



MOD FOI/EIR Compliance Notes

FOI Exemptions

CN33: Section 37 -Communications with the Royal Family and the Granting of Honours

Document history

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What this is about:

This note provides an overview on exemption section 37 of the Freedom of Information (FOI) Act – information which relates to communications with the Royal Family or the conferring of honours. This CN provides an outline of MOD compliance points to consider when engaging section 37 and other exemptions to consider.

Detail:

- The application of this exemption has changed since the FOI Act was introduced, so make sure you refer to an up-to-date copy of the [legislation](#).
- Section 37(1)(a) relates to communications with the Royal Family and 37(1)(b) to information about the Crown's conferring of honours.
- The exemption is **absolute** in relation to communications with the monarch and to the heir and the second in line to the throne. A PIT is not required in such cases, therefore.
- Use of this exemption in relation to all other section 37 information is **qualified**, and is subject to public interest testing, i.e. communications with other members of the royal family and the granting of honours.
- Section 37 is broad in its definition, encompassing information **relating to** communications with HMQ and other members of the royal family. This can include communications by members of the Royal Household on behalf of the Royal Family.

MOD compliance points:

- The exemption only applies to information held by MOD about members of the Royal Family in their **constitutional roles**. Use of the Section 37 exemption is not appropriate for information requests about their private roles and functions. For example, a request for Prince Andrew's RN application form and entrance tests was met with a withheld from release under **section 40 (personal information)** and **section 41 (information provided in confidence)**, not section 37.
- Extensive policy guidance has been provided by the ICO following recent DNs in relation to section 37(1)(b). In essence, the second part of section 37 is not an absolute exemption and there may be cases where it will be appropriate to disclose information even though this might erode the confidentiality of the process but not to any great extent (i.e. the information is more than 10 years old) and/or refers to persons nominated for awards who have since died.

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Draft responses involving use of section 37 need to be cleared with the Cabinet Office. If you plan to use section 37 to withhold information, please contact CIO SPP-IR Ops1 who will refer the request to the Cabinet Office FOI Team.

Other exemptions to consider:

- If you are concerned to protect information provided in confidence thought should be given to the use of section 41 (breach of confidence). Likewise, if you are concerned to protect personal information about living individuals use of section 40(2) (personal data) might be appropriate.

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