



MOD FOI/EIR Compliance Notes

FOI Exemptions

CN24: Section 28 (UK Internal Relations)

Document history

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What this is about:

This note provides an overview on exemption section 28 of the Freedom of Information (FOI) Act – information which, if disclosed, would prejudice relations between the UK's administrations. It provides an outline of MOD compliance points to consider when engaging section 28 and other exemptions to consider.

Detail:

- Section 28 can be applied to any information that would prejudice or would be likely to prejudice relations between the UK government, the Scottish Administration, the Welsh Assembly and the Northern Ireland Executive.

The exemption is qualified and therefore subject to a PIT.

MOD compliance points:

- The FOI 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 “would be 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 “would be likely to prejudice” is a lower test involving a degree of hypothetical certainty that there may very well be prejudice to UK internal relations if the information were released.
- Notwithstanding such interests may be prejudiced, 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.

MOD Casework Example:

An MOD case concluded that even though the Scottish Parliament and Executive are not responsible for defence matters, it might not be appropriate for MOD to provide information about possible policy or legislation decisions about basing in Scotland ahead of UK government announcements as this, in turn, impacts upon relations with the Scottish Administration.

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

