Information Commissioner's Office

The economy (section 29)

Freedom of Information Act

Contents

Introduction

The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.

1. An overview of the main provisions of FOIA can be found in the Guide to freedom of information.

2. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities fully understand their obligations and promote good practice.

3. This guidance explains to public authorities how the exemption provided by section 29 protects information, the disclosure of which might prejudice the economic interests of the UK, or the financial interests of any administration in the UK.

Overview

Section 29 focuses on the effects of disclosure of information and provides for information to be exempt if disclosure would or would be likely to prejudice:

- the economic interests of the UK or any part of it, or
- the financial interests of any administration in the UK.

Section 28(2) defines 'any administration in the UK' as:

(a) the government,
(b) the Scottish Administration,
(c) the Executive Committee of the Northern Ireland Assembly,
(d) the National Assembly for Wales.

The economic interests exemption protects information that would damage the economy of the UK as a whole or a regional or local economy.

The financial interests part of the exemption is narrower. It protects information which would, or would be likely to prejudice the financial interests of government administrations, for example revenue raised through taxation, or the funding of these administrations.

Section 29 provides the public authority with an exemption from the duty to confirm or deny it holds the information but, only where this would damage the economic or financial interest which the exemption seeks to protect.

Section 29 is a qualified exemption. This means that it can only be relied upon where the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

What FOIA says

4. Section 29 states:

> **29.**—(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
>
> (a) the economic interests of the United Kingdom or of any part of the United Kingdom, or
>
> (b) the financial interests of any administration in the United Kingdom, as defined by section 28(2).
>
> (2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

The main provisions of section 29

Economic interests of the UK or any part of it

5. The economy exemption recognises the instability and economic damage to the wider economy that could be caused by the disclosure of certain information.

6. By referring to the "economic interests of the UK or any part of it", the exemption seeks to protect communal interests rather than those of the individual. It is concerned with information that would damage the economy of the UK as a whole or a regional or local economy.

7. Public authorities can consider the effect of releasing information on an individual company provided that it has a significant impact on the local or national economy.

Example

Prejudice to the local or regional economy in relation to s29(1)(a) 'any part of the United Kingdom' was considered in the Information Tribunal decision of *Derry City Council v Information Commissioner (EA/2006/0014, 11 December 2006).*

This decision also suggests that prejudice to a Council's commercial interests (section 43(2)) could affect the economic interests of the region (section 29(1)(a)).

Derry City Airport was operated by the Council and had entered into an agreement with Ryanair in 1999 for a scheduled service to and from London, Stansted airport. In 2005 the complainant had requested details about Derry City Airport's agreement with Ryanair for the use of its airport, as well as how much Ryanair paid to Derry City Council for the use of its airport facilities.

The Council's view was that the financial information was exempt information under FOIA s 29 (economic interests), s 41 (confidential information) and s 43 (commercial interests).

The Commissioner had decided that the financial information should have been disclosed and the Council appealed that decision.

The Tribunal's view was that the economic interests of the region depended on the commercial interests of the Council's airport. It concluded that if those commercial interests were likely to be prejudiced then, it was argued, this would have a detrimental impact on the economic interests of the region also.

The Tribunal considered that the likelihood of the Council's commercial interests being prejudiced was sufficient to bring section 43 into play.

The Tribunal was also satisfied that any prejudice to the Council's commercial interests in relation to the airport would prejudice the economic interests of the region. Accordingly, the exemption under section 29(1)(a) was engaged and the Tribunal needed to consider the public interest test.

Because of the potential impact of disclosure on the Council's bargaining position with other airlines, and the competitive advantage that competing airports might have gained, the Tribunal decided that the Council would have been likely to have suffered prejudice to its commercial interests (and economic interests) had the information been disclosed in 1999.

However, by the time the request was made in 2005 (six years after the agreement was entered into), the risk of prejudice was not sufficient to outweigh the public interest in having the information disclosed.

The Tribunal concluded that the financial information should have been disclosed and agreed with the Commissioner's decision.

