
Freedom of Information Exemption Guidance

This document is intended to explain the difference between the different exemptions under the Freedom of Information Act and when information can be exempt from disclosure.



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Introduction

The Freedom of Information Act gives individuals the right to access to/copies of Council information.

Information must be disclosed, unless there is an exemption under the Act which applies to it.

Some of exemptions under the Freedom of Information Act which can be used by the Council are:

- Section 12 – exemption where cost of compliance exceeds appropriate limit
- Section 14 – vexatious or repeated requests
- Section 21 – information accessible to the applicant by other means
- Section 22 – information intended for future publication
- Section 24 – National Security
- Section 30 – investigations carried out by public authorities
- Section 31 – law enforcement
- Section 32 – court records
- Section 33 – audit functions
- Section 36 – prejudice of effective conduct of public affairs
- Section 38 – health and safety
- Section 40 – personal information
- Section 41 – information provided in confidence
- Section 42 – legal professional privilege
- Section 43 – commercial interests
- Section 44 – prohibitions on disclosure

Each exemption is described below along with when it applies.

Section 12 – Exemption where cost of compliance exceeds appropriate limit

This exemption applies when to collate the requested information would take in excess of 18 hours. 18 hours is the time limit specified as the maximum cost that an organisation must spend on a FOI request.

This exemption can only be applied for the location, retrieval and collation of the information and does not include the redaction time.

When using this exemption, we have to explain to the requestor why it would take over 18 hours to collate this information, detailing what would be involved in the collation. For example, “to collate the information would involve a manual trawl of around 30,000 records to pick out what records are included in your request. The records are not held in an electronic system that can be searched by the term you have specified”. We must make sure that any explanation is clear

Section 14 – Vexatious or repeated requests

This exemption can be used when a requestor submits repeated requests, or the requests are vexatious. To identify a vexatious request, the Information Commissioner’s Office provides some indicators which can suggest a request is vexatious:

- Abusive or aggressive language
- Burden on the authority
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance
- Scattergun approach
- Disproportionate effort
- No obvious intended to obtain information
- Futile requests
- Frivolous requests

To refuse a request under Section 14 as vexatious, some of the above need to apply and we must provide vast detailed evidence that the above indicators apply.

This exemption is very rarely used, due to the complex nature of providing evidence to confirm it applies.

Section 21 – Information accessible to the applicant by other means

This exemption applies when the information requested can be obtained elsewhere by the applicant. For example, the information may be published on the internet, or there is an application process which already exists where the requestor can apply for the information to apply for the information (even if there is a cost).

Section 22 – Information intended for future publication

This exemption applies when a decision has been made (prior to receiving the request) to publish the requested information. When this exemption applies, we have to do a balancing exercise to decide whether or not to release it before publication, so just because the exemption applies, doesn’t mean we will always refuse the information.

Section 24 – National security

This exemption applies where the release of the information could have an adverse effect on the security of the country. For example, information regarding terrorism. It is very rare that any Council information would fall under this exemption, but it could be, such as business continuity plans for a major incident in Sheffield.

Section 30 – Investigations carried out by public authorities

This exemption applies where the information relates to an investigation(s) that the authority has carried out, such as Trading Standards, however, the information has to specifically apply to an investigation and not be information such as stats or case outcomes.

Section 31 – Law enforcement

This exemption applies where the release of the information could hinder the prevention or detection of crime, or the apprehension/prosecution of an offender. For example, releasing information providing the location of empty properties which could then make them vulnerable to squatting.

Section 32 – Court records

This exemption applies to information which form part of a record in court.

Section 36 – Prejudice of effective conduct of public affairs

This exemption applies when the release of the information could cause harm to the Council or the public tasks that we carry out. We very rarely use this exemption, but it can apply to information such as, the answers to the Taxi Licensing Knowledge Test, or to release the patrol plans of Traffic Wardens. The use of this exemption has to be explained in detail and approved by the Monitoring Officer before it can be used.

Section 38 – Health and safety

This exemption applies where it could affect the mental and/or physical safety of an individual or individual(s).

Section 40 – Personal information

This exemption applies where the information requested is personal information about the requestor, or by another living person. The information does not have to directly identify anyone, but it is information that could be used by anyone to identify that it applies to a person.

Having said this, this exemption does not allow us to blanket exempt information that we believe would identify someone, for example, for a question asking about numbers of individuals within Sheffield, saying any number of individuals lower than 5 could mean they could be identified. It would have to depend up on the reality that someone could in fact be identified when using it with other information, for example, the number of children from a particular school who have been excluded within the last 12 months, by using the school and the fact that a child was absent from school for a period of time, could actually result in an individual being identified.

Section 41 – Information provided in confidence

This exemption applies where to release the information would result in a breach of confidence where legal action could be taken against the Council for release. For example, if we have signed a non-disclosure agreement with a third party.

Section 42 – Legal professional privilege

This exemption applies to information which has a legal professional privilege, for example, where the information contains legal advice from our Legal Team.

Section 43 – Commercial interests

This exemption applies where to release the information could cause harm to a company or organisation and their commercial interests, or the commercial interests of the Council. For example, releasing the pricing strategy of one of our providers.

This exemption is used for elements of contracts awarded by the Council where the release of certain elements of the contract might assist a competitor of the contractor. When considering this exemption, the Information Management Team need to consider the public interest in both the protection and provision of the requested information, reviewing the original document requested. Therefore, just because the exemption applies, doesn't mean that the information is automatically exempt, we would need to provide a clear explanation to the requester to demonstrate why.