



MOD FOI/EIR Compliance Notes

FOI Exemptions

CN25: Section 29 (Economic Interests of the UK)

Document history

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What this is about:

This note provides an overview on exemption section 29 of the Freedom of Information (FOI) Act – information which, if disclosed, would prejudice the economic interests of the UK or the financial interests of any of its administrations. It provides an outline of MOD compliance points to consider when engaging section 29 and other exemptions to consider.

Detail:

- Section 29 can be applied to any information that would prejudice or would be likely to prejudice the economic interests of the UK or any part of the UK- section 29(1)(a), or the financial interests of the Scottish, Welsh or Northern Ireland administrations - section 29(1)(b).
- The ‘economic interests’ aspect of this exemption provides for withholding information that if released would or would be likely to cause instability and economic damage to the wider economy.
- The ‘financial interests’ aspect of this exemption provides for withholding information that if released would or would be likely to cause long-term costs to the taxpayer.
- It might be appropriate to apply section 29 to information planning/managing the economy, promoting the economy, political considerations, social/health/environmental policy, regulating industry, planning (e.g. local or national level transport policies).
- Use of section 29 can potentially overlap with the EIRs.
- The exemption is **qualified** and therefore subject to a PIT.

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”.
- The likelihood of actual prejudice existing is a matter of fact that has to be determined on a case by case basis.
- Release being “likely to prejudice” is a lower test involving a degree of hypothetical certainty that there may very well be prejudice to the UK economy if the information were released.

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- Notwithstanding the level of prejudice, disclosure of the information must still be made if the public interest in disclosing the information outweighs the public interest in relying on the exemption.

Casework example:

- Sometimes referred to as 'the economy exemption', CIO is unaware of an MOD information request that has involved the use of section 29.

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