

Reasons restricted

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Explanation of reasons

- By Virtue of Paragraph 3

Information relating to the financial or business affairs of any particular person (including the authority holding that information)

Condition:

Information is not exempt if it is required to be registered under-

- The Companies Act 1985
- The Friendly Societies Act 1974
- The Friendly Societies Act 1992
- The Industrial and Provident Societies Acts 1965 to 1978
- The Building Societies Act 1986 (recorded in the public file of any building society, within the meaning of the Act)
- The Charities Act 1993

Information is exempt to the extent that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town & Country Planning General Regulations 1992(a).

Information falling within **any** of paragraphs 1-7 is not exempt by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

Guide on Public Interest and Confidentiality Considerations

A. Relevant public interest factors

The relevant public interest factors will vary depending on the facts of each case. The public interest test may be served where allowing access to the information would:

1. further the understanding of and participation in debating issues of the day;

2. facilitate transparency and accountability in and enhance scrutiny of decisions taken by the Council;
3. facilitate transparency and accountability in the spending of public money;
4. help individuals understand the decisions made by the Council affecting their lives and even in some cases, assist individuals in challenging those decisions;
5. bring to light information affecting public safety or danger to the environment;
6. contribute to the administration of justice and enforcement of the law or the prevention or detection of crime or the apprehension or prosecution of offenders;
7. protect the public from unsafe products or rogue traders or practices.

B. Irrelevant public interest factors

In deciding whether a disclosure is in the public interest, the following is not taken into account:

1. possible embarrassment to the Council or its Officers;
2. possible loss of confidence in the Council or another public body;
3. the seniority of persons involved in the subject matter;
4. the risk of the public misinterpreting the information.

C. Weighing the public interest on a case by case basis

The exemptions ensure a proper balance is achieved between:

- the right to know;
- the right to personal privacy; and
- the delivery of effective government.

Because the rights of access are so important, any decision not to disclose information is made with great care. Therefore it is necessary to:

1. identify the relevant public interest factors;
2. list the factors for and those against disclosure;
3. evaluate the relevant public interest factors, e.g. no weight, minimal weight, moderate weight or considerable weight;
4. Determine where the balance lies.

In evaluating the effect of disclosing information that may fall within an exemption, it is necessary to consider the full context of that disclosure, and to make a risk assessment of the disclosure.

D. Information provided in confidence

1. The information is provided to the Council with explicit conditions to its subsequent use or disclosure.
2. Conditions are not stated explicitly but are obvious or implied from the circumstances. For instance, a patient does not need to tell a doctor not to pass his/her information onto a journalist: it is simply understood that those are the rules.
3. The information must have been obtained by the Council from another person who may be an individual, a company, a local authority or any other 'legal entity'.

Information which the Council has generated itself is not classed as 'information provided in confidence' although, such information could be classed as 'commercially sensitive information'.

4. Disclosure of the information would give rise to an actionable breach of confidence. In other words, if the Council disclosed the information, the provider or a third party could take the Council to court.

E. When can confidential information be disclosed?

The duty of confidence is not absolute and the courts have recognised three broad circumstances under which confidential information may be disclosed:

1. Disclosures with consent. If the person to whom the obligation of confidentiality is owed (whether an individual or an organisation) consents, disclosure will not lead to an actionable breach of confidence.
2. Disclosures which are required by law. 'Law' in this context includes statute, rules of law, court orders etc.
3. Disclosures where there is an overriding public interest. There are no hard and fast rules here. The important point to note, however, is that the courts have generally taken the view that the grounds for breaching confidentiality must be strong ones. Confidentiality is recognised as an important concept in itself. In balancing confidentiality against the public interest, the task is not to weigh up the impact upon the individual against the good of society, but rather the good of society against the importance of preserving confidences.