FOI Exemptions: Already Public or Due for Publication

Sections 21 and 22 of the Freedom of Information Act 2000 deal with information the requester can already get, or will be able to get soon. Section 21 is absolute and applies where the information is reasonably accessible by other means. Section 22 is qualified and applies where you hold the information with a view to publishing it later. Section 22A, a related exemption, protects information from continuing research programmes.

AT A GLANCE

	Section 21	Section 22
Subject	Information accessible to the applicant by other means	Information intended for future publication
FOISA equivalent	Section 25	Section 27
Environmental information	No direct equivalent. Check what the requester can already access	Regulation 12(4)(d) in part
Type	**Absolute**	**Qualified**
Main test	Can this applicant reasonably access it another way	Did you hold it with a view to publication when the request was made, and is withholding reasonable
Neither confirm nor deny	Not applicable	Section 22(2), where confirming would itself disclose the information

1. When is information reasonably accessible?

Section 21(1) exempts information that the applicant can reasonably access by means other than a request under the Act. It is absolute, so there is no public interest test. Three points help you apply it.

- **Cost is not a bar.** Information can still count as reasonably accessible even if the applicant must pay for it, for example a printed publication on sale.
- **A legal duty to provide counts.** Information that you or anyone else must provide to the public on request, free or for a fee, is treated as reasonably accessible.
- **Your own publication scheme.** Information you hold does not count as reasonably accessible merely because you would provide it if asked. It does count if it is made available under your publication scheme, with any fee set out in the scheme or determined under it.

The test is about this applicant. If a requester says they cannot use the internet, for example, you need to consider whether the information is reasonably accessible to them. Where it is only partly accessible, apply the exemption to that part.

Do not simply refer to a website without checking the link works and the information is easy to find. A good response gives the exact location.

2. What does section 22 protect?

Section 22(1) applies where all three of these are true.

1. You hold the information with a view to its publication, by you or by anyone else, at a future date, whether or not that date is determined.
2. You already held it with that intention when the request was made.
3. It is reasonable in all the circumstances to withhold it until the publication date.

The intention to publish must be settled at the time of the request. A loose plan to publish at some point is not enough. Evidence such as a planned release calendar, a statutory duty to publish or a published schedule helps.

Reasonableness is the point in dispute. An imminent, fixed publication date supports withholding. A vague date years away does not. Consider whether the requester has a pressing need, and whether the delay is proportionate.

Because section 22 is qualified, you must also weigh the public interest. Where publication is imminent, the balance often favours withholding, but you must record why.

3. What is section 22A?

Section 22A protects information obtained in the course of, or derived from, a continuing programme of research, where there is an intention to publish the results and disclosure before then would, or would be likely to, prejudice the programme, the interests of those involved or the authority. It is qualified. It matters most to universities and research bodies, whose researchers need to publish first. Always check the current wording before relying on it.

4. What must your refusal say?

Section 17 requires you to name the exemption and explain why it applies. For section 22, include when publication is expected, or say plainly that no date is fixed. For section 21, include where the information can be found, because good advice and assistance under section 16 means helping the requester find it.

WORKED EXAMPLE (ILLUSTRATIVE)

A university receives a request for its annual report on student complaints, and for the underlying monthly statistics.

- **Annual report.** It was published on the university website last week. The requester has given an email address and has no stated difficulty with access. The university applies section 21, gives the web address and confirms the file is available there.
- **Monthly statistics.** These feed a quarterly report that the university is committed to publishing in three weeks, and the plan is documented in its publication calendar. It applies section 22, concludes that withholding for three weeks is reasonable and weighs the public interest. It tells the requester the expected date.
- **A draft evaluation of a continuing research project.** The researchers intend to publish next year, and disclosure now could prejudice their results. The university considers section 22A and records its reasons.

The case record notes each section, the evidence of intention to publish and the date given.

5. Managing signposting and planned publication: spreadsheet or structured case workflow

Task	Spreadsheet and email	Structured case workflow
Recording where information is published	A link in an email	Location noted in the case record and the response
Tracking a planned publication date	A diary reminder	Case notes with the date and the exemption relied on
Tracking the deadline	Bank holidays counted by hand	Deadline tracking that accounts for bank holidays
Closing a request that is not disclosed	Manual letter and file note	Streamlined closure for requests that are not disclosed

Frequently asked questions

Can we just point to our website?

Yes, if the requester can reasonably access the information there. Give the exact location, and check it for accuracy.

Does section 21 apply if there is a fee?

Yes. A fee does not stop information being reasonably accessible.

Can we withhold under section 22 if we have not decided a date?

Yes, in principle, but the intention to publish must exist at the time of the request, and withholding must be reasonable.

Do we have to confirm or deny under section 22?

Section 22(2) removes the duty only if confirming or denying would itself disclose information that is intended for publication.

THE PITFALL

Pointing the requester to a website without checking that they can reach the information.

THE REMEDY

Give the exact location, check that it works and consider whether this applicant can reasonably access it.

KEY TAKEAWAYS

- Section 21 is absolute. Section 22 is qualified.
- Reasonably accessible is judged for this applicant, and cost does not remove it.
- Your publication scheme affects what counts as reasonably accessible.
- For section 22, the intention to publish must exist at the date of the request.
- Tell the requester where to find the information, or when it is due.

Conclusion: prioritise reasonable access, clear signposting and evidence of intent

Where information is already published, a precise pointer is often the quickest correct answer. Where it is due for publication, keep the evidence of the plan from the date of the request.

HOW PROVEPRIVACY HELPS

ProvePrivacy DSAR & FOI (Lite) tracks the 20 working day deadline and bank holidays for each request and keeps the case notes, exemptions and reasons together. A streamlined closure process for requests that are not disclosed means you can close a section 21 or section 22 response quickly, while the audit log keeps the evidence of why.

Where this fits in the FOI process

Sections 21 and 22 are often the first exemptions to check, because they can resolve a request early. See our FOI process hub for where they sit in the sequence.

SCOTLAND AND ENVIRONMENTAL INFORMATION

In Scotland, section 25 of the Freedom of Information (Scotland) Act 2002 covers information otherwise accessible and section 27 covers information intended for future publication. Environmental information has no direct equivalent of section 21, but regulation 12(4)(d) covers material still in the course of completion, and is subject to the public interest test. See our guides on EIR exceptions and on FOISA and the EIRs in Scotland.

Related guides

- FOI Exemptions: Policy, Advice and the Conduct of Public Affairs
- FOI Exemptions: Health and Safety and Statutory Bans on Disclosure
- EIR Exceptions: How They Differ from FOI Exemptions

Sources

- Freedom of Information Act 2000, sections 2, 16, 17, 21 and 22 (legislation.gov.uk)
- Freedom of Information (Scotland) Act 2002, sections 25 and 27
- Environmental Information Regulations 2004, regulation 12(4)
- ICO guidance: Information reasonably accessible to the applicant by other means (section 21), and Information intended for future publication and research (sections 22 and 22A)

Talk to someone who has handled FOI

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