

Single Source Contract Regulations 2014 Guidance

Chapter 9 Confidentiality

Purpose

1. The guidance in this chapter relates to a Qualifying Defence Contract (QDC) and applies equally to a Qualifying Sub-contract (QSC), except where it explains the different treatment of a QDC and QSC. To assess whether you are dealing with a prospective or actual QDC or QSC you must read [Chapter 2 Qualifying Defence Contracts](#).
2. The guidance does not apply to other single source contracts (Non-qualifying contracts). If you assess that your contract is a Non-qualifying contract then you must read the [Pricing of Single Source Non-qualifying contracts](#) Commercial Policy Statement.
3. If you are dealing with a prospective or actual QDC or QSC then you must read this Chapter 9 Confidentiality to understand:
 - a. what information obtained under the Defence Reform Act 2014 (DRA) is subject to restrictions on disclosure;
 - b. the circumstances in which the disclosure of protected information is allowed; and
 - c. the penalty for unauthorised disclosure of protected information.
4. You must read this guidance in conjunction with the [Protection of Information Commercial Policy Statement](#) in which wider aspects of the protection of information are covered.
5. This chapter has been created as definitive guidance for MOD Commercial Officers so “you” indicates an action on the Commercial Officer.

What is the Legal Framework?

6. The primary legislation applicable to QDCs is the [Defence Reform Act 2014 \(DRA\)](#). Section 38 and Schedule 5 of the DRA cover:
 - a. the criminal offence of unauthorised disclosure of information specified in the secondary legislation (see below);
 - b. the penalty for unauthorised disclosure; and
 - c. permitted reasons for disclosure of such information.
7. The secondary legislation applicable to QDCs is the [Single Source Contract Regulations 2014 \(SSCR\)](#). Part 10 of the SSCR sets out specific details of the categories of information that are subject to the criminal offence of unauthorised disclosure.

Confidentiality – Criminal Offence of Unauthorised Disclosure

8. The foundation of the MOD's commercial relationship with industry has always been that information is held in confidence and this permits an uninhibited exchange of information.
9. The DRA however places a statutory obligation on contractors to provide the Single Source Regulations Office (SSRO) and the MOD with reports and 'open book' information which will contain commercially sensitive material. A contractor that fails to meet its obligations to provide information may be subject to a civil penalty (see [Chapter 10 Compliance and Remedies](#)).
10. This increased transparency and statutory obligation could create additional risks for contractors, for example:
 - a. information will be provided in a standard format that allows aggregation of data and over time the MOD will accumulate a body of information at both contract and contractor level; or
 - b. a contractor might be obliged to provide share-price sensitive information to the MOD in advance of releasing the same information to investors.
11. In both the above examples a potential unauthorised release of information is of genuine concern to contractors and, in recognition of such risks, the DRA creates a criminal offence for the unauthorised disclosure of the most sensitive information.
12. For the purposes of this guidance this most sensitive information is referred to as 'SSCR protected information' which is subject to restrictions on disclosure under Schedule 5 of the DRA.
13. You should note that the criminal offence applies to you personally and is in addition to your obligations under:
 - a. the Government Security Classification system; and
 - b. the main Acts of Parliament, and Government and MOD Policy that relate to the protection and disclosure of information (see the [Protection of Information Commercial Policy Statement](#)).

Penalty for Disclosing Protected Information

14. The sharing of information between contractors and the MOD, and the safeguarding of that information from unauthorised disclosure, particularly commercially sensitive information, is critical to the effective operation of the SSCR.
15. Consequently, if you are found guilty of the offence of an unauthorised release of SSCR protected information you could be liable to imprisonment of up to 2 years, or to a fine, or both. The criminal offence of unauthorised release will apply from the date at which the QDC is signed.

Protected Information

16. As a Commercial Officer you will be in receipt of a wide range of contract and contractor information which will have varying degrees of sensitivity.

