11. Charging for Information

The member of staff dealing with the request will calculate the appropriate charge, and (if appropriate) arrange for an invoice to be sent to the applicant.

The Finance Department will be responsible for sending the invoice to the applicant, and for informing the member of staff dealing with the request when payment has been received.

12. Releasing the Information

Upon receipt of payment (if applicable) the member of staff dealing with the request should release all of the relevant information in the format requested if possible. This may include:

- A summary of the information
- A written copy or copy in some other form (photocopy, electronic copy)
- An opportunity for the applicant to inspect the record containing the information themselves

The member of staff dealing with the request must also:

- inform the applicant of any information that has been exempted
- give details of why the information has been withheld
- advise the applicant of the appeals and complaints procedures by including a copy of 'Access to Information about the Royal Armouries'

Part Two. Receiving an Appeal

1. Receiving an Appeal

Any appeal for the release of exempted information should be forwarded to the FOI Champion.

2. Processing an Appeal

The FOI Champion should write to the applicant to acknowledge receipt of the appeal and give an estimate as to when the result of the appeal will be known.

An appeal should be carried out within 20 days.

Reviewing the Information (2nd Review)

The FOI Champion is responsible for retrieving the relevant file, and calling a meeting of the Review and Appeals Board.

The Review and Appeals Board will consider the appeal and decide whether it is in the 'public interest' to release the information, or if the information is exempt.

The FOI Officer is responsible for keeping a record of any appeals, and for informing the member of staff dealing with the request of the result.

A review should be completed within 20 days.

Answering an Appeal

The FOI Champion is responsible for informing the applicant of the result of the appeal.

The FOI Champion shall release all of the relevant information in the format requested if possible. This may include:

- A summary of the information
- A written copy or copy in some other form (photocopy, electronic copy)
- An opportunity for the applicant to inspect the record containing the information themselves

The FOI Champion shall also:

- inform the applicant of any information that has been exempted
- give details of why the information has been withheld
- advise the applicant that if they are unhappy with the outcome of the internal review they may ask for an independent review from the Information Commissioner

Part Three. Receiving a Complaint

Any complaint received from a member of the public should be forwarded immediately to the FOI Champion.

Complaints will be dealt with according to the Museum's normal complaints procedures.

Part Four. Recording Requests, Appeals and Complaints

1. Maintaining Records

It is important to maintain accurate records in order to:

- assist in the answering of requests
- monitor the progress of requests
- provide evidence in the event of an appeal or complaint

2. Recording Requests

It is the responsibility of departments to develop systems for recording and tracking requests. Such systems must include the following data:

- Date the request was received
- Name of the applicant
- Contact details (Address, Telephone number, Fax number, Email address)
- What information was requested
- Date the acknowledgement was sent
- What information was identified
- What information was subject to review
- Date of the review
- What was the result of the review
- Date the invoice was requested from Finance
- How much was charged
- Date the information was released
- Name of the member of staff
- Name of the file
- Location of the file

It is the responsibility of the member of staff dealing with the request to ensure that it is logged, and records must be kept up-to-date.

3. Filing Records

It is the responsibility of departments to develop manual systems for filing requests.

It is the responsibility of the member of staff dealing with the request to ensure that all of the relevant documents are filed. Any electronic records should be printed off as hard copies.

4. Recording 1st Reviews

It is the responsibility of the FOI Officer to record the results of a review on the MS Word Form provided.

The following data should be collected for each review:

- Date of the review
- Which members of are staff present
- What information is reviewed
- What exemption is being considered
- What is the result of the review

5. Recording 2nd Reviews

It is the responsibility of the FOI Officer to record the results of a review on the MS Word Form provided.

The following data should be collected for each review:

- Date of the review
- Which members of are staff present
- What information is reviewed
- What exemption is being considered
- What is the result of the review

Sept. 2002
Rev. Dec. 2004
Rev. May 2008

Enquiry no.

AGI/FOI Enquiry

Date Recd.	
-------------------	--

Name	
Address	

Tel. No.		Email address	
Fax. No.			

