Section 29 - The Economy

Chapter 01: The exemption under Section 29

Stating the exemption:
Section 29 of the Freedom of Information Act provides that:

1. Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
   - **(a)** the economic interests of the United Kingdom or of any part of the United Kingdom, or
   - **(b)** the financial interests of any administration in the United Kingdom, as defined by section 28(2).
2. The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

1.1 Explanation of General Terms

'economic interests': A central aim of government is economic and financial management which supports the maintenance of a stable macroeconomic framework, maintains sound public finances and promotes UK economic prospects and productivity. Associated with these are the oversight of a competitive financial services market and efficient tax and benefits systems. The economy exemption of the FOI Act exists in recognition of the instability and economic damage to the wider economy that could be caused by the disclosure of some information.

'financial interests': Government administrations seek to conduct their financial dealings efficiently and so reduce costs to taxpayers. Public accountability necessitates that sufficient information is available to assess the probity and cost-effective nature of such dealings. This needs to be balanced by the damage to an administration's financial interests that could arise if too much information is disclosed about its financial dealings or after too short a time period. The financial interests exemption of the FOI Act exists in recognition of the long-term cost to the taxpayer that could be caused by the very disclosure of some information and the premature disclosure of other information.

'an administration in the United Kingdom': section 28(2) defines an administration in the UK as:

1. the government of the United Kingdom,
2. the Scottish Administration,
3. the Executive Committee of the Northern Ireland Assembly, or the National Assembly for Wales.

Chapter 02: When to use the exemption under section 29

Type of exemption

2.1 Section 29 is a prejudice-based exemption. Thus the test for exemption is whether or not the interests referred to in the section would, or would be likely to, be prejudiced by disclosure. Notwithstanding that 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.

When could releasing information cause prejudice to the economic or financial interest of the UK or any part of the UK?

2.2 Recent government policy has been consistent with bringing greater transparency to economic and financial policy-making. This has been to enhance the credibility and public understanding of policy-making (e.g. the disclosure Monetary Policy Committee meeting minutes); to reduce the long-term cost of the government borrowing (e.g. the annual borrowing plans and gilt auction calendar); and to improve regulatory decision-making (e.g. the Financial Services Authority's obligation to consult on rule changes). Where disclosure is believed not to damage the economic interests of the UK or the financial interests of the government, government policy has been towards transparency (e.g. publication of foreign currency intervention). Recent disclosure policy therefore provides a baseline against which to consider the potential of disclosure to cause prejudice.

2.3 The economic interests of the UK, or of a part of the UK, covers a broad spectrum of subject matter, and could typically be prejudiced, for example, by the disclosure of sensitive information about:

- Tax, National Insurance and benefits policy;
- IMF loan programmes;
- Financial stability discussions and support operations;
- Firm-specific financial regulatory information;
- Discussions with overseas financial authorities;
- Analysis of macro-economic policy;
- Market trends including:
    - Interest rates and the framework of monetary policy;
    - Forecasts of Government borrowing; and
- Analyses of the effects of increases in public spending on wage and inflation pressures.

2.4 Many of the disclosures that have a clear potential to cause prejudice will be time-sensitive, and may be made as a matter of routine after a particular event. Typical examples would include information relating to the Budget, which must be withheld until the Chancellor has delivered the Budget (or Pre Budget report) statement(s), or information relating to changes to interest rates. Premature release could cause market instability (prejudicing the economic interests of the UK) or the use of improper arrangements to minimise the effect of forthcoming tax changes (prejudicing the financial interests of the government).

2.5 The financial interests of an administration in the UK again covers a broad spectrum of subject matter, and could typically be prejudiced by, for example, the disclosure of sensitive information about:

- Allocation of gilts and Treasury bills at auctions/tenders to particular investors or market-makers;
- Government cash dealing and banking arrangements;
- UK reserves and foreign currency liabilities management and foreign exchange dealings;

- Timing of large cash and stock transactions in the future;
- Intended investment strategies;
- Contract details of PFI and PPP deals;
- Auction bidding details (e.g. gilts, spectrum licenses); and
- Finances of public corporations.

