

SAR Exemptions: Regulation, Parliament and the Judiciary

Regulators, Parliament and the courts all need room to operate without a subject access request compromising an investigation, breaching parliamentary privilege, or undermining judicial independence. The six exemptions in this guide protect a wide range of institutions, from the Bank of England to the Charity Commission, but they share only two underlying structures.

1. Two different tests operate side by side

Four of the six protections in this guide, audit functions, the Bank of England, and the two regulatory functions groups, only apply to the extent that disclosure would be likely to prejudice the proper discharge of the function, the same prejudice test used throughout Schedule 2. The other two, parliamentary privilege and judicial functions, along with Crown honours, are largely absolute: no prejudice test is applied for their core limbs, because Parliament and the judiciary sit outside the reach of these GDPR obligations as a matter of constitutional principle, not practical harm.

WHY REGULATORS GET A NAMED LIST, NOT A GENERAL RULE

The regulatory functions exemptions cover an unusually long, specific list of bodies, from the Financial Conduct Authority to the Pensions Ombudsman to the Charity Commission. If your organisation is itself a regulator, check the named list in paragraphs 10 and 11 before assuming this exemption applies to you.

2. Six protections, six named institutions

SCHEDULE 2, PART 2, PARA 8

Audit functions

Personal data processed to discharge a function conferred by enactment on the Comptroller and Auditor General, or the equivalent Auditor General for Scotland, Wales or Northern Ireland, is exempt to the extent disclosure would prejudice that audit function.

In practice: this protects the audit body's own working papers and findings while an audit is under way, not the underlying data of the organisation being audited.

SCHEDULE 2, PART 2, PARA 9

Functions of the Bank of England

Data processed for a relevant Bank of England function, monetary policy, its public functions under the Financial Services and Markets Act 2000, or the Prudential Regulation Authority's functions, is exempt to the extent disclosure would prejudice the proper discharge of that function.

In practice: this is specific to the Bank's own regulatory and monetary roles; a firm being regulated by the PRA cannot rely on this exemption for its own records.

SCHEDULE 2, PART 2, PARAS 10 TO 11

Regulatory functions

A long list of named regulators, including the Information Commissioner, the Financial Conduct Authority, the Pensions Regulator, the Financial Ombudsman and the Charity Commission, along with functions relating to legal services, health service and children's services complaints, are exempt to the extent disclosure would prejudice their proper discharge.

In practice: check the specific list in paragraphs 10 and 11 before relying on this exemption, since it only covers the named bodies and functions, not regulators generally.

SCHEDULE 2, PART 2, PARA 13

Parliamentary privilege

The listed GDPR provisions, along with the duty to notify a data subject of a personal data breach, do not apply where this is necessary to avoid infringing the privileges of the House of Commons or House of Lords. No prejudice test applies where parliamentary privilege is genuinely engaged.

In practice: this is a narrow, specialist exemption; most organisations will never need it, and it should be applied with parliamentary or constitutional advice.

SCHEDULE 2, PART 2, PARA 14

Judicial appointments, independence and proceedings

Data processed to assess a person's suitability for judicial office or King's Counsel is exempt outright, as is data processed by an individual or court acting in a judicial capacity. Beyond those two absolute limbs, other data is exempt to the extent disclosure would prejudice judicial independence or judicial proceedings.

In practice: distinguish the two absolute limbs, appointments and acting judicially, from the third, prejudice based limb, which alone requires you to show likely harm.

SCHEDULE 2, PART 2, PARA 15

Crown honours, dignities and appointments

Data processed for the Crown to confer an honour or dignity is exempt outright, as is data processed to assess suitability for a short list of Crown appointments, including archbishops and diocesan bishops, lord-lieutenants and the Poet Laureate. No prejudice test applies to either limb.

In practice: one of the narrowest exemptions in Schedule 2, limited to the honours system and a specific, named list of ecclesiastical and ceremonial offices.



KEEPING THE RECORD STRAIGHT

Logging which of these six exemptions you relied on, and for which specific record, gives you the same audit trail a regulator would expect to see if your response were ever challenged. The ProvePrivacy platform keeps this log automatically for every SAR response you handle.

3. The pitfall to avoid

The absolute exemptions in this group are genuinely narrow, and stretching them to cover more than Schedule 2 describes is the most common error.

THE PITFALL

Assuming an absolute exemption, such as parliamentary privilege or Crown honours, applies more broadly than its genuinely narrow scope.

THE REMEDY

Reserve the absolute exemptions for the exact circumstances Schedule 2 describes, and fall back to the ordinary prejudice test for anything not explicitly listed.

Conclusion: prioritise institutional independence, precision and the correct test

Six different institutions, four prejudice based tests and two largely absolute exemptions sit inside this one guide, and treating them interchangeably is the fastest way to rely on an exemption that will not survive scrutiny. Identify the specific function or office in play, apply the correct test, whether that is prejudice or an absolute bar, and record your reasoning.

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

- **Name the function:** identify exactly which of the six protections applies before assessing prejudice.
- **Prejudice or absolute:** confirm whether a prejudice test applies, or whether the exemption is absolute.
- **Check the named list:** for regulatory functions, verify the body or function is actually named in paragraphs 10 or 11.
- **Record your reasoning:** log which exemption applied and why, for every request.

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Where only part of a record touches a regulator, Parliament or the courts, separating that part from the rest of the file rather than withholding the whole document is exactly the kind of precise handling the ProvePrivacy platform's DSAR Redaction tool is built for. Ask your account manager for a walkthrough.