Information requested:

Member of staff	
------------------------	--

Date Acknowledged	
--------------------------	--

Information retrieved:

1st Review	
Date answered	

Invoice sent	
Payment recd.	

2nd Review	
Date answered	

Invoice sent	
Payment recd.	

Enquiry no.

AGI/FOI First Review

Staff present:

Review date:

Information requested:

Information to be reviewed:	
Exemption applied:	
Decision:	
Details of why the information is to be withheld	

Information to be reviewed:	
Exemption applied:	
Decision:	
Details of why the information is to be withheld	

Enquiry no.

AGI/FOI Second Review

Staff present:

Review date:

Information requested:

Information to be reviewed:	
Exemption applied:	
Decision:	
Details of why the information is to be withheld	

Information to be reviewed:	
Exemption applied:	
Decision:	
Details of why the information is to be withheld	

Exemptions

[Guidelines from the DCA]

Section 21: Information accessible to applicant by other means

Section 21 applies to information that is already reasonably accessible to the applicant. It recognises that the right of access under the Freedom of Information Act 2000 is supplementary to the very many ways in which public authorities already provide information to members of the public. For example, section 21 will apply if information is included on a public authority's publication scheme or if the public authority is under a statutory obligation to give out the information to members of the public on request.

Key points:

The question is whether the information is reasonably accessible **to the applicant**: public authorities need to be alert to any attributes of an individual applicant which may mean that information is more or less accessible to him than it is to the public at large;

Section 21 may apply even if a fee is charged for supplying the information; There is no exclusion in section 21 of the duty to confirm or deny whether information is held. Even if information is exempt under section 21, public authorities may still have to tell the applicant whether or not they hold the information requested.

Section 21 is not subject to any public interest balance.

Section 22: Information Intended For Future Publication

Section 22 may apply if there is an intention to publish the requested information at some future date. This ensures that the FOI Act does not force public authorities into premature publication of information.

Key points:

- Section 22 may apply even if the specific date for publication has not yet been determined but the proposed publication timetable must be **reasonable** in all the circumstances;
- Section 22 will only apply if a public authority has decided, before the request is received, to publish the information concerned.
- Section 22 is subject to a public interest balance.

Section 23: Information Supplied by, or Related to, Bodies Dealing with Security Matters

Section 23 applies to two categories of information:

information supplied directly or indirectly by the Security Bodies that are listed in section 23(3) (this includes the Security Service, the Secret Intelligence Service and GCHQ). Whether this aspect of section 23 applies in a particular case will turn on the source of the information; and information that relates to one of the Security Bodies. The application of this part of section 23 will turn on the content of the information.

Key points:

- The fact that a public authority **does not hold** information supplied by one of the Security Bodies can itself be information relating to those bodies. If information falls within the exemption in section 23, it will very often be important to consider whether it is necessary to rely on the exclusion of the duty to confirm or deny whether the information is held.
- The interaction between section 23 and section 24 (national security) is quite complex and needs to be considered carefully in order to ensure that the relevant public interests are protected;
- It may be necessary to consult the Security Body concerned if it is anticipated that section 23 might apply
- Section 23 is **not** subject to any public interest balance
- A ministerial certification procedure exists where it becomes necessary to rely on this exemption.

Section 24: National Security

Section 24 applies to information whose exemption from the right of access **is required** for the purpose of safeguarding national security: in order to apply section 24, it will be necessary to decide whether any harm to national security might result from its disclosure.

Key points:

- In some circumstances it may be necessary to rely on both section 23 and section 24 in order to refuse to confirm or deny whether information is held in order to fully protect the important public interests concerned;
- When considering section 24, departments should be alive to the need to consult the National Security Liaison Group or other interested parties.
- Section 24 is subject to a public interest balance.
- A ministerial certification procedure exists where it becomes necessary to rely on this exemption.

Section 26: Defence

Section 26 applies to information whose disclosure would be likely to prejudice:

- the defence of the British Islands or any colony; or
- the capability, effectiveness or security of the armed forces of the Crown or any forces co-operating with them.

