



## GUIDANCE NOTE NUMBER 2

### THE EXEMPTIONS – BRIEF DETAILS

There are two types of exemptions within the Freedom of Information Act. These are absolute exemptions and qualified exemptions.

#### Absolute Exemptions

Where an absolute exemption applies, the information does not have to be supplied. The following are absolute exemptions:

#### **Information accessible by other means (Section 21)**

Where information is available to the applicant by other means, it should not be dealt with as an FOI request. This does not mean that we should not supply the information, but that it is dealt with in a different way or is already publicly available for example on the website. Refer to Guidance Note 7. We do, however, need to offer advice and assistance on how to obtain the information.

#### **Information supplied by, or relating to, bodies dealing with security matters (Section 23)**

Applies to information supplied by or relating to one of the security bodies listed in this section of the Act.

#### **Court Records (Section 32)**

Information in documents created for the purpose of legal proceedings, filed with the court, or held by other bodies conducting an inquiry or arbitration. Applicants need to apply to the court or other body for access to these records.

#### **Parliamentary Privilege (Section 34)**

This applies only to information privileged in either House of Parliament and it is unlikely we would hold such information.

#### **Personal Information (Section 40)**

Where the applicant requests personal information about themselves, this is exempt from FOI but must be dealt with as a subject access request under the Data Protection Act (refer to Data Protection policy). Where a person requests personal information about someone else, refer to the qualified exemption below.

#### **Information Provided in Confidence (Section 41)**

This applies if releasing the information would amount to an actionable breach of confidence at the time the request is made (i.e. a breach of confidence that could

result in legal action for damages or to obtain an injunction). You may need to consult with the third party who provided the information.

### **Prohibitions on Disclosure (Section 44)**

Where the disclosure of information is prohibited under other legislation, is incompatible with any European Community obligation, or if disclosure would be a contempt of court.

### **Qualified Exemptions**

Where a qualified exemption applies, a public authority must disclose information unless it decides that the public interest in maintaining the exemption outweighs the public interest in disclosing it.

### **Information intended for future publication (Section 22)**

Where the authority plans to publish the information in the near future, and it is reasonable to require the applicant to wait until it is published.

### **National Security (Section 24)**

Where information is required for safeguarding national security.

### **Defence (Section 26)**

Where disclosure of information is likely to prejudice national defence or the armed forces.

### **International Relations (Section 27)**

Where disclosure would be likely to prejudice the UK's international relations or interests.

### **Relations within the UK (Section 28)**

Where disclosure would be likely to prejudice relations between the UK administrations (Scottish, Welsh and NI assemblies).

### **The Economy (Section 29)**

Where disclosure would be likely to prejudice the economic interests of the UK or the financial interests of the government or UK administrations (Scottish, Welsh and NI assemblies).

### **Investigations & Proceedings Conducted by Public Authorities (Section 30)**

Information relating to criminal investigations and proceedings conducted by RMBC.

### **Law Enforcement (Section 31)**

Where information isn't exempt under Section 30 but where disclosure may prejudice:

- the prevention or detection of crime, the apprehension or prosecution of offenders,
- the assessment or collection of a tax or duty, the exercise by a public authority of its functions for law enforcement, regulatory activity or health and safety.

### **Audit (Section 33)**

Applies to information held by public authorities who have a function to audit other public authorities.

### **Formulation of Government Policy (Section 35)**

Only relevant to central government departments.

### **Prejudice to the Effective Conduct of Public Affairs (Section 36)**

Applies to information held by any public authority. For a local authority, a 'qualified' person is required to operate the exemption. The qualified person is the Monitoring Officer (Tim Mumford, Head of Legal Services).

### **Communication with Her Majesty & Honours(Section 37)**

Applies to information relating to communications with Her Majesty or the royal household or regarding the conferring of honours.

### **Health & Safety (Section 38)**

Where disclosure of information may endanger the physical or mental health or safety of any person.

### **Environmental Information (Section 39)**

Environmental information must be dealt with as a request for information under the Environmental Information Regulations. Refer to Guidance Note 6.

### **Personal Information (Section 40)**

An absolute exemption applies where the applicant requests personal information about themselves, as this must be dealt with as a subject access request under the Data Protection Act (refer to Data Protection policy).

The public interest test applies where an applicant asks for personal information about someone else, and the Data Protection principles must be considered.

### **Legal Professional Privilege (Section 42)**

Where data consist of information where a claim to legal professional privilege could be made in legal proceedings, i.e. the data consist of confidential discussions between a legal advisor and a client

### **Commercial Interests (Section 43)**

Where disclosure would prejudice the commercial interests of any person or reveal trade secrets.