

Section 37 research and natural resources

Introduction

This document is drafted as practical guidance to assist public authorities in applying the section 37 qualified exemption for research and natural resources. 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.

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.¹

Applying the exemption

There are two separate exemptions within the section, one in section 37(1) and the other in section 37(2). Either or both may apply to the information.

S37(1) Assess the information	
Does the information relate to research being carried out on behalf of a public authority?	
Does the information relate to research that is going to be carried out on behalf of a public authority?	
The answer to one of these must be yes.	
Case law in other areas indicates that "relates" should be interpreted broadly and therefore will cover a multitude of information which relates to the research being carried out.	

¹ s19 of the Act and further guidance on NCND
 Section 37 Research and natural resources
 201708
 v.1

<p>If the information was disclosed before the research was completed, would or would it be likely to prejudice either</p> <ul style="list-style-type: none"> • The public authority or a person who is, or will be carrying out the research on behalf of the public authority? Or • The subject matter of the research? 	
<p>Would prejudice occur or would prejudice be likely to occur?</p>	
<p>What would be the prejudice?</p>	

<p>S37(2) Assess the information</p>	
<p>If the information was disclosed, would or would it be likely to prejudice² any of the following?</p>	
<p>A cultural, heritage or natural resource?</p>	
<p>A species of flora or fauna?</p>	
<p>A habitat of a species of flora or fauna?</p>	
<p>Why is the information sensitive – take into account factors such as the type and level of threat, the vulnerability of the feature, the type of information and whether it is already in the public domain</p>	
<p>Would prejudice occur or would prejudice be likely to occur?</p>	
<p>What would be the prejudice?</p>	

If the exemption is engaged continue and assess whether the public interest in disclosing the information outweighs the public interest in maintaining the exemption.

² Prejudice could be caused by a multitude of factors including collection, damage, disturbance, commercial exploitation
Section 37 Research and natural resources
201708
v.1

Public Interest Test³	
Public interest factors in favour of disclosure	Public interest factors in favour of maintaining the exemption
If you disclosed the information would it enable a person to do something that would cause harm to the thing that the public authority is trying to protect?	
There is a general public interest in such information being available.	To avoid harm to the environment (the weight of this will depend on the nature of the harm).
May increase people's awareness and understanding of particular issues.	If disclosure would adversely affect whatever the information relates to, for example the breeding site of a rare species.
Promotes transparency and accountability of public authorities, greater public awareness and understanding.	There is evidence of recent harm.
Effects public participation in decision making which could contribute to society as a whole.	Disclosure would damage the ability of a conservation organisation to achieve a particular conservation objective.
Disclosing the information would not increase any risk of harm.	Disclosure of this information, when put together with other information would enable a harm to occur.

Further Information
The Information Commissioner has published guidance on the application of this exemption. https://www.inforights.im/media/1169/exempt37q_research_natural_resources.pdf

³ 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.