

## Section 30 Economy and commercial interests

### Introduction

This document is drafted as practical guidance to assist public authorities in applying the section 30 qualified exemption for the economy and commercial interests. 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.

Section 30(1) and section 30(2)(b) 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).

Section 30(2)(a) is a class based qualified exemption and **cannot** be engaged unless the information concerned falls within the class of information described by the exemption.

The first step in applying class based qualified exemptions is to establish whether the information concerned falls within the class of information described by the exemption. 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. If a public authority is satisfied that the information does fall within this class, it will then have to carry out the public interest test to determine whether the public interest in withholding the information is equal to or greater than the public interest in releasing the information (see part 3 of the Freedom of Information Act 2015 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>

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<sup>1</sup> s19 of the Act and further guidance on NCND  
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### Assess whether the exemption applies in any respect?

A public authority should consider if the requested information relates to/affects third parties (including another part of Government or public authority). Part 7 of the Freedom of Information Act 2015 Code of Practice provides guidance on consulting with persons to whom information requested relates or with persons whose interests are likely to be affected by the disclosure of such information. A public authority should not assume prejudice will be caused to a third party by the disclosure of information without consulting with them and obtaining their arguments about disclosure.

If a public authority is dealing with information involving the economic or financial interests of the Isle of Man or the ability of the Government to manage the national economy then it should consult with the Treasury where necessary.

The exemption is divided into several parts. Each part can be applied separately and is not dependent upon the others.

### **s30(1)(a) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice the economic interests of the Island**

<b>Assess the information</b>	
<p>Is maintaining the exemption necessary to provide protection from the damage that could be caused to the economy by the disclosure of some information, including protection for:</p> <ul style="list-style-type: none"> <li>• The provision of economic and financial management to support a stable economic framework?</li> <li>• The maintenance of a competitive financial services market and efficient tax and benefits systems?</li> <li>• The maintenance of sound public finances and efficient tax and benefits systems?</li> <li>• The maintenance of a competitive financial services market and the promotion of productivity?</li> </ul>	
<p>Does the effect on the economic interests stem from s30(2)(b) (prejudice to commercial interests – see below)? Both may be relevant.</p>	
<p>What are the chances of the prejudice occurring. <b>Would</b> it occur or <b>would it be likely</b> to occur? See guidance on applying the prejudice test.</p>	

### **S30(1)(b) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice the financial interests of the Island**

<b>Assess the information</b>	
<p>Is maintaining the exemption necessary to:</p> <ul style="list-style-type: none"> <li>• Protect the efficient administration of government finances in minimising the cost to the taxpayer?</li> <li>• Recognise the long term cost to the taxpayer which could result from disclosure (premature or otherwise) of certain information?</li> </ul>	
<p>What are the chances of the prejudice occurring. <b>Would</b> it occur or <b>would it be likely</b> to occur? See guidance on applying the prejudice test.</p>	

**s30(1)(c) Information is qualified exempt information if its disclosure would or would be likely to, prejudice the ability of the government to manage the national economy.**

<b>Assess the information</b>	
<p>Is maintaining the exemption necessary to protect the ability of the Isle of Man Government to make decisions regarding the management of the national economy?</p>	
<p>What are the chances of the prejudice occurring. <b>Would</b> it occur or <b>would be likely</b> to occur? See guidance on applying the prejudice test.</p>	

**s30(2)(a) Information is qualified exempt information if it constitutes a trade secret;<sup>2</sup>**

<b>Assess the information</b>
<p>If a public authority determines that the information is a trade secret there is no prejudice test (the prejudice is deemed to be inherent in the fact that it is a trade secret).</p> <p>The public interest arguments for s30(2)(a) are deemed to be similar to s30(2)(b), therefore see below for examples of the public interest arguments.</p>

<sup>2</sup> (Examples are formulae for highly specific products, technological secrets, strategic business information and collations of publicly available information such as databases).

