

## MOD FOI/EIR Compliance Notes

# The Public Interest Test

### Document history

Version No	Reference	Date Issued	Review Date
1.2	CIO-3-19-1-3	March 2013	March 2013

### What this is about:

This note provides an overview of the Public Interest Test (PIT) which must be conducted if information in scope of a FOI request is subject to a 'qualified' exemption or EIR exception.

### Detail:

## When must I carry out a Public Interest Test?

If information is subject to a 'qualified exemption' or EIR exception, you must conduct a written PIT, approved at 1\* level.<sup>1</sup>

- A PIT weighs up the factors for and against releasing the information and creates an audit trail of your decision. The PIT should decide whether the *interests of the public* are served better by withholding or releasing the information in scope of a request.
- The "public interest" is not the same as "what the public are interested in." Another way to think about the public interest is does society benefit more from the release of the information or its remaining undisclosed?
- When a qualified FOI exemption (or any EIR exception) is cited, the balance of factors for and against disclosure must be explained in the response: do not send out the PIT. Remember to save it for any subsequent investigation at appeal stage!

The applicant should be kept as fully informed as possible during the PIT process:

- If the answer (incl PIT) cannot be completed within the initial 20 working days, you should send a **compliant holding response** stating which exemption(s) (or exceptions) you are considering applying, and the reasons (without revealing any exempt information), and giving a date when you anticipate sending the substantive reply.
- If you are citing qualified exemptions and require more time to conduct the PIT, it is permissible for you to extend by another 20 working days.
- When a qualified FOI exemption (or any EIR exception) is cited, the balance of the public interest factors for and against disclosure must be explained in your reply to the requester.
- If you are handling an EIR request, a PIT must be conducted for each exception and you must then aggregate all the public interest factors for the same information when considering whether to disclose information or not. EIR allows an extension of a further 20 days to a maximum of 40 working days from the original request, but only if the request is both complex and voluminous.

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<sup>1</sup> The approval of PITs may, at the discretion and under the authority of the responsible 1\* star officer, be delegated to no lower than Band B level.

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Even if you are neither confirming nor denying the information is held, you should explain the background to the decision, as far as is possible.

- Remember, you need 1\* approval for the outcome of the PIT

### Qualified Class-based exemptions

If the exemption is class based, e.g. section 35 (formulation or development of policy) the exemption is automatically engaged to any information which meets the description of the information stated in the exemption in the FOI Act.

### Prejudice-based exemptions

If the exemption is prejudice based, e.g. section 36 (prejudice to the effective conduct of public affairs) you need to consider how likely is that the prejudice (harm) described in the exemption will occur and identify the causal link between the information release and that prejudice (harm) occurring from release of the information requested. If you are unable to do so, or the causal link is negligible, or the likelihood the harm occurring improbable, it is unlikely that the exemption will be found to apply.

Factors which, depending on the information in scope, may be relevant in considering the public interest in favour of disclosure include: :

- Informing public debate on important issues
- Achieving transparency of public spending decisions
- Providing accountability for performance
- Fostering participation in public life
- Illustrating or preserving fair procedures
- Revealing or preventing crime, misconduct or impropriety
- Preventing the public being misled

But these factors need to be balanced in the PIT against the factors in favour of withholding the information. These will be described generically in the actual description of the exemption being applied (e.g. prejudice to international relations) but the PIT should also describe in more detail any factors which **are specific to the information in scope** e.g. prejudice to current and future naval operations, effective operational use of unmanned air vehicles, harm to the effectiveness of the nuclear deterrent or providing potential aggressors with access to sensitive nuclear technology information etc.

In considering the weight of the public interest in respect of qualified exemptions the presumption is in favour of release. This means that the information requested can only be withheld if the public interest in doing so outweighs the public interest in disclosure and this is determined from the outcome of the PIT.

For further information – see [MOD guidance on FOI exemptions](#) and 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)