



MOD FOI/EIR Compliance Notes

FOI Exemptions

CN28: Section 32 (Information held as part of court records)

Document history

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What this is about:

This note provides an overview on exemption section 32 of the Freedom of Information (FOI) Act – information that is only held because it is part of court records, an inquiry or arbitration. It provides an outline of MOD compliance points to consider when engaging section 32 and other exemptions to consider.

Detail:

- Section 32 applies to information held only because it is contained, for the purposes of proceedings in a case, in:
 - A document filed with or placed in the custody of a court
 - A document served upon a public authority
 - Any document created by a court, or member of a court's administrative staff
- Section 32 also applied to information held only because it is contained, for the purposes of an inquiry or arbitration, in:
 - Any document placed in the custody of the person conducting the inquiry/arbitration
 - Any document created by a person conducting the inquiry/arbitration
- The exemption is **absolute** and therefore does not require a Public Interest Test ([See Section 3 – FOI Exemptions - Exemptions Overview for further details.](#))
- The exemption is **class-based** ([See the Different Types of Exemption Compliance Note for further details.](#))

MOD compliance points:

- The department may hold information as a result of being a party to litigation. Examples of court records covered by Section 32 include witness statements, court transcripts and statements of case (particulars of claim, defence, counterclaim, defence to counterclaim and reply)
- Information in records relating to Courts Martials as well as civilian courts may fall under this exemption.
- This exemption **cannot** be used to withhold information which is also held for another purpose by the department, or which relates to proceedings which have not yet begun. Section 32 is intended to exempt the fact certain information is contained within court records, rather than the information itself.

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- If it is unclear whether an inquiry or arbitration is properly governed by statute, and therefore covered by this exemption, the inquiry itself should be approached.
- In order to provide appropriate advice and assistance, a requester may be directed to approach the court involved directly to requests access to any documents made public, and obtain a copy of the final judgement.

Other exemptions to consider:

- Information held within court records may also contain personal data, which would be subject to **Section 40, (personal information)**.

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