



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Freedom of Information Act

The Enterprise Act 2002 and the Freedom of Information Act 2000

The Freedom of Information Act 2000 (FOIA) gives a right of public access to information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

This guidance explains to public authorities who hold information which is subject to the Enterprise Act 2002 (EA) why section 237 of EA is a bar to disclosure under the FOIA.

Overview

The EA is a law which made important changes to the rules on business competition. It also prohibits the disclosure of certain information and can thereby engage section 44 of the FOIA.

- Section 44 of the FOIA provides an exemption where disclosure is prohibited by any enactment.
- Section 237 of the EA can legally prevent disclosure.

What does the FOIA say?

Section 44 says that you do not need to disclose information in response to a request if its disclosure, other than under the FOIA:

- is prohibited by any enactment;
- is incompatible with any Community obligation; or
- would be a contempt of court.

You also do not need to confirm or deny whether you hold the information if that confirmation or denial would fall within any of the above subsections. This exemption does not require the consideration of a public interest test.

Further guidance on this exemption can be found at [Prohibitions on Disclosure: Awareness Guidance No. 27](#).

What does the EA say?

Section 237 of the EA applies to “specified information” which relates to the affairs of an individual or business which you have obtained in connection with your performance of certain functions e.g. functions given to you by the Competition Act 1998.

Specified information must not be disclosed during the lifetime of the individual or while the business continues to exist unless the disclosure is

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specifically allowed by other sections of the EA – to do so would be a criminal offence. Any disclosure of specified information must comply with the Data Protection Act 1998.

Section 237 of the EA does not affect any other legal power or duty to disclose information and applies to information regardless of whether it was obtained before or after the EA became law.

Status of the individual or business

Whether an individual is still alive should generally be relatively straightforward to establish.

If a limited company continues to file accounts and maintain its registration at Companies House then it can be deemed to still be in existence, even if it no longer actively trades.

Regarding other types of businesses which are not limited companies, it will be necessary to consider whether the business still trades or is active in any other sense. A business that no longer trades itself but is for sale as a potentially viable business would still be in existence.

Has the information already been legitimately disclosed to the public?

Disclosure of specified information is allowed if the information has been disclosed to the public on a previous occasion. This is the case as long as the disclosure:

- did not take place during the lifetime of the individual;
- did not take place while the business continues to exist; or
- does not breach any law preventing or restricting the disclosure.

Is the FOIA a basis for disclosure?

No. The FOIA cannot be used as a duty or power to disclose information under the EA because section 44 says you cannot use the FOIA as the justification for a disclosure which would otherwise be prohibited.

Example: In Dey v Information Commissioner (EA/2006/0057; 16 April 2007) the Tribunal supported this view by stating that “You cannot rely on disclosure under the Freedom of Information Act to get round that prohibition. Otherwise the argument would be circular any prohibition on disclosure could be circumvented by relying on the duty to disclose in section 1 of FOIA.”

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

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