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FOI/EIR FOI Section/Regulation s21 Issue Public domain: section 21 arguments
 Line to take:

If the requested information is already in the public domain, this does not mean it is automatically exempt under s21. The relevant question is still whether it is 'reasonably accessible' to the particular applicant.

If only part of the information is in the public domain, s21 cannot cover the new elements of information (unless these are available to the individual applicant from another source). For that reason care should always be taken to consider whether the FOI disclosure might in fact reveal something new.

Further Information:

This line is intended to assist case officers where it is clear that the requested information (or some of it) is already in the public domain at the time of the request. However, s21 may also be relevant in other circumstances (ie where the information is available to the applicant personally but not to the general public) and case officers should refer to the s21 lines for a full discussion of s21 issues.

To decide whether information is in fact in the public domain, see LTT222.

Even if the exact information requested is fully in the public domain, this does not mean it is automatically exempt under s21. The individual circumstances of the applicant should be considered to decide whether the information is in fact reasonably accessible to them. For example, this may take into account whether or not they have access to the internet, or whether there are any special circumstances (eg disabilities) that mean they cannot access the information from the public source. However, if the information is realistically accessible to the general public the public authority (and the Commissioner) are entitled to assume that the information is reasonably accessible to the applicant as a member of the general public unless and until it becomes aware of any such special circumstances (eg from prior dealings with the applicant, or because the applicant raises it as an issue). To invoke s21 the public authority will also need to be able to precisely direct the applicant to the specific location of the information. See LTT151 for more information.

If only part of the requested information is in the public domain and the FOI disclosure would reveal something new, s21 cannot cover all of the relevant information. It may apply to those parts of the information that are public, but will not apply to any new elements of information (unless these are available to the individual applicant from another source).

Even if the information appears to be in the public domain, the request and the exact content of the information should therefore be considered carefully to establish whether disclosure would in fact reveal anything new. For example, the disclosure may be more detailed, could corroborate a previously unreliable source or leak, or could confirm that the PA does not hold any additional related information. See LTT223 for more discussion of this point.

Source	Details		
Policy			
Related Lines to Take			
LTT151 , LTT221 , LTT222 , LTT223 , LTT224 , LTT226 , LTT227 , LTT228			
Related Documents			
Contact		LS	
Date	26/08/2011	Policy Reference	LTT225

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