8. The exemption concerns the effect on the economy rather than the government's ability to manage the economy. However, since it is an aim of governments to improve economic prosperity, weakening the government's control over the economy may also damage the economy itself.

9. The exemption does not concern the economic interests of states other than the UK unless those interests impact on the economy of the UK.

Financial interests of any administration in the United Kingdom

10. This exemption concerns information about an administration's financial dealings.

11. The definition of an "administration in the United Kingdom" for the purposes of this exemption is in section 28(2) of FOIA. It states that an administration of the United Kingdom means:

(a) the government of the United Kingdom

(b) the Scottish Administration

(c)	the Executive Committee of the Northern Ireland Assembly, or
(d)	the National Assembly for Wales

12. There is a significant public interest in disclosure of sufficient information to enable the public to assess the integrity and cost-effectiveness of government administrations. This needs to be balanced against the damage that could arise if too much information is disclosed or after too short a time period.

The duty to confirm or deny

13. Section 1(1)(a) of FOIA requires a public authority to inform the requester "whether it holds information of the description specified in the request". This is known as the duty to confirm or deny. This duty applies even if the information itself is exempt from disclosure, unless that duty is excluded.

14. Section 29(2) removes the duty to confirm or deny information about the economy:

> "if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)".

15. In other words, the public authority would not have to confirm or deny it holds the information, if doing so would or would be likely to damage economic or financial interests.

> **Example**
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> An example of this would be where a mere confirmation that changes to the tax system were under consideration could cause people to alter their financial arrangements to pre-empt any possible changes, to the detriment of the financial interests of the government.

16. With regard to section 29(2), the Commissioner considers that this exemption should be interpreted so that it is only

necessary for a public authority to show that either a confirmation or denial of whether requested information is held would be likely to harm the economic or financial interests defined in section 29(1)(a) and (b).

17. A public authority that may wish neither to confirm nor deny that it holds information should prepare a policy detailing its approach to the duty.

18. Neither confirm nor deny is a complex area and further information is available in our separate guidance when to refuse to confirm or deny information is held.

What information is covered

19. The exemption does not solely cover information held by public authorities concerned with the management of the economy or economic development.

20. Examples of how public authorities affect the **economy** are:

- As a major customer, employer and investor.
- Planning – at both local and national level, for example, transport policies, airports.
- Social, health, environmental policy – for example, public transport versus private car use.
- Planning or managing the economy – through setting or influencing interest rates, taxation, currency rates, controls on public spending, etc.
- Promoting the economy – regional policy, overseas trade.
- Political considerations – for example, trade embargos.

21. The **financial interests** of any UK administration may cover:

- Market trends including interest rates and the framework of monetary policy and government borrowing forecasts.
- Information held by the regulatory bodies – for example, regulation of financial services, energy companies.
- Government cash dealing and banking arrangements.
- UK reserves and foreign currency liabilities management and foreign exchange dealings.

- Intended investment strategies.
- Finances of public corporations.

Example

Decision notice **FS50208350** outlines the Commissioner's view that the prejudice to the financial interests of the Land Registry (LR), a government department, would have a wider effect because they were also part of the critical national infrastructure of the country.

In this case the complainant requested the source code for computer applications used by LR and information about three separate programs. The public authority withheld the information.

LR explained that as well as being a government department, it was also established as a trading fund, and as such was required to ensure that the revenue generated from its fees or receipts covered its expenditure.

A primary component of LR's database was the title registration system, which was relied upon by title holders and financial institutions for secured lending purposes.

LR argued that the ability of financial institutions to lend huge sums of money quickly and efficiently on the security of land and buildings was crucial to the nation's economy and financial services.

The Commissioner accepted that the source code could be used to compromise core systems if security was breached and it could follow that LR would be unable to generate revenue from the registration of titles as a result. The consequent financial burden would have to be borne by the government.

If the systems were significantly compromised this could also have a knock-on effect on economic areas where the sale and purchase of land was a core activity, impacting on tax revenues the UK government receives.

The Commissioner concluded that given the substantial prejudice that would be caused to the UK government's financial interests, section 29(1)(b) was engaged and that the public interest favoured maintaining the exemption.

