

21. DEALING WITH REQUESTS FOR MPs' CORRESPONDENCE RELATING TO CONSTITUENTS

The Department may receive FOI requests asking specifically for MPs' correspondence or for information that is included in communications with MPs. When dealing with these requests, it is vital to protect the personal details of, or other confidential information passed on by, constituents to their MPs. Many of the same considerations apply in the case of other elected representatives such as councillors and NI Assembly members.

If an MP has written to the Department passing on information from or relating to a constituent, the presumption should be that the information **is not** disclosed. Information is likely to be exempt under one or more specific exemption.

In all cases, the Department should consult the MP concerned when information about their correspondence has been requested under the Act. The MP may in turn want to consult their constituent. The Department should not contact the constituent directly unless the MP suggests that this would be appropriate. This consultation is important so that:

- the MP is aware that a request has been made; and
- the MP can, where it may not be apparent from the correspondence, give the Department information about the correspondence and the potential effects of releasing it.

The Department needs this information to ensure that it does not release information inappropriately or unlawfully.

Relevant Exemptions

Personal Details

Where information covered by a request contains personal details of a private individual, the use of section 40 to protect the information should be considered. Section 40 is an absolute exemption that protects personal data, linking with the Data Protection Act 1998. Information must not be released where to do so would breach any of the data protection principles. Particular consideration should be given to whether release of the information would be fair and lawful (the first data protection principle). Where an MP's letter contains personal data about a constituent, it will generally be unfair to release that information. Release would be likely to be a breach of the first data protection principle.

The Information Commissioner and the Information tribunal have drawn a distinction between personal data relating to the private life of an MP and that relating to an MP's public responsibilities. This distinction may also be relevant, for example, if an MP is writing not in a representative capacity but as a local resident. In the latter case, the information in the correspondence

is more likely to be the MP's own personal data and covered by the exemption in section 40.

The contents of an MP's letter to the Department is also likely to be the MP's personal data. Before making a decision on whether to release such information, the Department would need to consider:

- the capacity in which the MP has written;
- the likely expectations of the MP about the disclosure of the information;
- the effect which disclosure would have on the MP;
- the content of the information; and
- any public interest in the disclosure of the information.

Confidential Information

Where information covered by a request contains confidential information, passes on by a constituent, it is likely that section 41 should be used to protect the information. Section 41 provides an absolute exemption for genuinely confidential information.

MPs and their constituents do not have the same confidential relationship as a doctor and patient or lawyer and client. However, MPs often assure constituents that their dealing with them are confidential and there is usually in any event a legitimate expectation by a constituent that information disclosed in their dealings with their MP will be treated as confidential. This means that letters sent on behalf of a constituent may be subject to a duty of confidence.

Where an FOI request is made for this information, the Department will have to consider whether the constituent, the MP or anybody else would be able to bring an action against it for breaching confidence if the contents of their letter were disclosed.

Other Exemptions

Depending on the information contained in the correspondence, some other exemptions might apply to the information.

Sections 30 and 31 are qualified exemptions for information relating to investigations and law enforcement. MPs can receive information from constituents about alleged criminal activity or other misconduct, which they then pass on to the relevant authority. There are likely to be significant public interest arguments against disclosing such information, but these always have to be balanced with the public interest factors in favour of disclosure. This is the case in respect of all qualified exemptions, including sections 35, 36 and 43 referred to below.

Section 34 is an absolute exemption for information about proceedings of the Houses of Parliament. The correspondence of MPs to public authorities on constituency business is not covered by parliamentary privilege, but where an

MP is a member of a relevant parliamentary committee, the Department may need to consult the MP and the relevant House authorities to determine whether section 34 applies to the information in question.

Section 35 is a qualified exemption applying to information held by government which relates to the formulation of government policy. This could apply, for example, to information sent by an MP to a government department to illustrate a current policy issue.

Section 36 is a qualified exemption which can be applied if the release of information would or would be likely to have a prejudicial effect on the conduct of the Department's affairs.

Section 43 is a qualified exemption which covers trade secrets and information when disclosure would damage the business interests or financial position of any person. For example, if an MP was writing to a public authority with information supplied by a business, releasing the information might give their competitors an unfair advantage.

Correspondence from MPs may contain environmental information, and requests for this should be considered under the Environmental Information Regulations.