In order to determine whether section 23 applies it will be necessary to establish how exactly these defence matters would be prejudiced by disclosure of the information.

Key points:

- It will often be necessary to consult the Ministry of Defence in order to evaluate how and to what extent defence matters would be prejudiced by disclosure;
- Section 26 is subject to a public interest balance.

Section 27: International Relations

Section 27 applies to the following two categories of information:

- information whose disclosure would be likely to prejudice international relations. (The term "international relations" means relations between the UK and any other state, international organisation or court, or the interests of the UK abroad or the promotion or protection of those interests.)
- confidential information obtained from another state, an international organisation or an international court.

Key points:

- Departments should be alive to the need to consult the Foreign and Commonwealth Office in connection with the application of section 27
- Section 27 is subject to a public interest balance.

Section 28: Relations Within The United Kingdom

Section 28 applies to information whose disclosure would be likely to prejudice relations between two or more administrations in the United Kingdom. The relevant administrations are: the government of the United Kingdom, the Scottish Administration, the Executive Committee of the Northern Ireland Assembly and the National Assembly for Wales.

Key points:

- Where necessary, regard should be had to the Memorandum of Understanding which has been agreed with the four administrations and which includes safeguards to ensure that information shared between administrations is appropriately protected;
- Departments should be alive to the need to consult the other administration(s) concerned when determining whether section 28 applies, and in particular to be aware that separate freedom of information legislation applies in Scotland;
- Section 28 is subject to a public interest balance.

Section 29: The Economy

Section 29 applies to information whose disclosure would be likely to prejudice the economic or financial interests of the United Kingdom or of any administration in the United Kingdom.

Key points:

- Departments should be alive to the need to consult with HM Treasury when considering this exemption
- Section 29 is subject to a public interest balance;

Section 30: Investigations And Proceedings Conducted By Public Authorities

Section 30 is concerned primarily with preserving the integrity of certain proceedings and investigations which public authorities have the power or duty to conduct. There are two ways in which the application of section 30 may be triggered:

- where information has at any time been held for the purpose of specified criminal and other investigations or proceedings; and
- where information relates to the obtaining of information from confidential sources and was obtained or recorded for a number of specified investigations or proceedings.

Key points:

- Section 30 can only be relied on by an authority which itself exercises one of the investigation or litigation functions that are specified in the exemption.
- Section 30 is quite a complex exemption and Departments will need to be alert to the precise terms in which its two limbs are expressed.
- Section 30 is subject to a public interest balance.

Section 31: Law Enforcement

Section 31 is concerned with protecting a wide range of law enforcement interests and its application turns on whether disclosure would be likely to prejudice those interests.

Some interests that are protected by section 31 are drawn quite widely, for example: the administration of justice, the prevention or detection of crime and the operation of immigration controls. But section 31 also applies where the exercise by any public authority of certain specified functions would be prejudiced by disclosure. Those functions include: ascertaining whether a person is responsible for improper conduct, determining the cause of an accident and ascertaining a person's fitness to carry on a profession.

Key points:

- Section 31 only applies in cases where the information does **not** fall within section 30;
- The structure of section 31 is quite complex and it will be necessary to have careful regard to the important differences between the way in which the various categories of information are framed
- The categories within section 31 may overlap and consideration should be given to all categories that may apply.
- Section 31 is subject to a public interest balance.

Section 32: Court Records

Section 32 exempts information contained in certain litigation documents and court, tribunal and inquiry records and will apply regardless of the content of the information. There are separate and specific regimes for gaining access to court and tribunal records and section 32 ensures that those regimes are not superseded by the FOI Act.

Key points:

- Section 32 will apply only if the public authority concerned holds the information **solely because** it was contained in one of the specified documents.
- Section 32 applies regardless of the content of the information
- The application of section 32 is **not** subject to any public interest balance.

