



MOD FOI/EIR Compliance Notes

FOI Exemptions

CN30: Section 34 (Parliamentary Privilege)

Document history

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What this is about:

This note provides an overview of the exemption at section 34 – information which is subject to Parliamentary Privilege of the Freedom of Information (FOI) Act. It provides an outline of MOD compliance points to consider when engaging section 34 and other exemptions to consider.

Detail:

- Section 34 applies to information where disclosure would be an infringement of the privileges of either House of Parliament.
- Section 34 needs to be considered where a public authority is required to lay information before Parliament before disclosing it to anyone else. Section 34 will not apply where the information has been published by Parliament.
- Section 34(3) enables the parliamentary authorities conclusively to certify that material to which section 34 applies is exempt.

The exemption is **absolute** and does not require a Public Interest Test. It applies where it is required to avoid a disclosure which would 'infringe' the privileges of either House of Parliament.

MOD compliance points:

- It is unlikely that MOD will need to cite this exemption in responses;

If you consider the application of section 34 relevant, please contact CIO-SPP-IR Ops1 (Tel: xxxxxxxxxxxx) who will contact the relevant Parliamentary FOI officer.

- Only the appropriate House of Parliament authority can conclusively certify that the exemption applies. A certificate may be signed by the appropriate authority (either the Speaker of the House of Commons or the Clerk of the Parliaments at the House of Lords) to serve as evidence that release of the information would constitute an infringement of the privileges of either House of Parliament. There is no ICO appeal mechanism against the issue of a conclusive certificate, following the principle that decisions taken by parliamentary officers are not subject to judicial review.
- Much information previously considered as covered by parliamentary privilege is now routinely released, such as administrative documents and members' expenses. Such information **cannot** be considered to still be covered by parliamentary privilege.
- Information which might be covered by this exemption includes:

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- Committee reports and drafts not otherwise published
- Memos (and drafts) to committees of Parliament
- Lots of information held relating to Parliament's wide range of activities will **not** be considered privileged since it does not relate to proceedings in Parliament; such as:
- Unpublished working papers of a select committee of either House
- Drafts of motions, bills or amendments and associated correspondence

Other exemptions to consider:

- Information still in draft form or where there are Ministerial communications may be withheld under **section 35 (formulation of government policy)**.
- Information is exempt under **section 36 (effective conduct of public affairs)** if in the reasonable opinion of a qualified person its disclosure would prejudice the effective conduct of public affairs.
- Communications between MPs and Ministers about constituents' issues may be exempt under **section 40 (personal data)** to the extent that they constitute personal information or **section 41 (information provided in confidence)**.
- **Section 42 (legal professional privilege)** may also apply to some of the material covered by section 34.

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