

Section 22 Parliamentary privilege and business

This document is drafted as practical guidance to assist public authorities in applying the section 22 absolute exemption for parliamentary privilege and business. 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.

A public authority can only rely on the exemption if the information falls within it.

Whilst section 22(1)(a) is a class based exemption, section 22(1)(b) imports an element of the prejudice test into the exemption.¹ There is no public interest test.

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 under this section.²

Parliamentary privilege and business

- (1) *Information is absolutely exempt information if —*
 - (a) *exemption from the obligation to disclose it under this Act is required to avoid an infringement of the privileges of —*
 - (i) *Tynwald;*
 - (ii) *the Legislative Council; or*
 - (iii) *the House of Keys; or*
 - (b) *its disclosure under this Act would, or would be likely to, in the reasonable opinion of the appropriate person specified in subsection (3), prejudice the effective conduct of parliamentary business.*
- (2) *A certificate signed by the appropriate person specified in subsection (3) certifying that the exemption is required to avoid —*
 - (a) *in a case to which subsection (1)(a) applies, that infringement of privileges; or*
 - (b) *in a case to which subsection (1)(b) applies, that prejudice, is conclusive evidence of that fact.*
- (3) *The appropriate person is —*
 - (a) *the President of Tynwald, in the case of the privileges of Tynwald or the Legislative Council; and*

¹ See prejudice test guidance

² s19 of the Act and further guidance on NCND

- (b) *the Speaker of the House of Keys, in the case of the privileges of the House of Keys.*
- (4) *In any proceedings under this Act, a document purporting to be a certificate under subsection (2), or a document purporting to be a certified copy of the certificate, is to be treated as the certificate or copy unless the contrary is proved.*
- (5) *In relation to statistical information, subsection (1)(b) has effect with the omission of the words "in the reasonable opinion of the appropriate person specified in subsection (3)".*

About the exemption

- Section 22 protects the independence of the branches of Tynwald. It recognises that each branch can govern its own affairs, exercise jurisdiction over its own proceedings, make decisions about what information is published and ultimately make a final decision on what will infringe privilege.
- If the public authority seeking to apply this exemption is not a part of Tynwald, that public authority should consult the Clerk of Tynwald to ascertain whether disclosure will infringe privilege.³
- Whilst a document may be privileged, there may be factual information within it that is not privileged. A public authority should ask itself whether it is able to provide the factual information from the documents without revealing what is in the remainder of the document.

Section 22 Certificates

- A section 22 certificate is issued by either the President of Tynwald or the Speaker of the House of Keys in order to confirm that the section 22 exemption is engaged.
- A public authority does not need a section 22 certificate for the exemption in section 22(1)(a), but it may choose to have one. As the certificate is conclusive proof that the exemption is engaged it is recommended to have one in any event when citing this exemption.
- A public authority will always need a section 22 certificate when applying the exemption in section 22(1)(b).
- A section 22 certificate can be issued at any stage, which includes when the public authority is dealing with a request or when the Information Commissioner is dealing with a complaint.
- Under section 42(3), the Information Commissioner must not make a decision if it would require him or her to challenge the conclusiveness of a section 22 certificate.

³ See further, Part 7 of the Freedom of Information Act 2015 Code of Practice for guidance on consultation.

Assess the information	
Has the information been published? If "yes" look at section 20 Information accessible to the applicant by other means.	
Is it information relating to a member's constituency or general matters, rather than to anticipated proceedings? Answer must be "no", otherwise the exemption will not apply.	
Should the information be exempt in order to prevent an infringement of the privileges of Tynwald, the Legislative Council or the House of Keys?	
Is the information of the following type: <ul style="list-style-type: none"> • Motions/debates/votes; • Parliamentary questions; • Proceedings within committees (includes oral and written evidence and deliberations); • Work by officials of any of the chambers arising directly out of proceedings of the relevant chamber or under the authority of it; • Committee reports/draft reports; • Memos/draft memos submitted to committees; • Internal papers which are directly related to proceedings of the relevant branch or committees;⁴ • Papers prepared by the Tynwald Library for general dissemination to members or to assist individual members, which relate to or anticipate debates and other proceedings of the relevant branch and are intended to assist members in preparation for such proceedings; • Correspondence between members, officers, Ministers and Government officials directly related to the proceedings of the branches; • Bills, amendments and motions including drafts, where they originate from Tynwald or a member rather than from a Government department; • Information held by a Government department that may relate to Tynwald 	

⁴ Includes advice to the President of Tynwald or the Speaker of the House of Keys, briefs for the chairmen of committees and informal notes of deliberative meetings of committees

<p>proceedings;</p> <ul style="list-style-type: none"> • Papers prepared by third parties appointed for specific expertise? 	
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<p>S22(1)(a) Class based exemption</p>	
<p>If the information were disclosed, would it infringe the privileges of:</p> <ul style="list-style-type: none"> • Tynwald; • The Legislative Council; or • The House of Keys <p>If yes, obtain a s22 certificate</p>	
<p>S22(1)(b) Prejudice based exemption</p>	
<p>Is the information requested statistical information?</p> <p>If it is, then if the information were disclosed would/would it be likely to prejudice the effective conduct of parliamentary business?</p>	
<p>In the case of statistical information a public authority does not need to obtain a s22 certificate.</p>	
<p>Is the information requested regarding any other information that is not statistical information?</p> <p>If so, then if the information were disclosed would/would it be likely to prejudice the effective conduct of parliamentary business in the opinion of</p> <ul style="list-style-type: none"> • The President of Tynwald (regarding the privileges of Tynwald and the Legislative Council); or • The Speaker of the House of Keys (regarding the privileges of the House of Keys). 	
<p>Carry out the prejudice test.⁵</p>	
<p>In the case of non-statistical information a public authority must obtain a section 22 certificate to engage this exemption. A section 22 certificate will provide conclusive evidence that the exemption is engaged.</p>	

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⁵ See further guidance on the prejudice test.
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Further Information

Part 7 of the Freedom of Information Act 2015 Code of Practice
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The Information Commissioner has published guidance on the application of this exemption. https://www.inforights.im/media/1155/exempt22a_parliamentary_privilege.pdf
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Form of Certificate

[date]

**Certificate of the [President of Tynwald] [Speaker of the House of Keys], given in
accordance with section 22(2) of the Freedom of Information Act 2015**

In response to a request for information for [state request/synopsis if too long] I certify,
pursuant to s22 of the Freedom of Information Act 2015 that

Either –

[Disclosure of the requested information would infringe the privileges of [Tynwald/the
Legislative Council/the House of Keys]

Or

[Disclosure of the requested information [would/would be likely] to, in my reasonable
opinion, prejudice the effective conduct of parliamentary business for the following reasons
[state the harm that could be done unless to do so would be exempt information].

[insert signature]

[President of Tynwald/Speaker of the House of Keys]