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FOI POLICY INTERNAL KNOWLEDGE BASE		
FoI or EIR	Section/Regulation	Issue
FOI EIR	s2, Part II exemptions reg 12, reg 13	Public domain – practical guidance
<p>Summary:</p> <p>In cases involving the application of exemptions or exceptions we should conduct a very brief internet search for any relevant information already in the public domain.</p> <p>Use discretion when deciding whether more detailed searches or analysis is required.</p> <p>Take care when referring to parliamentary materials.</p>		
<p>Further Information:</p> <p>This CWAN supplements our guidance on Information in the public domain. It provides some supplementary practical guidance for caseworkers when investigating s50 cases.</p> <p>Although the guidance explains in detail our approach to a number of common arguments, it will not be necessary or proportionate to go to this level of detail in every case. Many cases are likely to be straightforward.</p> <p>Do a brief internet search at the start of the case</p> <p>The question of whether the requested or related information is in the public domain has potential relevance in all cases. Therefore it would be useful to do a short internet search (just a few minutes) at the start of any case where we are considering exemptions. This should also minimise or avoid the issue of relevant information disappearing or depleting during the course of our investigation by flagging up this issue at the earliest opportunity.</p> <p>In some cases a more thorough search will be required, but we should take a pragmatic approach to deciding whether this is necessary. Ask your line manager or seek signatory input if you are unsure. Generally a proper search will only be needed where:</p> <ol style="list-style-type: none"> issues about information in the public domain have been specifically raised by one of the parties, the short search throws up evidence of information in the public domain and/or calls into question the public authority's position, it is obvious from the context (taking into account the ICO's sectoral and subject-matter expertise and experience in previous cases) that some relevant information is likely to be in the public domain, or there has been significant media coverage of the relevant issues which suggest that some relevant information is likely to be in the public domain. <p>Case officers should use their discretion as to whether or not to ask the public authority if it has conducted its own search, as this may not be relevant or appropriate in some cases.</p> <p>In terms of the search itself, it is suggested that generally case officers spend no more than 20-30 minutes, for example, using multiple search terms via an internet search engine, unless more time is obviously required.</p> <p>If any information is found:</p> <p>If relevant information is found after this sort of search, for example, on the internet or in another publically accessible source (eg a published book) - that information is most likely in the public domain as being in practice accessible to a member of the public.</p> <p>Case officers will then need to double check whether that information was also available at the time of the request before going on to consider its precise content and effect.</p> <p>Parliamentary materials (eg Hansard or select committee reports)</p> <p>DNs can refer to Hansard or other parliamentary proceedings (eg committee reports) as evidence of the fact that the information contained within them is already in the public domain. We must however be careful not to make any judgment (positive or negative) about the accuracy of such information, as this risks us breaching rules on parliamentary privilege.</p> <p>In particular, arguments about misrepresentation or wrongdoing should not be applied to any information reflecting proceedings in parliament. This is because parliamentary privilege prevents the ICO from considering, questioning or relying upon the accuracy or reliability of such information. See also CWAN 008.</p>		
Source of Casework Advice Note	Policy Delivery	Details
Related Casework Advice Notes	CWAN 008	
Related Documents	ICO guidance: Information in the public domain	
Contact: LS		
Date: 27/03/2013		Reference number: CWAN 010

- Information Commissioner's Office intranet