



The exemptions

The FOI Act gives people a right to access documents held by State and local government agencies, subject to some limitations.

Some documents are protected from disclosure because their release would have an adverse effect on the private and business interests of individuals, or would hinder the proper functioning of government.

Agencies should only claim an exemption when there are good reasons to do so and when the public interest requires nondisclosure, rather than merely because an exemption is potentially available to be claimed. The onus is on the agency to show that its decision is justified ([section 102\(1\)](#)).

The fifteen kinds of exemptions are set out in [Schedule 1](#) to the FOI Act. Information about the most commonly claimed exemptions is included below.

Personal Information – Clause 3

Documents are exempt under [clause 3\(1\)](#) if their disclosure would reveal personal information about an individual (whether living or dead).

Personal information is defined in the [Glossary](#) to the FOI Act.

There are several limits to this exemption. That means that personal information is not exempt under clause 3(1) if:

- disclosure would merely reveal personal information about the applicant (clause 3(2));
- disclosure would merely reveal prescribed details about officers or former officers of agencies, or persons who perform or have performed services for agencies under a contract for services (clauses 3(3) and 3(4)). Prescribed details include certain work-related information such as an officer's name, title, work-related qualifications, functions and duties, and things done in the course of the officer's functions or duties ([regulation 9](#) of the FOI Regulations);
- the applicant provides evidence that the individual concerned consents to the disclosure of their personal information to the applicant (clause 3(5)); or
- its disclosure would, on balance, be in the public interest.

Business and Commercial Information – Clause 4

[Clause 4](#) contains three separate exemptions.

These exemptions are intended to protect commercial or business information supplied to government by third parties and about third parties dealing with government.

Documents are exempt under clause 4 if their disclosure would reveal:

- trade secrets (clause 4(1)); or
- information that has commercial value to a person and disclosure could reasonably be expected to destroy or diminish that commercial value (clause 4(2)); or
- information about the business, professional, commercial or financial affairs of a person, and disclosure could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information to the government or an agency (clause 4(3)).

There are several limits to these exemptions. Matter is not exempt under the above clauses:

- if its disclosure would merely reveal information about the business, professional, commercial or financial affairs of an agency or the applicant (clauses 4(4) and 4(5)); or
- if the applicant provides evidence that the person concerned consents to the disclosure of the matter to the applicant (clause 4(6)).

In addition, matter is not exempt under clause 4(3) if its disclosure would, on balance, be in the public interest. The exemptions in clauses 4(1) and 4(2) are not subject to that public interest limitation.

Note: Reference to ‘person’ in the FOI Act includes a public body, company, or association or body of persons, corporate or unincorporate (*Interpretation Act 1984*).

Deliberative Processes of Government – Clause 6

The exemption in [Clause 6\(1\)](#) is intended to protect from disclosure material forming part of the decision-making of government when circumstances require confidentiality of those deliberations. To rely on this exemption, an agency must establish not only that disclosure of the relevant information or documents would reveal the deliberations of government but also that its disclosure would, on balance, be contrary to the public interest. This can be a difficult requirement to meet.

Legal Professional Privilege – Clause 7

The exemption in [Clause 7](#) of Schedule 1 to the FOI Act provides that matter is exempt if it would be privileged from production in legal proceedings on the ground of legal professional privilege.

Legal professional privilege protects the confidentiality of certain communications made in connection with, or brought into existence for, the giving or seeking of legal advice or for use in existing or anticipated legal proceedings.

There is no ‘public interest’ test attached to this exemption.

Confidential Communications – Clause 8

Matter is exempt under [Clause 8](#) if disclosure would:

- be a breach of confidence for which a legal remedy could be obtained (clause 8(1)); or
- reveal information of a confidential nature obtained in confidence and could reasonably be expected to prejudice the future supply of information of that kind to the government or an agency (clause 8(2)).

Matter is not exempt under clause 8(2) if its disclosure would, on balance, be in the public interest. However, the exemption in clause 8(1) is not subject to a public interest test.

For examples of decisions relating to the exemptions in clauses 1, 2, 5 and 9-15 of Schedule 1 to the FOI Act, see the [FOI Coordinators Manual](#).

If you have any general enquiries about the FOI process, please see our website or contact our office.

Note: This Information Sheet is intended as a general guide only and should not be viewed as legal advice. The Information Commissioner considers each complaint on its merits and according to the relevant circumstances.

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