Section 33: Audit Functions

Section 33 can only be used by public authorities which have financial audit functions in relation other public authorities or whose functions include examining the efficiency, effectiveness and economy with which other public authorities discharge their functions. Section 33 applies to information whose disclosure would be likely to prejudice the exercise of these functions.

Key points

- Section 33 only applies where one public authority has audit or monitoring functions in relation to another public authority. It does not apply where a public authority has such functions in relation to private sector bodies, nor does it cover internal audit and monitoring;
- Section 33 is subject to a public interest balance.

Section 34: Parliamentary Privilege

Section 34 applies to information whose exemption is **required** in order to avoid an infringement of the privileges of either House of Parliament. The purpose of section 34 is to preserve Parliamentary privilege and protect the position of Parliament.

Key points

- Section 34 will need to be considered where a public authority is required to lay information before Parliament before disclosing it to anyone else.
- If privileged information has been published by Parliament then section 34 will not apply: exemption is not required in order to avoid an infringement of Parliamentary privilege.
- Section 34(3) enables the Parliamentary authorities to conclusively certify that section 34 applies. Departments are strongly advised to consult officials from the relevant House before relying on section 34 and to obtain a certificate where necessary.
- Section 34 is **not** subject to any public interest test balance.

Section 35: Formulation Of Government Policy

Section 35 is aimed at protecting the government policy-making process and its proper use is essential to ensuring the delivery of effective government. Section 35 applies to information which **relates to**:

- the formulation and development of government policy;
- communications between Ministers (including Cabinet proceedings);
- the provision of advice by the Law Officers (or any request for advice); and
- the operation of any Ministerial private office.

Key points:

- Section 35 can only be used by government departments or the National Assembly for Wales;
- Once a policy decision has been taken, statistical information that was used to inform the decision will no longer be protected only on the grounds that it relates to government policy or ministerial communications;
- Departments must be alive to the need to consult with interested departments and, where necessary, the DCA co-ordination unit to ensure that this exemption is properly applied;
- Section 35 It is closely related to section 36 which protects the effective conduct of public affairs but the two exemptions are alternatives and cannot be used cumulatively;
- Section 35 is subject to a public interest balance. Section 35(4) indicates that there is a particular public interest in the disclosure of factual information which is used to inform policy decisions.

Section 36: Prejudice To Effective Conduct Of Public Affairs

Section 36 exempts information whose disclosure would be likely to have any the following effects:

- prejudice collective Cabinet responsibility;
- inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation; or
- prejudice the effective conduct of public affairs.

Key points:

- Section 36 can only be used if, in the **reasonable view of a "qualified person"**, disclosure of the requested information would have one of the specified prejudicial effects. For most government departments, this means that a Minister of the Crown must decide that the exemption applies before it can be relied on to refuse a request for information;
- Section 36 can only be used if section 35 does not apply to the information;
- The application of section 36 is subject to a public interest balance.

Section 37: Communications With Her Majesty, With Other Members Of The Royal Household, And The Conferring By The Crown Of Any Honour Or Dignity

Section 37 applies to two categories of information:

- Information relating to communications with Her Majesty, other members of the Royal Family or the Royal Household; and
- Information relating to the conferring by the Crown of any honour or dignity.

Key points:

- It is a fundamental constitutional principle that communications between the Queen and her Ministers are essentially confidential in nature: in most situations, the public interest in disclosure is likely only exceptionally to outweigh the public interest in maintaining this aspect of the exemption;
- In respect of both parts of this exemption, public authorities should be alive to the need to consult relevant departments or private offices;
- Section 37 is subject to a public interest balance.

Section 38: Health And Safety

Section 38 applies to information whose disclosure would be likely to endanger the physical or mental health or the safety of any individual.

Key points:

- The individual concerned does not have to be identifiable: section 36 can apply where there is a group or class of persons, any or all of whom are likely to have their health or safety endangered by disclosure;
- Section 38 is subject to a public interest balance.

