

Section 33 Audit Functions

Introduction

This document is drafted as practical guidance to assist public authorities in applying the section 33 qualified exemption for audit functions. 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 33 is a prejudice based qualified exemption and **cannot** be engaged unless a public authority is satisfied that disclosure of the requested information would, or would be likely to prejudice the exercise of any of the public authority's functions in relation to:

- (a) The audit of the accounts of other public authorities; or
- (b) The examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

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

Is the exemption relevant?	
Is the public authority listed in schedule 1 of FOIA? Answer must be yes.	
Does the public authority exercise any functions in relation to (a) the audit of the accounts of other public authorities; or	

¹ s19 of the Act and further guidance on NCND
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<p>(b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions? The answer to one of these must be yes. Note – FOIA doesn’t require these functions to be set out in statute.</p>	
<p>Is the public authority trying to use this exemption the public authority that is the subject of the audit? (If so, this exemption cannot be claimed but other exemptions may be relevant).</p>	
<p>If a public authority is unsure about whether an audit is covered by this exemption it should look to any legislation that would allow it to carry out the audit, as this will usually set out the purposes of the audit and will help indicate whether the exemption may apply.</p>	

<p>What type of information is envisaged to be covered by the exemption?</p>	
<p>Information that hasn’t as yet been placed in the public domain/published. If it has then the information won’t be covered by the exemption.</p>	
<p>Information that falls within the following categories:</p> <ul style="list-style-type: none"> • Draft reports • Audit methodologies • Correspondence or other communications between auditors and the public authority being audited • Information disclosed to auditors as part of the audit process or by whistle-blowers or other informants 	

<p>Carry out the prejudice test Ask, if the information requested was disclosed would/would it be likely to prejudice –</p>	
<p>A specific audit or to a particular process?</p>	
<p>Relations with audited bodies and audit third parties? For example, if disclosed, certain information originating from third parties could harm relations between the auditors and that body, and so affect the ability of the auditors to carry out their functions effectively.</p>	
<p>Audit methods?</p> <ul style="list-style-type: none"> • It may be important that details of the audit method, including specific files that the auditor intends to examine, are kept 	

<p>from the audited body before the audit takes place to ensure that the audit is effective.</p> <ul style="list-style-type: none"> • Disclosure methods after an audit may prejudice subsequent audits if an auditor intends to use the same method. • Similarly releasing information about how the auditing body derives its conclusions could also prejudice the audit function. 	
<p>Public reporting and scrutiny?</p> <ul style="list-style-type: none"> • Before publication, many public sector auditors discuss their emerging findings and draft report with the audited bodies and other affected parties to ensure accuracy and completeness of the evidence on which they have based their conclusions and recommendations. If information from an audit were disclosed before official publication this may preempt the proper reporting process and could lead to preliminary findings (which had not been fully tested) being given the same currency as fully tested conclusions. This may undermine the fairness of the audit process and create a misleading impression of both the auditor and the body being audited, possibly causing unwarranted damage to the reputation of either. In these circumstances the audit function would clearly be prejudiced. 	
<p>The voluntary supply of information? For example, if provided by a whistle-blower an authority may wish to argue that disclosure would discourage co-operation</p>	
<p>A public authority should also consider -</p>	
<p>The timing of the request. This may be relevant in terms of releasing the report before the exercise has been completed or whilst still at draft stage, providing a premature indication of findings before validation.</p>	
<p>Would the prejudice occur or would the prejudice be likely to occur?</p>	

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

The public interest test²	
Note that the public interest may change over time depending upon whether the final report has been published.	
Public interest factors in favour of disclosure	Public interest factors in favour of maintaining the exemption
Disclosure could lead to greater public confidence in the integrity of the audit process as it would allow both the audited body and the performance of the auditors to be scrutinised.	To ensure that auditors can effectively carry out audits of public authorities; checking that public authorities account for the monies allocated to them and their work delivers value for money
To further public understanding of decisions made by public authorities.	Much of the information that auditors produce is made available for the same general public interest reasons that support the principles of FOI including: <ul style="list-style-type: none"> • Making reasons for decisions evident • Enhancing scrutiny and improving the accountability of public bodies • Contributing to public debate and • Increasing public participation in decision making
To improve public participation in debate.	To facilitates accountability and transparency of public authorities for decisions taken by them, which in turn facilitates accountability and transparency in the spending of public money. Generally value for money audits lead to a public report with these express aims.
To promote accountability and transparency in relation to decision making.	Clear public interest in protecting the effectiveness and integrity of the audit process.
To promote accountability and transparency in the use of public funds by public bodies.	Premature disclosure of findings could prejudice the implementation of solutions which an authority needs thinking space to fully consider, implement and test recommendations away from the public gaze.

Further Information
The Information Commissioner has published guidance on the application of this exemption. https://www.inforights.im/media/1166/exempt33g_audit_functions.pdf

² 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.