

Types of FOI exemptions

Two types of exemptions can be applied under the Freedom of Information Act:

- Absolute Exemptions ('public interest test' does not apply).
- Qualified Exemptions ('public interest test' applies).

Freedom of Information - Absolute Exemptions

Exemptions where the public interest test does not apply:

- Section 21 - information accessible by other means.
- Section 23 - national security: 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.
- Section 32 - court records.
- Section 34 - parliamentary privilege - a certificate signed by the Speaker of the House, in respect of the House of Commons, or by the Clerk of the Parliament, in respect of the House of Lords, is conclusive proof that the exemption is justified.
- Section 36 - effective conduct of public affairs - so far as relating to information held by the House of Commons or the House of Lords.
- Section 40 - 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.
- Section 41 - information provided 'in confidence'.
- Section 44 - prohibitions on disclosure - where a disclosure is prohibited by an enactment or would constitute contempt of court.

Freedom of Information - Qualified Exemptions

Exemptions where the public interest test applies:

- Section 22 - information intended for future publication exemption.
- Section 24 - national security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not apply).
- Section 26 - defence.
- Section 27 - international relations.

- Section 28 - relations within the UK.
- Section 29 - UK economic interests.
- Section 30 - investigations and proceedings conducted by public authorities.
- Section 31 - law enforcement.
- Section 33 - audit functions.
- Section 35 - formulation of government policy and ministerial communications.
- Section 36 - prejudice to effective conduct of public affairs (except information held by the House of Commons or the House of Lords).
- Section 37- communications with Her Majesty, the Royal Family or concerning honours.
- Section 38 - health and safety.
- Section 39 - environmental information - as this can be accessed through the Environmental Information Regulations.
- Section 40 - personal information relating to a third party access request.
- Section 42 - legal professional privilege.
- Section 43 - commercial interests.

Please note: Where a public authority considers that the public interest in withholding the information requested outweighs the public interest in releasing it, the authority must inform the applicant of its reasons, unless to do so would mean releasing the exempt information.