17. Some of this information will be in the mandated contract reports under the SSCR and distributed to you by the Single Source Advisory Team (SSAT) (see [Chapter 5 Contract Reporting](#)); other information may for example, be in reports you receive as a result of analysis of contractor information undertaken by the SSRO.

18. The SSAT is responsible for protectively marking such information in accordance with the Government Security Classification system before distribution. However if you receive information or reports from the SSAT that is not marked with a security classification or handling instruction, you must inform the SSAT immediately.

19. You may also receive information directly from your contractor in your day-to-day business which would fall within the boundaries of Schedule 5 of the DRA. For example on receipt of a contract report from the SSAT you may seek clarification from your contractor on some of the content. If that content is subject to Schedule 5 of the DRA it is essential that you not only mark the correspondence in accordance with your obligations mentioned in paragraph 13, but also that you do not disclose the information without authorisation.

20. Schedule 5 of the DRA states that information is subject to restrictions on disclosure (and therefore SSCR protected) if:

- a. it has been obtained by the Secretary of State for Defence by virtue of the DRA or it has been derived from such information (for instance analysis);
- b. it relates to the affairs of an individual or a business; and
- c. it falls under one of the categories set out in the SSCR

21. To help you determine if information meets the criteria in paragraph 20 and is subject to restrictions on disclosure, you should refer to the flowcharts at Annex A.

22. You can also refer to Annex B, which provides more detail on what is included under Schedule 5 of the DRA. For example you can identify which information in any contract reports you receive from the SSAT would be subject to restrictions on disclosure.

23. If, having read Annexes A and B, you are still uncertain if the information is subject to Schedule 5 of the DRA you must consult the SSAT. Until they advise you otherwise, you must assume that the information is SSCR protected and is therefore subject to restrictions on disclosure.

Authorised Disclosure

24. You can share SSCR protected information on a 'need to know basis' with other persons within the MOD, however you must ensure it includes an appropriate security marking and handling instruction. You must only disclose SSCR information on a wider basis with the consent of the originating contractor,

unless you are releasing the information under the SSCR 'permitted disclosures' (see Annex C).

25. You may receive a request for information under a SSCR permitted disclosure. If you receive such a request, you must only release the information following approval of a Commercial 1*.

26. You will not be subject to the offence of disclosing information to which Schedule 5 of the DRA applies if the information has already been disclosed under a permitted disclosure and as a result is in the public domain.

Contacts, Training and Further Information

27. The [Web Access Page](#) for the DRA and SSCR contains a summary of the legislation, details of who you can speak to for advice, and what training is available. It also contains links to other chapters in the SSCR guidance and other relevant topics and information.

What are the key points to remember?

