

## Section 32 Law Enforcement

### Introduction

This document is drafted as practical guidance to assist public authorities in applying the section 32 qualified exemption for law enforcement. It is not intended to be a comprehensive assessment of the law in this area and a public authority is required to assess each request on the basis of its own individual facts.

Sections 32(1) and s32(2) are prejudice based qualified exemptions and **cannot** be engaged unless a public authority is satisfied that disclosure of the requested information would, or would be likely to, cause prejudice to those relationships and interests detailed within the exemption.

When assessing the application of prejudice based qualified exemptions a public authority must establish the likelihood of any prejudice/harm being caused as a consequence of the disclosure. If a public authority cannot establish this then it will not be able to rely upon the exemption when answering a freedom of information request (see further guidance on applying the prejudice test). If a public authority is satisfied that the disclosure of information would/would be likely to cause prejudice/harm, the public authority must then carry out a public interest test to ensure that the public interest in withholding the information is equal to or greater than the public interest in disclosing the information (see Part 3 of the Freedom of Information Act Code of Practice).

A public authority should consider whether other exemptions, in addition to this one, may also apply to the requested information, bearing in mind that other exemptions might be more appropriate (see other exemptions guidance). Different exemptions may apply to different aspects of the requested information, although only one exemption needs to be engaged for information to be withheld.

A public authority may also need to consider whether to neither confirm nor deny that the information is held, if to do so would, in itself, be absolutely exempt or qualified exempt information under this section.<sup>1</sup> Unlike section 31 this exemption is not limited to public authorities which have a duty or power to conduct criminal investigations or prosecutions. It also applies to relevant information which public authorities hold for the law enforcement purposes of other bodies, not only for their own purposes.

There are 2 separate exemptions within the section, in s32(1) and s32(2), which a public authority should assess.

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<b>S32(1)</b> <b>Assess the information</b>	
<b>If the information was disclosed, would or would it be likely to prejudice....</b>	
<p><b>The prevention or detection of crime</b> Examples</p> <ul style="list-style-type: none"> <li>• Intelligence about anticipated criminal activities, planned policies operations/identity of informers/strategies.</li> <li>• Information provided to a law enforcement agency as part of an investigation.</li> <li>• Information that would make anyone, including the public authority, more vulnerable to crime.</li> </ul>	
<p><b>The apprehension or prosecution of offenders</b> This includes general procedures and specific crimes.</p>	
<p><b>The administration of justice</b> Can be through the Courts, tribunals and alternatives to litigation (therefore interpret this broadly). It includes adversarial and inquisitorial processes. Prejudice includes to a general process or a specific case. Examples</p> <ul style="list-style-type: none"> <li>• Operation of judicial appointments system.</li> <li>• Ability to deliver justice effectively.</li> <li>• Business of running the courts, tribunals etc.</li> <li>• Enforcement of sentences, execution of judgments.</li> <li>• Ability of litigants to bring their case to court.</li> <li>• Effectiveness of inter-agency relationships.</li> <li>• Effectiveness of ancillary services.</li> <li>• Maintenance of an independent and effective legal profession.</li> </ul>	
<p><b>The assessment or collection of a tax or duty or of an imposition of a similar nature</b> Examples</p> <ul style="list-style-type: none"> <li>• Details of tax plans e.g. to close loopholes.</li> <li>• Information held in relation to the tax affairs of companies or individuals.</li> <li>• Information which informs plans for future investigations.</li> <li>• Third party information which aids the collection of tax or duties.</li> <li>• Details of strategies, investigative practices</li> </ul>	

or even negotiating tactics used to assist in the collection of taxes or duties.	
<b>The operation of immigration controls</b> Example • Where information would help people evade immigration controls.	
<b>The maintenance of security and good order in institutions (within the meaning of the Custody Act 1995) where persons are lawfully detained</b> Disclosure would cause harm if it would compromise security, lead to the breakdown of good order or impair an institutions ability to restore either. Examples • Times and routes of prisoner escorts or strategy for dealing with discipline. Note that it must prejudice security AND good order.	
<b>The following questions may assist in applying this exemption</b>	
What is the prejudice claimed? It must be real, actual or of substance. If it is only trivial, the exemption won't be engaged.	
Could any harm arise if the requested information were put together with other information (the mosaic effect)?	
What is the link between the disclosure of the information and the harm claimed?	
What is the likelihood of the harm occurring, would it occur or would it be likely to occur?	

