ProvePrivacy

GUIDE

# SAR Exemptions: Crime, Law and Public Protection

A subject access request can land on a desk in the middle of an active investigation. The Data Protection Act 2018 lets you withhold data where disclosure would prejudice a crime, tax or immigration matter, but the exemption is deliberately narrow. It applies only to the extent prejudice would actually occur, not as a blanket withhold across an entire file. Getting this wrong in either direction, over disclosing into a live investigation or over withholding a routine request, causes real problems.

## 1. The prejudice test runs through this whole category

Most of the exemptions in this guide share the same shape. Article 15 UK GDPR does not apply to the extent that responding to the request would be likely to prejudice a specific, named purpose: preventing or detecting crime, collecting tax, maintaining immigration control, or a regulator carrying out its function. The words to the extent are doing the work here. You assess prejudice document by document, sometimes line by line, not once for the whole case file.

This is different in feel from the Schedule 3 exemptions covered in the health, social work, education and child abuse guide: there the question is harm to a person, here it is prejudice to a process. The discipline is the same though. A general assumption that disclosure would cause a problem is not evidence that it would.

**WHY PARTIAL WITHHOLDING IS THE NORM**

The ICO expects most crime and law related responses to be redacted rather than refused outright. If prejudice only affects part of a document, for example the paragraph identifying an informant, the rest of the document is still disclosable.

## 2. Five bases, one common test

Each basis below sits in Schedule 2 to the Data Protection Act 2018 and shares the prejudice test, but each applies to a different function and a different set of controllers.

SCHEDULE 2, PART 1, PARA 2

### Crime and taxation: general

Article 15 does not apply to data processed for preventing or detecting crime, apprehending or prosecuting offenders, or assessing or collecting tax or duty, to the extent disclosure would be likely to prejudice any of those purposes. A second controller who receives the data for the same statutory purpose can rely on the same exemption to the same extent as the original controller.

- Applies to any controller processing for these purposes, not only the police or HMRC.
- Prejudice must be likely, not merely possible, and must relate to the specific request.

In practice: ask the investigating team whether disclosure would genuinely tip off a suspect or compromise a case before relying on this exemption, rather than applying it automatically because a crime reference exists on the file.

SCHEDULE 2, PART 1, PARA 3

### Crime and taxation: risk assessment systems

A narrower carve out protects the classification a person receives from a government department, local authority or housing benefit authority risk assessment system, where disclosure would stop the system operating effectively. It only covers systems used to assess tax, duty or benefit fraud risk, or crime involving unlawful use of public money.

- Protects the risk score or flag itself, not the underlying case file.
- Limited to public sector risk scoring systems named in the Schedule.

In practice: treat this as a narrow exemption for the scoring mechanism, and assess the rest of the file under the general crime and taxation test instead.

SCHEDULE 2, PART 1, PARA 4

## Immigration

Data processed to maintain effective immigration control, or to investigate activity that would undermine it, is exempt to the extent disclosure would be likely to prejudice either purpose. This exemption has been narrowly read by the courts and must be applied case by case, not as a standing policy that all immigration data is exempt.

- Covers a wider set of GDPR rights than most exemptions in this guide, including erasure and objection, not just access.
- Case law, including the Open Rights Group litigation, has pushed organisations toward more individualised assessments; treat this as an evolving area.

In practice: record the specific prejudice you expect for each request rather than citing the exemption as a category level policy, since a blanket approach is the version most likely to be challenged.

SCHEDULE 2, PART 1, PARA 5

## Information required to be disclosed by law or in connection with legal proceedings

Three related exemptions apply where you are legally obliged to make information public, where an enactment, rule of law or court order requires disclosure, or where disclosure is necessary for legal proceedings, obtaining legal advice, or establishing, exercising or defending legal rights.

- Covers routine statutory disclosures, such as public registers, as well as one off obligations created by a court order.
- The legal proceedings limb is often confused with legal professional privilege, which is a separate exemption; check which one actually applies.

In practice: identify which of the three limbs you are relying on and record the specific enactment, order or proceeding, rather than citing legal proceedings generically.

SCHEDULE 2, PART 2, PARA 7

### Protecting the public

A separate exemption protects functions designed to protect the public against dishonesty, malpractice, incompetence or financial loss, for example functions exercised by financial regulators, health and safety bodies, and ombudsmen, to the extent disclosure would prejudice the proper discharge of the function. The function must be conferred by an enactment, exercised by the Crown or a government department, or be a public function exercised in the public interest.

- Includes regulators of financial services, workplace health and safety, charities, and complaints handling bodies such as ombudsmen.
- The Competition and Markets Authority has its own specific limb covering competition and consumer protection functions.

In practice: confirm the function in question is actually one of the protective functions listed in the Schedule before relying on this exemption, since it does not cover every regulator's every activity.

**KEY TAKEAWAY**

The words to the extent mean partial disclosure is usually the right outcome in this category, not full refusal. A withheld file with no redaction log is a much harder position to defend than a disclosed file with clear, documented redactions.

## 3. The pitfall to avoid

Most errors in this category come from treating the presence of a crime reference as a reason to withhold an entire file, rather than assessing prejudice at document level.

**THE PITFALL**

Blanket withholding an entire file because a crime reference exists somewhere in it.

**THE REMEDY**

Apply the prejudice test document by document, or paragraph by paragraph. Redact the specific content that would cause prejudice and disclose the rest, and log your reasoning for each redaction rather than a single note covering the whole file.

## Conclusion: prioritise proportionality, evidence and documentation

Crime, tax and immigration exemptions exist to protect an active process, not to give your organisation an easy way to avoid a difficult SAR. Treat every one of the five bases in this guide as a document level test, and be ready to explain, in writing, exactly what prejudice you expected and why.

Where a live investigation is involved, loop in whoever owns that investigation before you finalise your response, since they are best placed to say what disclosure would actually prejudice.

A few checks worth running before you rely on any exemption in this group:

- **Purpose first:** confirm which of the five bases actually matches your processing purpose, since each has a different scope.
- **Prejudice, not preference:** identify the specific harm disclosure would cause to the process, not just discomfort for your organisation.
- **Redact, then disclose:** default to redacting the prejudicial content rather than withholding the whole document.
- **Log the reasoning:** record which limb you relied on and why, for every redaction.

### New: DSAR redaction, included in your subscription

Redacting prejudicial crime, tax or immigration content by hand, without losing the rest of a document to an all or nothing refusal, is exactly what the ProvePrivacy platform's DSAR Redaction tool is built for. Ask your account manager for a walkthrough.