22. Information that could fall within this exemption includes material relating to the Budget, and government cash flows and borrowing requirements.

Example

Disclosure of the information that the government would be selling sterling in order to make a large payment on a particular day, under a defence contract involving contractors in another country, may lead to pre-emptive selling of sterling on foreign exchanges. This could lower the price that the government could obtain, thus prejudicing the government's financial interests.

23. Some of the information held in relation to these areas may constitute environmental information. Access to environmental information is covered by the Environmental Information Regulations.

Would or would be likely to prejudice

24. The exemptions provided for in section 29 are subject to the prejudice test. This means that the authority has to satisfy itself that the prejudice or harm relates to either the economic interests of the UK or any part of it, or the financial interests of a UK administration.

25. The term "would…prejudice" means that it is more likely than not to occur (ie a more than 50% chance). "Would be likely to prejudice" is a lower threshold; this means that even if there is below a 50% chance, there must be a real and significant likelihood of prejudice occurring. The authority must decide the likelihood of prejudice arising on the facts of each case.

26. Many of the disclosures that could be prejudicial will be time sensitive and may be made after a particular event. Typical examples would be information relating to the Budget, which must be withheld until the Chancellor has delivered the Budget statement, or information relating to changes in interest rates.

27. The assessment of prejudice is relevant to the public interest test. The choice between "would" and "would be likely" is important because it affects the balance of factors in the public interest test. The more "likely" the prejudice to the economy, the stronger the public interest in not disclosing the information requested.

Example

In **FS50095271,** an early case, when the UK was a member of the European Union, the complainant had made requests to HM Revenue and Customs (HMRC) for information on EC Treaty Challenges. HMRC had withheld the requested information.

The information related to cases where UK tax law had been challenged in the courts on the grounds of EC law. The information held by HMRC was estimates made by case officers of what the theoretical maximum costs to the Exchequer would be if the claims succeeded.

Those estimates were made as vulnerability assessments based on the worst possible scenario, as the cases involved are complex and litigation can take some time.

The main purpose behind the use of an estimate figure is as an early warning mechanism, and, HMRC argued, was unlikely to bear any resemblance to reality.

HMRC had previously indicated that once the litigation was final it would disclose the estimates.

HMRC put forward four arguments relating to section 29 and the prejudice to the economic interests of the UK:

- Release could lead to speculation about the Government's cash flows and future borrowing requirements – causing uncertainty in the financial markets.
- Disclosure might lead to speculation about the Government's future tax policy and whether there were any plans to raise taxation levels.
- Release of the information could undermine people's confidence in the ability of the Government to manage the economy which could have caused political instability.
- It could foster a campaign against UK involvement in

Europe and the reach of the European Courts of Justice.

The Commissioner considered that the degree of instability in the estimates was fundamental to assessing the prejudice, and that disclosure could have an artificial and distorting effect on financial markets and investor confidence.

The Commissioner was satisfied that section 29 had been correctly applied in that the disclosure of such unsubstantiated figures would present a real risk of prejudice to the economic interests of the UK, and went on to consider the public interest test.

The Commissioner noted that the public interest would not be served by disclosing information which would have a detrimental impact on the economy.

The Commissioner also considered that any benefit to the public and financial markets of publishing the estimates was outweighed by the uncertain nature of the estimates, and found that in this case the public interest in maintaining the exemption outweighed the public interest in disclosure.

Complex nature of the economy

28. The way that the economy operates can be complex and it will not always be obvious how or why the disclosure of information would be harmful to it.

29. It is recognised that the financial markets can be very sensitive to the release of information about the economy and that generally speaking information that distorts the financial markets is seen as damaging to the economy. It may not be easy to demonstrate the specific impact on the markets if particular information were released or how the reaction of the markets to the premature release of information would differ if it were released to a planned timetable. However, public authorities withholding information on the grounds that it would damage the economy must be able to explain how the harm would arise and why it is likely to occur to both the applicant and the Commissioner, based on the particular circumstances of each case.

