

Section 41 Information for future publication

This document is drafted as practical guidance to assist public authorities in applying the section 41 qualified exemption for information for future publication. 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 41 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.¹

The purpose of this exemption is to ensure that freedom of information requests do not dictate publication timetables or force publication before it was intended (unless the public interest dictates otherwise). Publication includes, physical inspection, pictures, speeches (and preparatory notes) and drafts up to the point that the information is published. The information can be published by anybody, it does not have to be the public authority however, it has to be available to the general public rather than a restricted audience. The issue is not **what** is going to be disclosed but **when** it is going to be disclosed.

Assess the information	
Section 41(a) - Is the information held with a view to it being published by a public authority or any other person, at some future date (whether determined or not)? (The answer must be yes).	
Section 41(b) - Is the information already being held with a view to publication at the	

¹ s19 of the Act and further guidance on NCND
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<p>time that the request is received? (The answer must be yes). A public authority cannot decide, after receiving a request, that it will publish in the future, in order to be able to apply this exemption.</p>	
<p>Section 41(c) Is it reasonable in all the circumstances that the information be withheld from disclosure until that future date? (The answer must be yes). Consider the disclosure here and why it is reasonable.</p> <ul style="list-style-type: none"> • When is the date of publication? The closer it is the more reasonable to withhold. • Is the information complete or could it mislead? • Will any disadvantage be caused to third parties? • Could it be mitigated by disclosing some of the information and withholding the rest until publication? 	

Other considerations when applying this exemption	
<p>As a public authority, can you sufficiently identify the information to be published? A public authority has to know what is being published rather than being in the process of deciding what to publish.</p>	
<p>Is the information that the public authority intends to publish the same information as has been requested?</p>	
<p>If a public authority later rejects information and decides that it is not going to be published then that information will not be covered by the exemption.</p>	
<p>When is the information going to be published?</p> <ul style="list-style-type: none"> • Could be any date before a particular deadline? • Will it be published once other actions have been taken? • Will it be published once a particular event has occurred? 	

Carry out the public interest test²	
As the information is already going to be disclosed in the future the question to be answered is whether it is reasonable to withhold disclosing the information until that future date?	
Factors in favour of disclosure	Factors in favour of maintaining the exemption
Timing. Where the disclosure timetable is in the distance or contingent or indeterminate.	Premature disclosure in response to a FOI request may be unfair to others.
Publication will not cause any impact to the public authority.	Public authorities should be able to manage their own public affairs.
Public interest in transparency of issues of financial management and accountability.	Disclosure would contravene publication procedures.
	Damage being caused to a third party's interests or some public concern being caused.
	So that a public authority can choose to release information in the manner and form and at the time of its choosing.
	If disclosure would undermine consultation or pre-publication disclosure with particular persons.
	Risks of early disclosure cannot be mitigated (e.g. by any explanations alongside the information).
	Where disclosure would contravene any previous undertakings.
	Potential damage to commercial interests.
	Some form of harm will occur as a result of the information being prematurely disclosed.
	Could result in information being disclosed which isn't accurate therefore misleading the public.
	The closer it is to publication the more reasonable it would be to withhold the information until publication has occurred.

If a public authority determines that the exemption is engaged and the information should not be prematurely disclosed, the public authority should take the following actions:

- Advise the applicant how and where the information will be published
- Advise when the information is expected to be published, by date, or after an event etc.

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.

Further Information

The Information Commissioner has published guidance on the application of this exemption.
https://www.inforights.im/media/1178/exempt41g_future_pub.pdf