<p>Is it a trade secret? There are 3 elements to assessing this:</p> <ul style="list-style-type: none"> <li>• If the information was disclosed would it be liable to cause real or significant harm to the owner?</li> <li>• Is the information used in a trade or business?</li> <li>• Is it not generally known? (this usually means that the owner has limited or at least not permitted its widespread publication).</li> </ul>	
Is the information used for the purposes of a trade?	
Is the information highly confidential?	
Is it obvious from the nature of the information or, if not, has the owner made it clear that he or she considers releasing the information would cause him or her harm or be advantageous to his or her rivals?	
Is the information already known?	
How easy would it be for competitors to discover or reproduce the information themselves (the easier it is, the less likely that it is a trade secret)?	
Has the value of the information diminished over time?	

**S30(2)(b) Disclosure of the information would, or would be likely to, prejudice the commercial interests of a person (including the public authority holding it).<sup>3</sup>**

<b>Assess the information</b>	
Is it a commercial interest?	
Will disclosure of the information affect a person's ability to participate competitively in a commercial activity (directly or indirectly)?	
Is it the public authority's own internal information, which is truly confidential, but s26 (Information Provided in Confidence) cannot be used as the information has not been provided by another person?	
Whose commercial interests are affected?	
Would there be damage to reputation or business confidence?	

<sup>3</sup> Usually relating to the commercial trading activity they undertake e.g. ongoing sale or purchase of goods and services for the purposes of revenue generation, within a competitive environment.

Is the information commercially sensitive?	
<p>What are the chances of the prejudice occurring. <b>Would</b> it occur or <b>would be likely</b> to occur? See guidance on applying the prejudice test.</p> <p><i>Note - Prejudice can be more than financial and can include</i></p> <ul style="list-style-type: none"> <li>• <i>Damage to business reputation or the confidence that customers, suppliers or investors have in that business;</i></li> <li>• <i>detrimental impact on commercial revenue or the ability to obtain supplies or secure finance;</i></li> <li>• <i>a weakening of its position in a competitive environment by revealing market sensitive information or information of potential usefulness to competitors</i></li> </ul>	

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

<b>Public Interest Test<sup>4</sup></b>	
<b>Factors in favour of disclosure</b>	<b>Factors in favour of maintaining the exemption</b>
Showing where public money is being spent, how much public money is being spent and how the supplier arrived at the process.	Disclosure could result in financial instability.
Legitimate public interest in economic policy, taxation and financial management.	Disclosure would pre-empt announcements on taxation, national insurance or benefits.
Release of some information will promote public understanding and informed debate.	Where selective disclosure of information could affect financial markets.
The need to hold public authorities to account for their stewardship of public resources.	Where information consists of an assessment of an institution's or an economy's viability.
To build public trust and transparency in the operation of the economy and to increase the credibility of economic policy decision makers and enhance the reputation of the Isle of Man as a fair and honest business environment.	Where information has been received from confidential sources (e.g. overseas governments or regulators) and these relationships would be damaged by disclosure and reduce the likelihood of information being made available in the future.
Accountability for the spending of public	The economy is sensitive to even small

<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.

<p>funds. Ensuring that public money is being used effectively and Departments are getting value for money when purchasing goods and services.</p>	<p>changes in investor confidence and disclosure of information could lead to more than just a small change in investor confidence.</p>
<p>Proper scrutiny of Government actions in carrying out licensing functions in accordance with policy.</p>	<p>The need to protect the commercial interests of the private sector, which plays an important role in the general health of the economy.</p>
<p>Need to ensure that commercial activities, including the procurement process, are conducted in an open and honest way.</p>	<p>The need to protect the commercial interest of the public sector, whose commercially related functions need, in any event, to be exercised in the wider context of the public interest.</p>
<p>Business can respond better to public sector opportunities.</p>	<p>Consideration of matters such as the maintenance of intellectual property rights and the need to protect the flow of commercial secrets to public authorities.</p>
<p>Protection of the public – from unsafe products/practices.</p>	

### **Further Information**

The Information Commissioner has published guidance on the application of this exemption.  
[https://www.inforights.im/media/1170/exempt30q\\_economy\\_comm\\_int.pdf](https://www.inforights.im/media/1170/exempt30q_economy_comm_int.pdf)