Economic assessments

30. There may be many reasons for a public authority to hold information on an area’s economy. That information may

present a negative impression of the area's current or potential performance and its release could discourage investment.

31. Before relying on the exemption to refuse a request, however, a public authority would need to balance the level of damage to business confidence against the public interest arguments in favour of releasing information that would allow businesses to make fully informed decisions.

32. A well-informed business community may have the opportunity and incentive to prevent a problem deepening into a crisis and there may be other occasions where restricting access to information may make a problem worse.

Managing relationships

33. Economic development or regeneration often involves public authorities establishing strong relationships with the private sector. There may be a concern that access to information about those relationships or to information that has been provided by private sector organisations may damage relations or inhibit future private sector involvement. However, the exemption concerns the effect on the economy or financial interests of the UK, not the private interests of a company, although the two may be linked.

34. In determining whether the exemption would apply, a public authority should consider whether any such concern is justified. It will not be sufficient to simply say that as a result of disclosure a contractor would necessarily be unwilling to enter into an agreement with a public authority.

35. It is unlikely that an authority could claim the exemption if information about that company is already available through access regimes in other countries where the company operates, or countries where the company is considering investing.

36. Even if the information is exempt, it may be necessary to disclose it given the public interest in understanding the relationships between the private and public sectors.

37. Some of the information that private companies wish to protect may also be covered by exemptions relating to commercial interests (section 43) and information provided in confidence (section 41).

38. For more details on this, please see our guidance on the prejudice test.

The public interest test

39. Section 29 is a qualified exemption. This means that, even if the information requested is exempt from disclosure, the public authority must go on to consider and decide whether the public interest in maintaining the exemption outweighs the public interest in its disclosure.

40. Information that is likely to impact the UK economy may be about the government of another country or a company based there. The purpose of FOIA is to promote transparency about the UK government and the public authorities defined in section 3(1). Any interests which citizens of another country have in knowing about the actions of said government or company is not relevant when carrying out the public interest test.

41. Citizens from other countries can ask for information about UK authorities by submitting FOIA requests in the same way as UK citizens – a FOIA requester does not have to be a UK national or resident, as clarified in the Explanatory Notes on the Freedom of Information Act at paragraph 49.

Arguments in favour of disclosure

42. FOIA itself does not list the factors that would favour disclosure however, they include:

- furthering the understanding and participation in the public debate of issues of the day;
- promoting accountability and transparency by public authorities for decisions taken by them;
- promoting accountability and transparency in the spending of public money;
- allowing individuals, companies and other bodies to understand decisions made by public authorities which affect their lives; and
- bringing to light information affecting public health and safety.

Arguments in favour of maintaining the exemption

43. Factors that will have significant weight in favour of maintaining the exemption include:

- where disclosure would result in financial instability of institutions or countries, either in the UK or abroad which would harm the economic interests of the UK or the financial interests of any administration within it;

- where disclosure could pre-empt announcements on taxation, national insurance or benefits – for example Budget information;

- where selective disclosure of the information could affect financial markets. Financial regulation and government policy requires the transparent release of market-sensitive data simultaneously to the whole market. Selective or premature release of information undermines confidence in dealing in UK markets;

- where information has been obtained from confidential sources (eg overseas governments or regulators) who would be damaged by disclosure and who will not provide information in the future and no longer having access to such information would harm the economy of the UK or the financial interests of any administration; and

- where the information consists of assessments of an institution or the economy's viability.

Balancing the public interest arguments

44. Applying the public interest test means weighing the harm that is identified in a particular exemption against the wider public interest that may be served by disclosure. The test must be applied on a case by case basis. Both the content and context of the information will be relevant when considering this test and determining the appropriate weight to be given to the benefits and detrimental effects of disclosure.

45. Certain factors can add weight to the arguments on either side and these will help decide where the balance of public interest lies.

46. The likelihood of prejudice will be a relevant factor in determining where the balance of public interest lies. The more "likely" the prejudice to the economy, the stronger the public interest in not disclosing the information

requested.

