



MOD FOI/EIR Compliance Notes

FOI Exemptions

CN35: Section 39 (Environmental Information Regulations)

Document history

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What this is about:

This note provides an overview on exemption section 39 of the Freedom of Information (FOI) Act – information whose release is governed by the Environmental Information Regulations (EIRs). It also provides an outline of MOD compliance points to consider when engaging section 39 and other exemptions to consider.

Detail:

Section 39 exempts environmental information whose disclosure is governed by the EIRs. Section 39 provides that:

1. "Information is exempt information if the public authority holding it-
 - (a) is obliged by regulations under section 74 to make the information available to the public in accordance with the regulations, or
 - (b) would be so obliged but for any exemption contained in the regulations.
2. The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection in subsection (1).
3. Subsection (1) (a) does not limit the generality of section 21(1)."

Section 39 is subject to a public interest balance, but this should not be considered independently of the operation of the provisions in the EIRs.

MOD compliance points:

- You must first decide whether the information requested is covered by the FOI Act or EIRs and it must then be considered in accordance with the requirements and procedures of the FOI Act or EIRs. Environmental information is defined in Regulation 2(1) of the EIRs.
- If the information requested is environmental information, it is exempt under section 39 of the Act. These requests must be considered for disclosure under the EIRs. The EIRs may require the disclosure of information which would otherwise have been exempt under the FOI Act.
- If only part of the information requested is environmental information, the request may need to be dealt with under both regimes, with the FOI Act regime continuing to apply to that information which does not fulfil the definition of environmental.

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- Where information is environmental information, then the public interest will lie in maintaining the exemption at section 39(1)(a) or (b) of the FOI Act and you must consider requests under the EIRs.
- The same public interest test is applied by both the FOI Act and the EIRs.

MOD Casework example:

MOD has never applied this exemption to an information request.

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