2.6 Disclosure of options that have not been, or are not being, pursued might also cause prejudice. The knowledge that certain options have been under active consideration could generate harmful uncertainty about the future course of policy, especially if options have either been deferred or put back on the shelf rather than being rejected outright. Were it to be disclosed that certain changes to the tax system were under consideration, that could lead people to alter their financial arrangements so as to pre-empt the possible changes, to the detriment of the financial interests of the government. Similarly, were it to be known that serious consideration were being given to fundamental changes to the monetary framework, that could lead to financial instability prejudicial to the economic interests of the UK. If policy decisions against change to the monetary framework were known to be finely balanced, with a reasonable prospect of the scales tipping the other way at some point in the future, then this could materially damage the credibility (and hence effectiveness) of monetary policy, which could ultimately damage the economic interests of the UK. Clearly, section 35 (information relating to the formulation or development of government policy) will also be relevant here.

2.7 Care also needs to be taken when considering the release of, for example, information concerning auction bidding and tendering processes. In some instances, disclosure of information encourages active bidding by competitors, reduces risks to bidders and contributes to a better financial outcome for the government (and, therefore, for the taxpayer). However, on other occasions, if bidders know that competitors will see details of their bidding strategies, this can permit collusive or domineering signalling by counterparties during the process or introduce increased risks to bidders in future competitions if their strategies are revealed, so leading to a worse financial outcome in the long run for the government. Section 43 (Commercial interests) may also be relevant here.

2.8 The following is a non-exhaustive list of some examples of potentially prejudicial disclosures capable of falling within the terms of this exemption.

Information contained in Standing Committee and financial stability papers (of HM Treasury, Bank of England, Financial Services Authority): Indications that a particular institution, group of institutions or a country's financial system were being discussed could prompt a reaction that resulted in financial instability which would have a detrimental impact upon the economic interests of the UK or of part of the UK. Such instability might require action (for example the Bank of England acting as lender of last resort), which would also have a detrimental impact on the financial interests of the government. It could in addition lead unnecessarily to financial losses to the institutions being discussed, investors or depositors, in which case section 43(2) would be relevant since disclosure of the information would, or would be likely to, prejudice the commercial interests of a person.

Vulnerability assessments: An assessment of the vulnerability of, for example, emerging market economies might well be released after a suitable period of time, but immediate release could contribute to financial instability and so prejudice the economic interests of (part of) the UK.

Gilt auctions: An example of short-term sensitivity is the size of offering at a gilt auction. Should details of planned issuance be released to one or more gilts counterparties ahead of the usual announcement to the wider market ahead of an auction, this could influence the price achievable at auction and, in turn, the cost of borrowing for the government, thus prejudicing the financial interests of the government. It could also prejudice the government's reputation for fairness and transparency, deterring some investors from future auctions, again prejudicing the financial interests of the government. Also, the allocation of stock at the auction at what price is commercially sensitive for the bidder - the release of such data would result in lower participation in UK auctions and higher interest rates, potentially harming the economic interests of the UK. Section 43 may again be relevant here.

Budget information: The release of any information from the Budget - ahead of its formal announcement - particularly in relation to changes to tax and National Insurance rates or in the taxation system, could enable people pre-emptively to amend their financial affairs, reducing the tax payable to government, thus prejudicing the financial interests of the government.

Government cash flows and borrowing requirements: Premature or limited disclosure of the government's cash flows or borrowing requirements would be market sensitive information. Disclosure of market sensitive information to a participant in a market in response to an application under the Act would put that participant at an advantage with respect to other market players, and could ultimately harm the UK economy by deterring less well-informed investors from investing in the UK in the future. Disclosure of the information that the government would be selling Sterling in order to make a large payment on a particular day, under a defence contract involving contractors in another country, would lead to pre-emptive selling of Sterling on the foreign exchanges, depressing the price that the government could obtain, thus prejudicing the government's financial interests.

Terrorism reinsurance: Information supplied by Pool Re, the government-backed terrorism reinsurer, would most likely be covered by section 43 (as prejudicing the commercial interests of any person) but there may be cases where disclosure of information about claims could prejudice the economic interests of (part of) the UK.