Severity of harm

47. The severity of the prejudice that may happen affects the weighting. If the prejudice has a particularly severe or detrimental effect on individuals or the authority or other public interests, then this will carry considerable weight in the public interest test. This would be relevant, for example, if there is any risk of physical or mental harm to an individual.

48. The number of people impacted or amounts of money involved may also be relevant in this regard.

49. The following decision notices are useful examples of requests for information where the balance of the public interest favoured maintaining the exemption:

Example 1

In the following scenario the weights of the respective arguments for and against disclosure were finely balanced.

In **FS50519631** the complainant requested information relating to the meetings of the Joint Oversight Board (JOB) about the Funding for Lending Scheme (FLS).

The FLS is a scheme intended to help stimulate the UK economy through incentivising banks and building societies to boost lending to the economy by reducing funding costs.

The Treasury applied the s29(1)(a) exemption arguing that disclosure would discourage participation in the scheme and that there was a reputational risk attached to the release of the information.

The Commissioner agreed with the Treasury that disclosure of the information could have an adverse impact on the JOB's relationship with stakeholders and affect its capacity to successfully administer the FLS. He took the view that the exemption had been applied correctly in this case.

The Commissioner went on to consider the public interest test.

There was a strong public interest in disclosure because of the detriment caused by the economic downturn and the weight of interest attributable to attempts to mitigate these effects.

However, the aim of the FLS to promote greater lending activity was one that should ultimately benefit the public.

The JOB needed space not only to consider the issues relating to the development of the scheme but also to foster relationships with organisations that were already signed up, or were considering signing up, with the FLS. Any move that could upset this process weighed heavily against disclosure.

The time which had elapsed between this request and even the earlier meetings was not sufficient to show that the prejudice claimed was likely to have lessened to any significant extent. Furthermore, important decisions relating to the FLS were still being made and the items referred to in the requested information were therefore 'live'.

For this reason, the Commissioner decided that, at the time the request was made, the public interest in disclosure was outweighed by the public interest in favour of maintaining the exemption.

Example 2

In decision notice **FS50502589** the complainant requested information from the Cabinet Office concerning contact between the Cabinet Secretary, Sir Jeremy Heywood, and representatives of all private sector companies and lobbying groups covering a two week period in January 2013. The request was submitted on 31 January 2013.

The Cabinet Office withheld the information, citing 29 (1)(a) and (b).

The Commissioner was satisfied that there was a clear link between disclosure of the withheld information and prejudice to the economic and financial interests of the UK for the reasons set out by the Cabinet, and that the exemptions were engaged on the basis that there was a real and significant risk of prejudice occurring.

In his decision notice the Commissioner recognised the significant public interest in disclosing information that allowed the public to understand how businesses communicated with government.

However, he also recognised the important role that the conversations had in helping the Government develop policy and the significant prejudicial consequences to the economic and financial interests of the UK if information of this nature was disclosed.

Disclosure of the requested information at the point the request was submitted would have resulted in disclosure of information concerning the Cabinet Secretary's contacts within the last two weeks.

Based on the very recent source of the information, and the relatively limited extent to which disclosure of this information would serve an identifiable public interest in disclosure, the Commissioner concluded that the public interest in releasing the information was outweighed by the public interest in maintaining the exemption.

Timing of disclosure

50. Many public authorities responsible for managing the economy, regulating industry or economic development will need to make information available to achieve their aims. However, the timing of the release of that information can be critical.

Example

ICO Decision Notice **FS50474293** concerned a request to HM Treasury (the Treasury) for information it held relating to the central forecasts contained in the Bank of England's *Inflation Report* published in February 2012. The request was submitted on 27 April 2012.

The Treasury withheld the requested information citing the exemptions in section 29(1) (and also 35(1)(a)) of FOIA.

