

Right to know requests exemptions

Introduction

The FCA may refuse to comply with a request for information where an exemption in Part II of the Freedom of Information Act (FOIA) applies.

If an exemption applies, we will set out:

the exemption which applies; and,

the reasoning behind its application.

We aim to use the exemptions appropriately, in order to protect information which should properly remain confidential. For example, s.44 provides an absolute exemption where UK or EC law prohibits disclosure.

The most likely application of the s.44 exemption in the FCA is where s.348 of the Financial Services and Markets Act (FSMA) applies. s.348 contains restrictions on the disclosure of confidential information by the FCA.

The Act also allows us to refuse to provide information if the cost of finding it would be more than £450 (see the note on fees).

To help you identify whether the information you require may be subject to an exemption we have listed below the exemptions, together with a brief explanation.

Types of exemptions

There are two types of exemption that can be used; absolute and qualified.

If an absolute exemption is applied, there is no duty for the FCA to consider the public interest test. The information requested need not be disclosed and in some cases the FCA may not be obliged to confirm or deny whether it holds the requested information.

Where an exemption is qualified, the FCA is required to consider whether withholding the information requested outweighs the public interest in releasing it. If that is the case we will set out the reason for refusing the request, unless to do so would mean releasing exempt information.

Summary of exemptions under FOIA

| Absolute Exemption | Description |
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| Section 21 | <p>Information 'reasonably' accessible to applicant by other means</p> <p>Information that has been published or is publicly accessible in any other way is exempt from release as it is already in the public domain, even if it is accessible only on payment.</p> <p>This therefore includes information that is included in the FCA's FOI Publication Scheme.</p> |
| Section 23 | <p>Information held or originating from security organisations</p> <p>Information supplied by the Security Services (including the Security Services, Secret Intelligence Service, GCHQ, National Criminal Investigation Service and the Special Forces) is exempt from release. This includes any part of the armed forces that is assisting GCHQ at that time. The obligation to confirm or deny the existence of particular records does not arise if it was supplied by any of those bodies.</p> |
| Section 32 | <p>Court records, etc</p> <p>Documents created for or held by a Court or Tribunal for an ongoing case or enquiry are exempt from release. The duty to confirm or deny does not arise for information that is exempt due to this reason.</p> |
| Section 34 | <p>Parliamentary privilege so far as it relates to information held by either House of Parliament</p> <p>An exemption is applied if the release of a record is an infringement of parliamentary privilege. This exemption can only be obtained through a certificate signed by the Speaker of the House for the House of Commons or the Clerk of the Parliaments for the House of Lords.</p> |
| Section 40 | <p>Personal information</p> <p>Personal information or "personal data" is exempt under FOIA and should be handled under the Data Protection Act.</p> |
| Section 41 | <p>Information provided in confidence</p> <p>Information is exempt if it was obtained from another person (including a public authority and to disclose it would constitute a breach of confidence. The duty to confirm or deny does not arise if to do so would constitute an actionable breach of confidence.</p> |

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| Section 44 | <p>Prohibitions on disclosure where a disclosure is prohibited by an enactment or would constitute contempt of court.</p> <p>Information is exempt from disclosure if its release is prohibited by other Legislation (e.g. FSMA or the Human Rights Act).</p> |
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| Qualified Exemption | Description |
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| Section 22 | <p>Information intended for future publication</p> <p>Information is exempt if it is held with a view to its publication at some future date.</p> |
| Section 24 | <p>National Security (other than information supplied by or relating to named security organisations, where the duty to consider disclosure in the public interest does not arise)</p> <p>If the records requested are not supplied from the Security Services, but their release would still constitute a threat to National Security, they are exempt from disclosure.</p> |
| Section 26 | <p>Defence</p> <p>If it is deemed that disclosing particular information would prejudice the defence of the British Isles or its colonies or the capability, effectiveness or security of any relevant forces, then this exemption can be applied.</p> |
| Section 27 | <p>International relations</p> <p>If the disclosure of information would prejudice the UK's relations with other States, international organisations, the interests of the UK abroad and the promotion or protection by the UK of its interests abroad, then this exemption can be applied.</p> |
| Section 28 | <p>Relations within the United Kingdom</p> <p>If it is deemed that releasing particular information would prejudice relations with other administrations within the UK government, the Scottish Administration, the Northern Ireland Assembly or the National Assembly for Wales, then this exemption can be applied.</p> |
| Section 29 | <p>The economy</p> <p>If releasing the information requested would prejudice the economic or financial interests of the United Kingdom, then this exemption can be applied.</p> |

| Qualified Exemption | Description |
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| Section 30 | <p>Law enforcement (including investigations which may require regulatory action, relate to fitness and competence, a person in a regulated profession carrying out activities which require a licence)</p> <p>If the information requested contains information that may be used for investigations or criminal prosecution, and disclosure would prejudice their outcome, then this exemption can be applied.</p> |
| Section 31 | <p>Law enforcement (including: investigations into whether circumstances exist or may arise justifying regulatory action under any enactment; regulatory investigations relating to fitness or competence of company directors; or investigation of persons in regulated professions or who carry out activities which require a licence).</p> <p>If section 30 does not apply, but the release of the records would be likely to prejudice effective law enforcement, including the prevention or detection of crime, the apprehension or prosecution of offenders, the administration of justice of the operation of immigration controls, then this exemption can be applied.</p> |
| Section 33 | <p>Audit Functions</p> <p>This section applies to any public authority, which has functions in relation to the audit of the account of other public authorities or the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.</p> |
| Section 35 | <p>Formulation of government policy</p> <p>If the information requested relates to the formulation or development of government policy, Ministerial communications, the operation of any Ministerial private office or legal advice given in relation to policy information, then this exemption can be applied] [Comment: I would omit this, as we cannot use it].</p> |
| Section 36 | <p>Prejudice to the effective conduct of public affairs (except information held by the House of Commons or the House of Lords)</p> <p>Any disclosure of information that would inhibit the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation or would otherwise prejudice the effective conduct of public affairs is exempt from release. The duty to confirm or deny does not arise in relation to information to which this section applies.</p> <p>This exemption can be applied to any disclosure of information that would inhibit the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation or would otherwise prejudice the effective conduct of public affairs.</p> |
| Section 37 | <p>Communications with HM, etc and honours</p> <p>If the information requested concerns communications with the Queen or other members of the Royal Family or Royal Household, or is related to the conferring of honours by the Crown, then this exemption may be applied.</p> |

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| Section 38 | Health & Safety If the disclosure of information would endanger the physical or mental health of any individual or endanger the safety of any individual, then this exemption applies. |
| Section 39 | Environmental information as this can be accessed through the Environmental Information Regulations Environmental information is exempt under FOIA and must be treated in accordance with the Environmental Information Regulations. |
| Section 42 | Legal professional privilege If the requested information contains legal advice and its release would breach legal professional privilege, then this exemption applies. |
| Section 43 | Commercial interests If releasing information would prejudice the commercial interests of any person (including the business interests of the FCA), or constitutes a trade secret, then this exemption may be applied. |

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| Other circumstances where we do not have to disclose | Description |
| Section 12 | Cost of compliance exceeds appropriate limit |
| Section 14 | Vexatious or repeated requests |
| Section 25 | Certificates under sections 23 & 24: supplementary provisions |