

Section 21 Court Information

Introduction

This document is drafted as practical guidance to assist public authorities in applying the section 21 absolute exemption for court information. 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. There is no prejudice test or 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.¹

To apply this exemption, a public authority needs to consider how it holds the information. If the information is held for any other reason apart from the Court proceedings then it will not be covered by the exemption. For example, if a public authority has entered into a contract and subsequently that contract becomes part of the Court proceedings, as the contract is held for another purpose as well, this exemption will not be applicable, however other exemptions might be.

There are 3 separate exemptions contained within the section. Each can be applied separately.

Section 21 Court Information

- (1) *Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document of the following kind for the purposes of legal proceedings —*
 - (a) *filed with, or otherwise placed in the custody of, a court;*
 - (b) *served upon, or by, a public authority.*

- (2) *Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document created by a person of the following kind for the purposes of legal proceedings —*
 - (a) *a court;*

¹ s19 of the Act and further guidance on NCND
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(b) a member of the administrative staff of a court.

(3) Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document —

(a) placed in the custody of; or

(b) created by,

a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.

(4) In this section —

"arbitration" means any arbitration to which Part I of the Arbitration Act 1976 applies;

"court" includes a tribunal or other body exercising judicial power;

"inquiry" means an inquiry or a hearing held under a provision contained in, or made under, an enactment; and

"legal proceedings" includes —

(a) a cause or matter within the meaning of the High Court Act 1991; and

(b) an inquest or post-mortem examination.

s21(1) Assess the information	
Is the information held by the public authority solely because it is in a document for the purposes of legal proceedings?	
Has the document been filed with or otherwise placed in the custody of a court?	
Documents served upon, or by, a public authority include: ➤ Claim forms ➤ Defence ➤ Witness statements/expert reports ➤ Skeleton arguments ➤ Disclosure lists ➤ Pre-trial questionnaires/checklists ➤ Application notices ➤ Trial bundles	
Is the information contained in the Court documents also held in another form? If yes	

<p>then the exemption will not cover it as it isn't held "only by virtue of being contained in a document..."</p> <p>It may help to consider the function and purpose of the public authority.</p>	
<p>Have the proceedings actually commenced? The answer must be yes to engage the exemption. If not then consider s40 Legal Professional Privilege.</p>	

<p>s21(2) Assess the information</p>	
<p>Is the information held by the public authority only by virtue of being contained in a document created by a court (including a tribunal or other judicial body) for the purposes of legal proceedings?</p>	
<p>Is the information held by the public authority only by virtue of it being contained in a document created by a member of the administrative staff of the court (including a tribunal or other judicial body) for the purposes of legal proceedings?</p>	
<p>The documents will include:</p> <ul style="list-style-type: none"> ➤ Unpublished judgments and orders ➤ Notebooks of judges etc. ➤ Notices of hearings ➤ Summaries by judicial assistants ➤ Court internal memoranda and correspondence relating to particular proceedings ➤ Transcripts 	

<p>s21(3) Assess the information</p>	
<p>Is the information held by a public authority only by virtue of it being contained in a document placed in the custody of a person conducting an inquiry or arbitration for the purposes of the inquiry or arbitration?</p>	
<p>Is the information held by a public authority only by virtue of it being contained in a document created by a person conducting an inquiry or arbitration for the purposes of the</p>	

inquiry or arbitration?	
Does the enquiry have some basis in law? (The answer must be yes to engage the exemption) e.g. is the enquiry required to be held under a specific statutory provision/order? If in doubt check the status of the inquiry and its terms of reference.	

Next steps if a public authority determines that the exemption is engaged	
If there is another way to obtain the information a public authority should provide advice and assistance to the applicant by pointing them in the right direction of how they might be able to obtain it, for example; Rule 2.21 of Isle of Man Courts of Justice – Rules of the High Courts of Justice.	

Further Information	
The Information Commissioner has published guidance on the application of section 21. https://www.inforights.im/media/1304/exempt21a_court_info.pdf	