The Treasury made the following points to support its decision:-

- It had sought the views of the Bank of England (the Bank) on the potential impact of the release of the requested information, since the information had been produced by the Bank.
- The information requested by the complainant informed the quarterly *Inflation Report* but the Bank had decided not to make this degree of detail public in the report.
- Global financial markets were fragile. Release of the withheld information without relevant context or explanation could lead to market speculation, adversely affect market confidence and deter internal and external investors from investing funds in the UK economy.
- In support of this statement, considerable contextual information had been provided in the February 2013 *Inflation Report*. Release of this report had nevertheless had a significant impact on the markets. Without that context it was felt that reactions would be even larger and more volatile.
- This would be likely to have a destabilising effect on the financial markets and thus have a prejudicial effect on the economic interests of all or part of the UK. Release of the information would also be likely to have a prejudicial effect on the financial interests of the Government.

The Commissioner acknowledged that in order to be effective, monetary policy communication has to be put into context and explained in a way that is rational and consistent.

The Commissioner is generally reluctant to accept arguments that information should not be disclosed because it may be misunderstood. His view is that sufficient context or explanation should be provided by the public authority.

However this was an unusual set of circumstances as the request was made to the Treasury for information which had been produced by the Bank of England. It would be difficult for the Treasury to provide appropriate context or explanation to avoid any misunderstanding, if the information were to be released.

Even if the Bank had been approached to compile the relevant context this would be difficult. Considerable time had elapsed since the date of the report and some members of the Bank’s staff, whose views on the economy would have formed part of the discussions in February 2012, had moved on.

Release of information produced by the Bank inevitably has an impact on the markets and therefore its release should be carried out in a planned and structured way.

The Treasury said that releasing information that the Bank's Monetary Policy Committee (MPC) had decided not to publish may risk undermining the work of the MPC in preparing the quarterly *Inflation Report*, which is a carefully considered medium for influencing expectations about future rates of inflation, economic growth and monetary policy.

The Commissioner accepted that financial markets can be particularly sensitive to this type of information. He agreed with the Treasury's view that disclosure of the withheld information would result in a real and significant risk of prejudice to the economic and financial interests of the UK. In addition he said that if there were any detrimental impact from disclosure, this could have consequences for large numbers of people in the UK.

Because of the crucial role the Bank plays in the UK economy and the sensitive information that it produces, it is in the public interest that the Bank should have some control over which of that information is published and when any publication should take place.

In light of all of the above the Commissioner's view was that the public interest in maintaining the exemption outweighed the public interest in disclosure, and concluded that the Treasury was entitled to withhold the information.

51. There may be situations where policy is not yet settled and the release of information may create a misleading impression of a public authority's intentions. In these circumstances other exemptions may also apply, for example section 35, which concerns information likely to prejudice the formulation of government policy.

Example

ICO decision notice **FS50105898** concerns a request for information to HM Treasury for information fed into the macroeconomic model used to forecast the performance of the UK economy.

This forecasting tool informs the forecasts and proposals in the Chancellor's annual Budget. Variables including data about past performance and estimated values for factors such as predictions on the performance of the housing market, levels of UK employment, and the likely level of world oil prices, all of which may influence the future performance of the economy, are fed into the tool.

The Treasury withheld the information under section 29 (economic interests of the UK) and 35 (formulation of government policy).

The Treasury argued that disclosure of the information would or would be likely to cause prejudice to the economic interests of the UK for the following reasons:

- Uninformed interpretation of the forecasts could mislead and damage the credibility of the Treasury and erode public confidence in it.

- Disclosure would make it difficult to manage expectations and could hinder the conduct of monetary and fiscal policy.

The Commissioner accepted that because of the risk that forecasts may influence behaviour, disclosure would be likely to prejudice the economic interest of the UK.

Having then gone on to apply the public interest test, the Commissioner considered that both exemptions were correctly applied.

In reaching his conclusion the Commissioner was influenced by the timing of the information request, which related to the economic forecasts for the same year in which the request was made. Had the request been submitted much later, for example 10 years after the forecast had been made, the risk of prejudice would be much lower and the public interest balance may be altered.

52. Where the public authority intends to publish the information requested at a later date, the exemption provided by section

22 (information intended for future publication) may apply. This is explained further in our guidance on information intended for future publication.

