

Section 36 Health and Safety

Introduction

This document is drafted as practical guidance to assist public authorities in applying the section 36 qualified exemption for health and safety. 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.

This exemption **cannot** be engaged unless a public authority is satisfied that release of the requested information would, or would be likely to:

- (a) Endanger the physical or mental health of an individual; or
- (b) Endanger the safety of an individual.

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

Examples of disclosure

- Those which would allow individuals, groups or firms to be identified or located and consequently targeted and attacked for their beliefs or practices, including work in controversial scientific areas.
- Information about the location and use of speed cameras which may affect driving behaviour and increase the numbers of road-related deaths or personal injuries.
- Disclosure of sensitive or graphic information about deceased individuals which could cause serious distress to particular individuals such as family members, particularly if they were not previously aware of the details.
- Where disclosure may have an adverse effect on public health.

¹ s19 of the Act and further guidance on NCND
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Assess the information	
What is the risk of harm that may occur (endanger connotes risk of harm rather than harm itself?).	
Is there a link between the disclosure and the endangerment (it cannot be a remote or hypothetical possibility).	
Are there any legal prohibitions in disclosing information which would endanger an individual's health or safety? For example, the Rehabilitation of Offenders Act or the Health and Safety at Work Act 1974 (Act of Parliament), as it applies to the Isle of Man.	
Who is the individual concerned? (It can be any individual or group of individuals and not just the applicant or the supplier of the information).	
Are any other exemptions engaged, (including national security and defence)?	
Is it regarding health and safety matters in terms of the Health and Safety legislation? (This may be covered by other exemptions e.g. law enforcement).	

The prejudice test (Although the word "endanger" is used, it still equates to conducting the same test)	
Health	
How will disclosure endanger the health of an individual? Consider such things as medical matters.	
Is the endangerment to physical or mental health?	
If stating that endangerment "would be likely" to occur - is there a real and significant likelihood of this outcome?	
If mental health	
Is the endangerment more than stress and worry (mental health is not equated with distress). Although a public authority does not need clinical evidence of a psychiatric condition, ² a public authority may need to	

² PETA v ICO & University of Oxford (EA/2009/0076)
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seek an authoritative opinion upon which a public authority can rely if the applicant appeals to the Information Commissioner. (Note this may not have to be disclosed, but it may support any submissions to the Information Commissioner if a public authority states that it relied upon professional opinion.)	
Can the risk to mental health can be mitigated by explaining the possible risks in advance and giving an opportunity to reconsider the request or how the information is given (i.e. may be appropriate to have another person there)?	
Safety	
How will disclosure affect the safety of an individual? Think about risk of accident or harm, risk to security, freedom from danger.	

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

Public Interest Test³	
This will be satisfied where the harm that would be likely to be caused to any individual by the disclosure of the information would be greater than the public interest in the disclosure.	
Weigh the harm identified in a particular exemption against the wider public interest that may be served by disclosure.	
Does the information requested involve living individuals? If so see s25 (Absolutely exempt personal information).	
What is the size of the risk involved, the likelihood of the outcome in question and the extent to which steps might be taken to reduce or manage that risk?	
What is the nature and seriousness of the resulting outcome were that risk to materialise?	
Is there a possibility that disclosure would help to protect the health or safety of other individuals?	
Is there a possibility that the anticipated	

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.

danger could be prevented or managed by other, reasonable, precautions?	
Public interest factors in favour of disclosure	Public interest factors in favour of maintaining the exemption
Disclosure will reduce the potential danger to people and to increase their personal freedom by making them aware of various risks and enabling them to take appropriate action.	Never in the public interest to endanger the health and safety of any individual. To outweigh a risk to health and safety that was sufficient to engage the exemption, there would have to be very weighty countervailing considerations.
May enhance the trust that the public have in a department which is necessary if the recommendations and information supplied by departments with specific responsibilities to inform the public of health and safety issued are to be acted upon.	Maintaining confidence.
Public receiving information on the cost effectiveness of the provision of a public service	
Where endangerment risks are slight and appropriately balanced.	
Furthering the understanding and participation in the public debate of issues of the day.	
Promoting accountability and transparency by public authorities for decisions taken by them.	
Promoting accountability and transparency in the spending on public money.	
Allowing individuals, companies and other bodies to understand decisions made by public authorities affecting their lives.	
Bringing to light information affecting public health and safety.	

Further Information

The Information Commissioner has published guidance on the application of this exemption.
https://www.inforights.im/media/1168/exempt36q_health_safety.pdf