



## MOD FOI/EIR Compliance Notes

### FOI Exemptions

#### CN23: Section 27 (International Relations)

##### *Document history*

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##### *What this is about:*

This note provides an overview of the section 27 exemption of the Freedom of Information (FOI) Act – information which, if disclosed, would prejudice the UK's **international relations** or the UK's interests abroad. It provides an outline of MOD compliance points to consider when engaging section 27 and other exemptions to consider.

##### *Detail:*

- Section 27(1) covers information that would prejudice or would be likely to prejudice:
  - (a) Relations between the UK and any other State
  - (b) Relations between the UK and any international organisation or international court
  - (c) The interests of the UK abroad
  - (d) The promotion, or protection, by the UK of its interests aboard
- Section 27(2) covers confidential information obtained from a State other than the United Kingdom, or from an international organisation or court.
- Confidential information is defined as information obtained under terms which require it to be held in confidence at the time of the request, or under circumstances where the originator might reasonably expect it to be so held.
- This exemption is **qualified** and therefore subject to public interest testing.

##### *MOD compliance points:*

- The Act does not define “would prejudice” or “would be likely to prejudice”. However, case law suggests that “prejudice” should be taken to mean actual “harm” or “damage”; and “likely to prejudice” to mean “a very significant chance of harm or damage”. It is useful to state which level of prejudice the Department is relying on in its arguments otherwise should he come to investigate a complaint the Information Commissioner will always consider that the lower level applies
- Information may be exempt under section 27(1) or 27(2). Where information in scope of a request was provided by a foreign state or international body or is jointly owned information with the UK (for example because it was produced as part of a collaborative project), where appropriate the foreign state or international body's views on disclosure should be sought **in neutral terms**. In some circumstances it would clearly be inappropriate to discuss information regarding another state or international body with the subject of that information. In such cases, care should be taken not to release information which might make relations with states or international bodies more difficult, even if the response from the subject is not known and could be hard to predict.

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- Where consultation with a foreign state or international body about release is considered necessary (before deciding whether to release information) and where this process is likely to delay the issue of a substantive response beyond the statutory deadline for responding to the requester, you should issue a substantive response citing the relevant part of section 27 but explain that you are currently seeking the views of the State (you do not need to state the country with whom you are consulting) to which the exemption applies. These have not yet been received but if, on receipt, they indicate a change in the current decision to withhold the information in the public interest is appropriate, you will write again. This will ensure compliance with section 10 of the Act (timeliness of replies)
- Section 27 does not necessarily focus on the scale or importance of an issue but whether the international relations and interests of the UK would be prejudiced by release.
- When applying section 27(2) there is no requirement that the release would constitute an actionable breach of confidence (as with Section 41) for the exemption to be legitimately engaged.
- Checks should be made to see what information is already in the public domain. If information has already been disclosed this may reduce the prejudice of release, or in some circumstances increase it if combining this information would reveal greater levels of detail. It is important to consider **how** the information came to be in the public domain – relations may be prejudiced by officially disclosing information previously only the subject of speculation.
- The level of harm which release could cause may be dependant upon the timing of the request, and the wider context of UK international relations at the time.
- Other exemptions to consider:
  - Where information relates to the armed forces of other states working alongside the UK, **Section 26, (Prejudice to UK Defence and force capabilities)** should be considered to protect the capabilities and security of such forces.

For further information – see the ICO's detailed guidance:

[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/freedom\\_of\\_information\\_and\\_environmental\\_information.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/freedom_of_information_and_environmental_information.aspx)