Public Interest Test

2.9 When applying the exemption, the public authority must clearly (and demonstrably) analyse the weight of the public interest that attaches to disclosing the information on the one hand, and withholding it on the other, and be able to articulate it. There is legitimate public interest in the UK's economic policy, taxation and financial management. Disclosure of some information will promote public understanding and allow informed dialogue. Whilst being alert to the risk of prejudice, information should be disclosed wherever possible. That said, there will be cases where, depending upon the particular facts relevant to the circumstances of the case, the disclosure of information could be covered by section 29.

2.10 Particular factors that will tend to point towards the public interest being served by disclosing the information include:

- The need to hold public authorities to account for their stewardship of public resources; and
- The objective of building public trust and establishing transparency in the operation of the economy so as to increase the credibility of economic policy decision-makers and enhance the UK's reputation as a fair and honest business environment.

2.11 Factors that will tend to point towards the public interest being served by withholding information relating to the economy include:

- Where disclosure could result in financial instability of institutions or countries, either in the UK and abroad;
- Where disclosure could pre-empt announcements on taxation, National Insurance or benefits;
- Where selective disclosure of the information could affect financial markets. Financial regulation and government policy requires the transparent release of market-sensitive data simultaneously to the whole market. This reinforces confidence in market integrity by investors and liquidity providers, thereby reducing the cost of capital in financial markets. Selective or premature release of information undermines confidence in dealing in UK markets;
- Where information has been obtained from confidential sources (e.g. overseas governments or regulators) who would be damaged by disclosure and who will not provide information in the future; and
- Where the information consists of assessments of (an institution's/economy's) viability.

It would be difficult to argue that the public interest is best served by releasing information with these consequences.

The public interest is not static. The need to withhold information may increase or diminish as time passes, and the balance may tip either way.

Chapter 03: Consultation

3.1 The majority of requests for information relating to the economy, and the disclosure of which would raise questions about the application of this exemption, are likely to be directed to HM Treasury and other Chancellor's departments and related bodies. However, other departments will also hold information the disclosure of which would have an impact on the economy or the UK's financial interests. Recognising the expertise of HM Treasury, it is hoped that the latter's officials will be contacted where possible about the impact of any disclosure. This is in keeping with good practice expressed in the Codes of Practice issued under section 45 of the FOI Act. Responsibility for any disclosure or non-disclosure ultimately rests with the department to which the request has been submitted.

3.2 HM Treasury is the lead organisation for advice on section 29.

Chapter 04: Interrelation with other exemptions

4.1 Other FOI exemptions are likely to be relevant to much information covered by the economy exemption. Included amongst these would be:

Section 21 Information accessible to the applicant by other means: government, and in particular the Treasury, publishes a vast amount of economic information which could provide a full response to a request.
Section 22 Information intended for future publication: as indicated above, much information is exempt from disclosure for a limited period of time and is then published as a matter of routine.
Section 27 International relations: information about overseas economic interests where disclosure would, or would be likely to, prejudice relations between the UK and any other state, relations between the UK and any international organisation (such as the IMF or World Bank), or international court, the interests of the UK abroad, or the promotion or protection by the UK of its interests abroad.
Section 30: Investigations and proceedings conducted by public authorities and
Section 31 Law enforcement: In certain circumstances departments such as the Inland Revenue and HM Customs and Excise might prosecute cases which revealed information whose disclosure might harm the UK economy.
Section 33 Audit: some financial information may be required for audits, this exemption protects information the disclosure of which would prejudice the exercise of functions in relation to the audit of the accounts of other public authorities, or the examination of the economy, efficiency and effectiveness with which other public authorities use their resources.
Section 35 Formulation of government policy: disclosure of economic options being considered (for example to tax policies or closing tax loopholes) relates to the formulation or development of government policy.
Section 43 Commercial interests: government may hold information which constitutes a trade secret, or the release of which would, or would be likely to, damage the commercial interests of any person or organisation.
Section 44 Information the disclosure of which by the public authority holding it is prohibited by or under any enactment, or is incompatible with any Community obligation. This would be relevant to information falling within, for example:

- the restriction on the disclosure of confidential information in section 348 of the Financial Services and Markets Act 2000, and the relevant directive restrictions on the disclosure of information (listed in regulation 1 of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001); and
- the restriction on the disclosure of information obtained for monetary policy or cash ratio deposit purposes in section 37 of the Bank of England Act 1998.