Age of the information

53. The public interest in maintaining an exemption will usually diminish over time, as the issue the information relates to becomes less topical or sensitive and the likelihood or severity of the prejudice diminishes.

54. However, this is not true in every case; for example, an investigation may be closed for a long time and it may be argued that the weight of public interest in disclosure has increased, but if the investigation is re-opened the weight of the public interest argument for the exemption may be restored.

55. The weight of the arguments on either side can depend on the age of the information and the timing of the request.

Example

In ICO decision notice **FS50142678** the complainant made a request to the National Archives of Scotland for the following two files:

> *SOE6/1/1708 Needs Assessment Study (NAS): Scottish Public Expenditure 1984-1984; and*
>
> *SOE6/1/1709 Needs Assessment Study (NAS): Scottish Public Expenditure 1984-1987.*

The request was submitted on 1 June 2006. The Scotland Office refused to disclose this information under sections 29 (1)(a)(the economy).

The Scotland Office explained that much of the information contained within the two files was out of date and potentially inaccurate, which could be misleading to any reader of the information. The information in the files centred on the use of a particular formula for allocating funds across the UK. This formula had been used for over 20 years and was the means of determining the budgets of the three territorial departments and now the devolved administrations.

The information dated back to 1984 which was more than 20 years old at the time the request was submitted. It was also clear from the papers that the figures used in the Needs Assessment Study were being heavily criticised at the time from a number of sources.

The formula was still in use and the Treasury Committee conducted a major enquiry into it in 1997 and 1998.

The Commissioner did not accept the Scotland Office's arguments that releasing inaccurate data which was more than 20 years old would, or would be likely to, prejudice the economy or bring instability to the process of budget allocation.

Although disclosure of the information may reignite discussion on the use of the formula, the Commissioner said that this was not prejudicial to the economy. The contents of the files made it clear that the figures used may not have been accurate, and the age of the files was also clear.

The Commissioner concluded that section 29 was not engaged and required the release of the information.

56. For more information, please see our separate guidance on the public interest test.

Interaction with other exemptions

57. A public authority seeking to rely on section 29 should consider whether there is an interaction between section 29 and other exemptions in FOIA. A public authority should identify the most appropriate exemption, or exemptions, that apply to the information requested in each case.

58. Other exemptions which may be relevant include:

- section 33 – some financial information may be required for audits, and this exemption protects information on audit functions;
- section 35 – disclosure of economic options being considered (for example to tax policies or closing tax loopholes) relates to the formulation of government policy; and
- section 43 – government may hold information which constitutes a trade secret, or information that, if released, would, or would be likely to, damage the commercial interests of any person or organisation.

> **Example**
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> Indications that a particular institution, group of institutions or a country's financial system were being discussed could prompt a reaction that resulted in financial instability which would have a detrimental impact on the economic interests of the UK or of part of the UK.
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> Such instability might require action (for example the Bank of England acting as lender of last resort), which would have a detrimental impact on the financial interests of the government.
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> It could lead to financial losses to the institutions being discussed, investors or depositors, in which case section 43(2) would also be relevant since disclosure of the information would, or would be likely to, prejudice the commercial interests of a person.

59. Further guidance can be found on these exemptions under sections 33, 35 and 43, in our separate guidance on public audit functions, government policy and commercial interests.

60. Public authorities should ensure in each case that they analyse exactly what harm the public authority is trying to protect against and apply only the most appropriate exemptions. This process will make it easier for the public authority to justify why those exemptions apply.

61. Inappropriately listing numerous exemptions is not good practice and could create the impression that a public authority is being secretive.

62. A public authority should provide the fullest response to the requester that details which exemptions apply to the information requested. It is not appropriate for a public authority to exhaust all of the exemptions in turn with the aim of withholding information.

Other considerations

63. Detailed guidance on section 29 has been prepared by the Ministry of Justice.

64. This guidance relates only to FOIA. If the information is environmental, public authorities will instead need to consider exceptions under the EIR.

More information

65. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.

66. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

67. If you need any more information about this or any other aspect of freedom of information, please contact us, or visit our website at www.ico.org.uk.