<b>S32(2)</b> <b>Assess the information</b>	
<b>If the information requested were disclosed would or would it be likely to prejudice the exercise by any public authority of the following functions<sup>2</sup> or any civil proceedings<sup>3</sup> brought as a result of the exercise of any of its functions?</b>	
In order to engage this exemption you will need to • Identify the public authority that has been entrusted with a function to fulfil one of the following purposes; • Confirm that the function has been specifically designed to fulfil that purpose; and • Explain how the disclosure would prejudice the function. The functions are as follows:	
To ascertain whether a person has failed to	

<sup>2</sup> Hazell v Hammersmith and Fulham LBC [1991] HL Construe "functions" widely to include all the duties and the powers of an authority.

<sup>3</sup> Includes legal action and regulatory proceedings.

comply with the law.	
To ascertain whether a person is responsible for conduct that is improper.	
To ascertain whether regulatory action under any enactment is justified.	
To ascertain a person's fitness or competence in relation to – (i) the management of bodies corporate; (ii) any profession or other activity that the person is, or seeks to become, authorised to carry on.	
To ascertain the cause of an accident.	
To protect a charity against misconduct or mismanagement (whether by trustees or other persons) in its administration.	
To protect the property of a charity from loss or mismanagement.	
To recover the property of a charity.	
To secure the health, safety and welfare of persons at work.	
To protect persons, other than persons at work, against risk to health or safety where that risk arises out of, or in connection with, the actions of persons at work.	
<b>The following questions may assist in considering the exemption</b>	
What function does the public authority carry out?	
Does the public authority have the power to determine the matter in hand with some certainty?	
Does the public authority have the authority to make a formal decision as to whether a person has complied with the law?	
Will prejudice be caused to the civil proceedings or the authority's position in such proceedings (both will be covered)?	
Do the proceedings arise as a direct result of the investigation?	

If any of the exemptions are engaged, continue and assess whether the public interest in disclosing the information outweighs the public interest in maintaining the exemption.<sup>4</sup>

<sup>4</sup> Examples of public interest arguments are listed for illustrative purposes and each request should be looked at on the basis of its own individual facts. Further guidance on carrying out the public interest test can be found in Part 3 of the Freedom of Information Act 2015 Code of Practice.

<b>S32(1) Public Interest factors</b>	
<b>Factors in favour of disclosure</b>	<b>Factors in favour of maintaining the exemption</b>
<b>The prevention or detection of crime and the apprehension or prosecution of offenders</b>	
To maintain confidence in law enforcement and the criminal justice system.	To maintain confidence in law enforcement and the criminal justice system.
	Disclosure would undermine legitimate police objectives.
	Effects of crime on individuals/on society/on the economy.
<b>The administration of justice</b>	
Public interest in the administration of justice.	
Public interest in the separation of powers.	
<b>The assessment or collection of a tax or duty or of an imposition of a similar nature</b>	
Transparent tax system, promoting awareness of how taxes work.	To maintain stable and secure public finances.
	To maintain stability and sustainable growth of the economy.
	To support and improve the competitiveness of business.
	To avoid disruption/distortion of markets.
	To enable the successful delivery of tax policy objectives.
<b>Operation of Immigration Controls</b>	
Public interest in ensuring public confidence in the operation of our immigration controls (which can be done by keeping the public informed of policies and developments).	Importance of regulating entry to and settlement in the Isle of Man.
Ensuring the public has access to correct information.	Ensuring people are not able to evade or abuse immigration controls in order to enter the Isle of Man illegally.
To provide the public with information confirming the performance of immigration control.	To ensure the efficient and integrity of immigration controls are not undermined.
Ensuring immigration control is carried out in accordance with published statements and policies.	To be able to conduct investigations into suspected immigration offences effectively.

Ensuring those who are subject to immigration controls are aware of what they are.	
<b>The maintenance of security and good order in institutions (within the meaning of the Custody Act 1995) where persons are lawfully detained</b>	
Ensuring confidence in the operation of the prison system by disclosing policies, proposals and developments.	To ensure that no action can cause unrest or put anybody at risk.

<b>S32(2) Public Interest factors</b>	
<b>Factors in favour of disclosure</b>	<b>Factors in favour of maintaining the exemption</b>
<b>If the information requested were disclosed would or would it be likely to prejudice the exercise by any public authority of the following functions<sup>5</sup> or any civil proceedings<sup>6</sup> brought as a result of the exercise of any of its functions?</b>	
	To protect the proper conduct of civil proceedings and the administration of justice.

<b>Further Information</b>
The Information Commissioner has published guidance on the application of this exemption. <a href="https://www.inforights.im/media/1176/exempt32q_law_enforcement.pdf">https://www.inforights.im/media/1176/exempt32q_law_enforcement.pdf</a>

<sup>5</sup> Hazell v Hammersmith and Fulham LBC [1991] HL Construe “functions” widely to include all the duties and the powers of an authority.

<sup>6</sup> Includes legal action and regulatory proceedings.