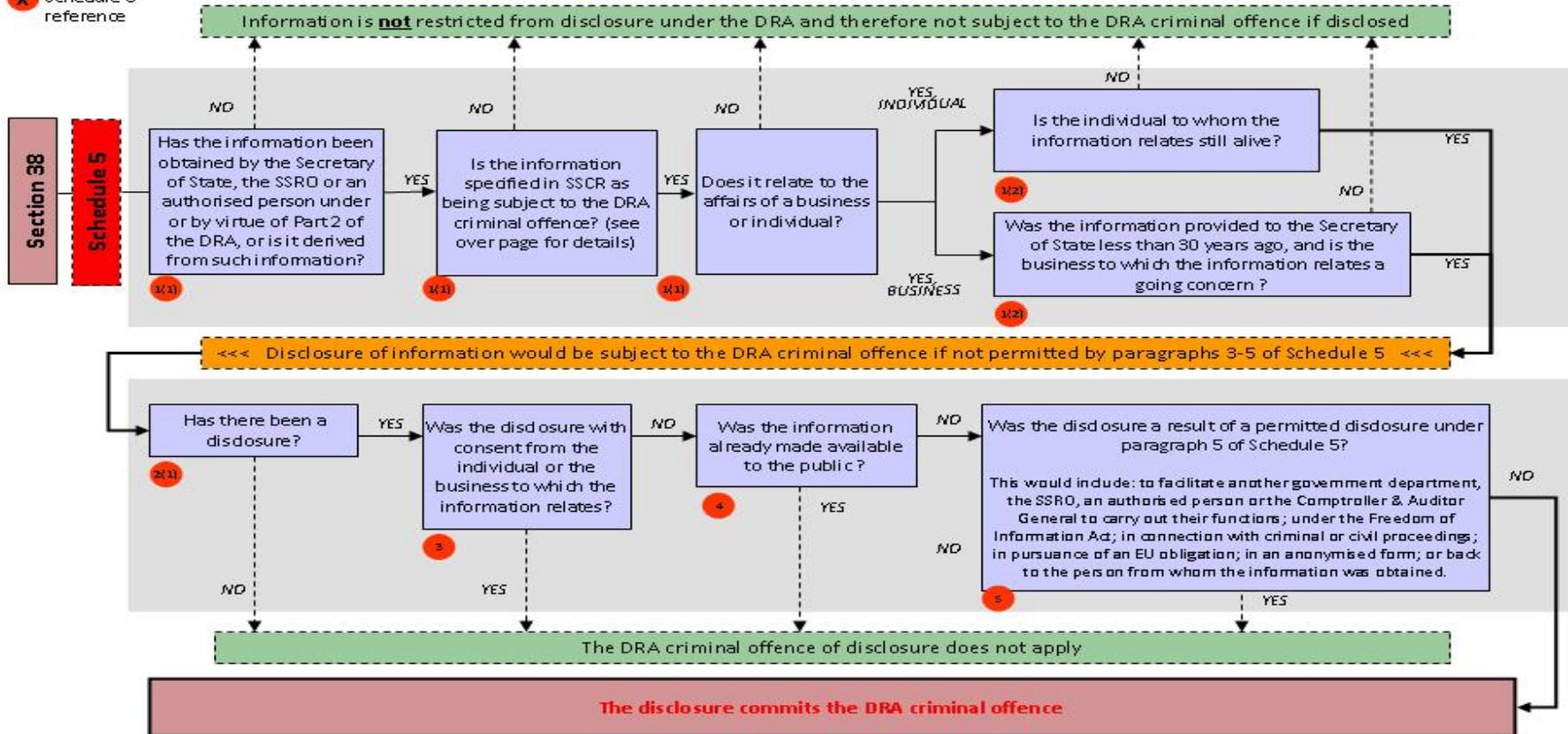
1. You must read this guidance in conjunction with the Protection of Information Commercial Policy Statement which covers wider aspects of the protection of information.
2. You must refer to this guidance and use the flow chart to determine whether the information you hold is SSCR protected and therefore subject to Schedule 5 of the DRA restrictions on disclosure. If in doubt you must consult the SSAT.
3. You must only disclose SSCR protected information to persons within MOD on a 'need to know basis'. You must seek the permission of the originator for wider release unless it is covered by the SSCR 'permitted disclosures'.
4. You must only make a 'permitted disclosure' of SSCR protected information following approval of a Commercial 1*.
5. You must be aware of the serious consequences of unauthorised disclosure of information protected under Schedule 5 of the DRA. There are penalties which apply to you personally, which may include a fine or imprisonment.