Section 39: Environmental Information

Section 39 exempts environmental information whose disclosure is governed by the **Environmental Information Regulations 2004**. The Environmental Information Regulations 2004 implement an European Directive and establish a specific regime to enable individuals to access environmental information, including exemptions from that right of access. The disclosure of environmental information must be considered under the Environmental Information Regulations: section 39 therefore exempts this from the rights of access under the FOI Act.

Key points:

- If information is environmental information and is exempt under section 39, public authorities must consider its disclosure under the Environmental Information Regulations 2004; the Regulations **may require the disclosure** of information which would otherwise have been exempt under the FOI Act.
- Section 39 is subject to a public interest balance, but this should **not** be considered independently of the operation of the provisions in the Regulations.

Section 40: Personal Information

Section 40 concerns personal data within the meaning of the **Data Protection Act 1998**. Section 40 applies to two distinct types of requests for information:

- if a request asks for the personal data of the applicant himself, the information is exempt; and
- if a request asks for the personal data of someone else then that information will be exempt if its disclosure would contravene any of the data protection principles in the Data Protection Act 1998 (or certain other provisions of the Data Protection Act 1998).

Key points:

- If information is exempt under section 40 because it is the personal data of the applicant then its disclosure must be considered under the subject access provisions in the Data Protection Act 1998; the Act **may require the disclosure** of information which would otherwise have been exempt under the FOI Act.
- For most government departments that receive requests for personal data of someone other than the applicant, the application of section 40 will in most circumstances turn on whether disclosure of the information to a member of the public would be 'unfair'.
- Officials must be alive to the need to consult experts where the application of section 40 is difficult or unclear: getting a decision wrong **may result in breach** of the Data Protection Act 1998.
- The majority of section 40 is **not** subject to a public interest balance.

Section 41: Information Provided In Confidence

Section 41 applies to information that has been obtained from another person and whose disclosure to the public would constitute an actionable breach of confidence.

Key points:

- Section 41 will only apply where a person would be able to bring a successful action for breach of confidence as a result of disclosure to the public;
- Section 41 is not subject to a public interest balance imposed by the FOI Act. But, the courts have recognised that a person will not be successful in an action for breach of confidence if the public interest in disclosure outweighs the public interest in keeping the confidence;
- The application of section 41 may require detailed consideration of the law of breach of confidence: expert advice will often be necessary.

Section 42: Legal Professional Privilege

Section 42 applies to information that would be subject to legal professional privilege if litigation were in progress. Legal professional privilege covers confidential communications between lawyers and clients and certain other information that is created for the purposes of litigation. Section 42 ensures that the confidential relationship between lawyer and client is protected.

Key points:

- Whether information is subject to legal professional privilege is a **question of law** and it will very often be necessary to consult legal advisers in connection with this;
- Advice from the Law Officers is also governed by section 35 and the Law Officers should be consulted where their advice is the subject of a request;
- Section 42 is subject to a public interest balance. But, given the very substantial public interest in maintaining the confidentiality of legally professionally privileged material, it is likely to only be in exceptional circumstances that this will be outweighed by the public interest in disclosure.

Section 43: Commercial Interests

Section 43 exempts information whose disclosure would be likely to prejudice the commercial interests of any person. It also includes a specific exemption for trade secrets.

Key points:

- Section 43 protects not only the commercial interests of third parties but also the commercial interests of the public authority that holds the information;
- Public authorities will need to bear in mind that the commercial sensitivity (particularly the market sensitivity) of information will usually decrease with time;
- Section 43 is subject to the public interest test.

Section 44: Prohibitions On Disclosure

Section 44 applies to three distinct categories of information:

- If there is an existing statutory bar to the disclosure of information by a public authority then that information will be exempt;
- If disclosure would be incompatible with a European Community obligation then the information will be exempt; and
- If disclosure would constitute or be punishable as a contempt of court at common law (for example because it would breach a court order) then it will be exempt.

Key points:

- The Human Rights Act 1998 can be a statutory bar to the disclosure of information if to do so would breach one of the Convention rights that have been incorporated into domestic law;
- Section 44 is **not** subject to any public interest balance.