Annex A

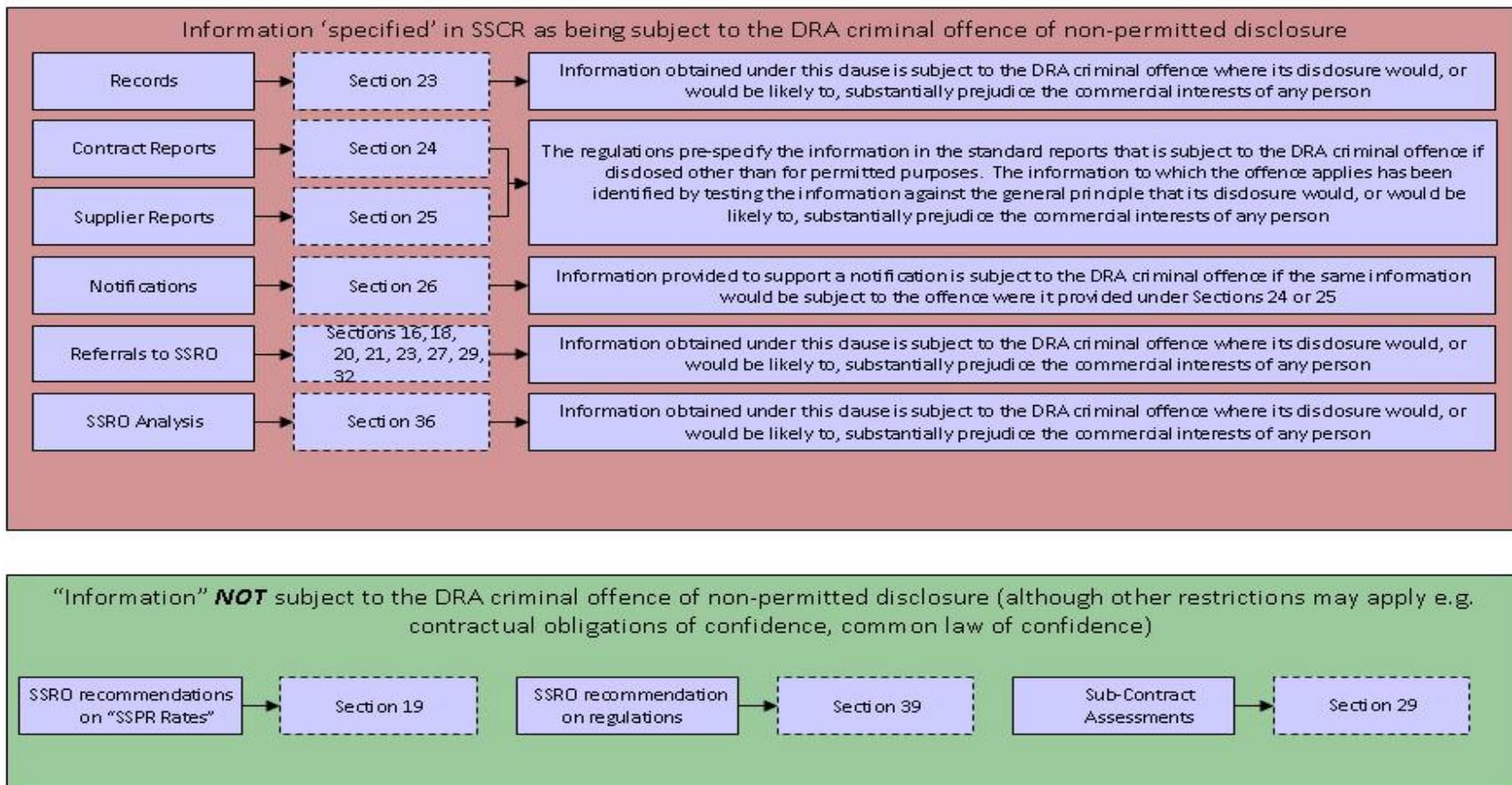
Applicability of the DRA criminal offence (1)

Single Source
Contract Regulations

 Schedule 5
reference



Applicability of the DRA criminal offence (2)



Annex B

SSCR Categories to which DRA Schedule 5 applies

SSCR Reference	Information Description Summary	Information Source
Regulation 23(2)(a)	Allowable Costs and contract profit rate used to determine the contract price.	Contract Pricing Statement*
Regulation 23(2)(d)	Description of the calculation to determine the profit rate and all adjustments under steps 1 to 6.	Contract Pricing Statement*
Regulation 23(2)(e)(i)	Assumptions and calculations relevant to each element of the Allowable Costs.	Contract Pricing Statement*
Regulation 23(2)(f)	Any other information materially relevant to the pricing of the contract.	Contract Pricing Statement*
Regulation 25(2)(b)-(f)	Information on: the estimated value of all output metrics; annual profile of risk contingency and profit underpinning the contract; annual profile of estimated costs at the time of agreement; total non-recurring allowable costs; and annual profile of estimated volume of each cost recovery base.	Contract Notification Report
Regulation 25(2)(l)	Information on the top twenty (by value) actual and intended sub-contract(s) with a value of £1M or more including the contract value, QSC assessment and contract details.	Contract Notification Report

SSCR Reference	Information Description Summary	Information Source
Regulation 26(6)(a)-(h)	Information on: annual profile of risk contingency and profit underpinning the contract price; annual profile of estimated costs at the time of agreement; annual profile of risk contingency, planned and maximum profit for actual and forecast costs; annual profile of actual and forecast costs; breakdown of actual and forecast costs by 12 calendar quarters; quantified analysis of variance; forecast Target Cost Incentive Fee (TCIF) adjustment and description of event / circumstance occurring since contract was entered into.	Quarterly Contract Report
Regulation 26(6)(k)	Information on the top twenty (by value) actual and intended sub-contract(s) with a value of £1M or more including the contract value, QSC assessment and contract details.	Quarterly Contract Report
Regulation 27(4)(b)-(i)	Information on: estimated value of deliverables expressed using output metrics; annual profile of risk contingency and profit underpinning the contract price; annual profile of estimated costs at the time of agreement; total non-recurring Allowable Costs; annual profile of estimated volume of each cost recovery base; annual profile of risk contingency, planned and maximum profit for actual and forecast costs; annual profile of actual and forecast costs and volume of each cost recovery base and quantified analysis of variance.	Interim Contract report*
Regulation 27 (5) (a), (b) and (e)	Information on: TCIF adjustment forecast; event / circumstance and effect on costs and sub-contract details.	Interim Contract report*

SSCR Reference	Information Description Summary	Information Source
Regulation 28(2)(b)-(k)	Information on: actual value of all output metrics; annual profile of risk contingency underpinning the contract price; actual risk contingency; maximum profit from incentive adjustment calculation in contract price; actual incentive adjustment, planned and actual profit excluding incentive adjustment; annual profile of estimated costs; total non-recurring Allowable Costs; annual profile of estimated volume of each cost recovery base; annual profile of actual costs; annual profile of actual volume of each cost recovery base; quantified analysis of variance; description of event / circumstance occurring since contract was entered into and forecast of TCIF adjustment or final price adjustment the contractor expects to be made.	Contract Completion Report
Regulation 28(2)(p)	Information on the top twenty (by value) actual and intended sub-contract(s) with a value of £1M or more including the contract value, QSC assessment and contract details.	Contract Completion Report
Regulation 29(2)(c) to (e)	Information on: the annual profile of contractor's actual allowable costs including: all purchased costs goods, services and expenses (incl. sub-contractor payments); cost recovery rate information; other costs allocated to the contract; total cost incurred in delivering the contract and explanations of variations in costs.	Contract Costs Statement*
Regulation 34(3)(d)-(j)	Information on: the financial statements for Qualifying Business Unit (QBU); quantified analysis of adjustments between financial statements and costs claimed; quantified analysis of adjustments for costs incurred in one relevant financial accounting period recovered across other periods; quantified analysis of QBU direct costs under QDC / QSC / other defence contracts; quantified analysis of QBU costs allocated to cost recovery bases; calculation of volume of cost recovery base and calculation of each cost recovery rate with volume of each and total cost claimed.	Actual Rates Claim Report

SSCR Reference	Information Description Summary	Information Source
Regulation 35 (7) and (8)	Costs analysis information for Business Unit including: quantified analysis information of total actual operating costs for QBU; staffing costs; actual values for all cost recovery bases and rates; quantified analysis of total actual revenue for the QBU and estimated cost analysis report.	Qualifying Business Unit Actual Cost Analysis Report
Regulation 36(3)(d) to (j)	Information on: the QBU budget; quantified analysis of budget and costs claimed; quantified analysis of adjustments between budget and costs claimed; quantified analysis of QBU costs estimated to be recovered as direct costs; quantified analysis of QBU estimated costs allocated to each cost recovery base; quantified analysis of adjustments for costs incurred in or forecast for one relevant period received in another; calculation of estimated volume of each cost recovery base and calculation of each estimated cost recovery rate including volume and total estimated cost claimed and cost recovery base used to calculate it.	Estimated Rates Claim Report (ERCR)
Regulation 37(7) and (8)	Estimated costs analysis information for Business Unit including: quantified analysis information of total estimated operating costs for QBU; staffing costs; quantified analysis of total estimated revenue for the QBU; explanation of changes between actual and estimated cost analysis information and description of material future initiatives included in future actual or estimated rates claim reports.	Qualifying Business Unit Estimated Cost Analysis Report
Regulation 38(6)	Information on: the assumptions used in calculating each cost recovery base; indices and rates in calculating estimated costs included in ERCR and material assumptions.	Estimated Rates Agreement Pricing Statement

SSCR Reference	Information Description Summary	Information Source
Regulation 39(4)(c) and (d)	Information on: the cost recovery rates used in any outstanding contracts and actual value of the rates; and actual volume of cost recovery base attributable to the contract, volume of cost recovery base and cost recovery rate used for calculating price.	Rates Comparison Report
Regulations 41 to 44	All content including information relating to: corporate structure of the ultimate parent undertaking; activities, people and infrastructure; forecast costs of maintaining industrial capacity; under or over capacity issues; efficiency and investments and supply chain.	Strategic Industry Capability Report
Regulation 56 (2)(a) and (b)	Information obtained under SSCR Part 4 Records the disclosure of which would, or is likely to, substantially prejudice the commercial interests of any person.	Records
Regulation 56 (4) (a) (i)	Information provided by the contractor to the MOD relating to an occurrence (circumstance) / likely occurrence (circumstance) of an event likely to have a material effect on a QDC and of a kind that could have fallen within the above types of information.	Duty to report relevant events, circumstances and information
Regulation 56 (4) (a) (ii)	Information provided by the contractor to the SSRO relating to a notice to investigate an obligation of confidentiality and of a kind that could have fallen within the above types of information.	References to the SSRO
Regulation 56 (5) (a) and (b)	Information produced by the SSRO the disclosure of which would, or would be likely to, substantially prejudice the commercial interests of the contractor.	SSRO analysis
Regulation 56 (5) (a) (i)	Information obtained by the SSRO for the purpose of any application, reference or appeal to the SSRO the disclosure of which would, or would be likely to, substantially prejudice the commercial interests of the contractor.	References to the SSRO

* Includes on-demand contract report information (see [Chapter 5 Contract Reporting](#))

Annex C

DRA Permitted Disclosures

DRA Schedule 5 Reference	DRA Permitted disclosure
Section 3	Consent: with the consent of the person or business to whom the information relates.
Section 4	Publicly available: where the information has already been made publicly available in circumstances that would be permitted under Schedule 5.
Section 5(1)(a)	Across Government: for use by wider government.
Section 5(1)(b)	SSRO: to enable the SSRO to carry out its functions.
Section 5(1)(c) and (d)	Defence Reform: in the event of DE&S reform, to be used by an authorised person or a contractor in order to provide defence procurement services to the MOD.
Section 5(1)(e) and (f)	To the person who supplied the information: to enable the exchange of information between the MOD and the contractor.
Section 5(1)(g)	Freedom of Information Act (2000): in response to an authorised request under the FOIA where it has been determined that none of the available exemptions apply. It would be expected however that sensitive commercial information would be exempt from release under Section 41 or Section 43 of the FOIA.
Section 5(1)(h) and (i)	Legal: where the information is required for criminal or civil proceedings.
Section 5(1)(j)	EU: where the information must be disclosed to comply with an EU obligation.
Section 5(1)(k)	Parliamentary: when required by the Comptroller and Auditor General for carrying out its functions.
Section 5(1)(l) and 5(3)	Anonymised form: where no individual or other person to whom the information relates can be identified from it.