

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24 May 2010

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Summary

The complainant requested a full list of visitors to Chequers since July 2007. Whilst a list of official visitors is published annually, the Cabinet Office (CO) maintained that they do not hold a list of those Mr Brown and his family entertained in a private and personal capacity at Chequers. They further maintained that any information that they do hold regarding the Brown family's personal visitors to Chequers is held by the Prime Minister's Office on behalf of the Prime Minister in his personal capacity and consequently not held for the purposes of Freedom of Information Act 2000 (the Act) by virtue of section 3(2)(a). The Commissioner has found that the information is in fact not held by the public authority and therefore has not considered the application of section 3(2)(a).

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. Chequers is a country house near Aylesbury, Buckinghamshire. It was given to the nation by Lord and Lady Lee of Fareham in 1917 *as a*

place of rest and recreation for her Prime Ministers for ever". It is run by a private Trust and administered by independent Trustees.

The Request

3. On 9 August 2008 the complainant requested the following information:

"Please let me have a full list of visitors to Chequers since July 2007. I understand that the list published in a ministerial statement last month only covers those "officially supported" on their visits. Could I have a full list please".

4. On 9 September 2008 the Cabinet Office (CO) provided a response to the request. It informed the complainant that FOIA only applied to information held by a public authority for official purposes and did not apply to the Chequers Trust as it was a private independent trust. They did however provide a copy of the list of all who had received official hospitality at Chequers since Mr Brown became Prime Minister that was published on 22 July 2008.

5. On 11 September 2008 the complainant requested an internal review:

" You have to tell me whether you have any of the information, regardless of whether another organization does. Please do so. You are required to check all places the information could be held, for example official diaries. The fact that the list of guests might not be complete is irrelevant. If you then think it shouldn't be disclosed you have to say why by reference to FOIA exemptions".

6. On 24 October 2008 the CO communicated the result of its internal review. It stated that the names of those people that the Prime Minister and his family entertained in a personal capacity - and therefore where public funds were not spent - were *"not held"* under the terms of the Act.

The Investigation

Scope of the case

7. On 2 November 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

The complainant stated that the CO's refusal relied upon the fact that information on some visitors are not held "within the terms of the FOIA" and argued that such a distinction should not exist.

Chronology

8. The Commissioner wrote to the CO on 18 February 2009 primarily to establish whether it was relying upon the fact that any information that it did hold was held on behalf of a third party. The Commissioner also asked the CO to consider, where information existed, the exemption provided by section 40(2) of the Act.
9. The CO responded on 15 April 2009. They explained that the Prime Minister and his family would, from time to time, receive personal and other guests at Chequers. They stated that whilst the names of these visitors were known in most cases to the Prime Minister's Office, they were nevertheless held on behalf of the Prime Minister and his family in their personal and non-official capacities. Accordingly, they felt that the information was "*not held*" for the purposes of the Act. As the information was "*not held*", the CO did not consider that section 40(2) was relevant.
10. The Commissioner wrote again on 7 May 2009 seeking confirmation as to the information held, irrespective of whether it believed that the information fell outside the reach of the Act.
11. On 23 June 2009 the CO wrote to the Commissioner to state that it was manifestly unreasonable to try to use the Freedom of Information Act to obtain details about the personal life of the Prime Minister and his family.
12. The Commissioner wrote to the CO on 14 July 2009 to explain the relevance of the FOI Act to the request. He further requested that the CO reconsider their stance in the matter.
13. On 8 October 2009 the CO wrote to the Commissioner to advise that, in their opinion, the requested information is not held for the purposes of FOIA by virtue of section 3(2)(a) of the Act.
14. The Commissioner wrote to the CO on 14 January 2010 to present the argument that the requested information, whilst held on behalf of the Prime Minister by the CO, is nevertheless held by the CO for its own purposes as well.
15. In the absence of a response, the Commissioner wrote again to the CO on 12 February 2010.

16. The CO responded on 25 March 2010 to advise that the CO did not maintain a list of personal visitors to Chequers.

Analysis

Substantive Procedural Matters

Is the information held by the Cabinet Office held on behalf of another person?

17. Section 3(2)(a) of the Act provides that information is held by a public authority if it is held by the authority, otherwise than on behalf of another person.
18. The Commissioner initially focussed his investigation on whether the information is in fact held by the Cabinet office on behalf of another person.
19. The CO has said in its letter of 23 June 2009 that the Prime Minister is effectively constantly *"on duty"* and that the Prime Minister's Office has to be able to contact him at any moment of the day to deal with Affairs of State. The CO have stated that, to assist in this matter, the Brown family do provide details of non-official visitors to Chequers.
20. Following on from this, the CO, in their letter of 8 October 2009, stated that details of the Prime Minister's unofficial visitors are *"... not held for or used in the normal course of official business of the Prime Ministers Office"*. Instead the Prime Minister's Office has said that they hold the information *"...on behalf of the Prime Minister in his personal capacity"*. They stated that a very limited number of their staff who organise the Prime Minister's diary would come across, have access to or process details of the Brown family's private visitors. For example, they would occasionally need to access this information to notify security.
21. The CO has also stated in the same letter that the Prime Minister's Office needs to know where the Prime Minister is and who he is with *"at all times regardless of whether it is for official, private or political reasons"* so that he can be contacted *"... at any moment of the day, in case of emergencies for example."*
22. In considering whether the CO held the information on behalf of another person and not for its own purposes, the Commissioner has

referred to the Information Tribunal's decision in the case of *Ennis McBride & MoJ (EA/2007/0105)*. The Tribunal said that whether a public authority holds information on behalf of another person "...is simply a question of fact, to be determined on the evidence..."

23. In this case, the CO has said that the Prime Minister's Office needs to know where the Prime Minister is at all times and with whom regardless of whether he is on official business or on his own private time. On this basis, the Commissioner is satisfied that the Prime Minister's Office sometimes holds information which falls within the scope of the request passes through his office and it is used for its own purposes which are very limited in extent and time.
24. The CO further stated that no official list of personal visitors to Chequers is maintained by them. Such a list, however, is clearly the target of the request in this case.
25. In investigating cases involving questions as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner Environment Agency (EA/2006/0072)*. In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.
26. Whilst it appears that information may at times have been temporarily held by the CO for limited purposes, such as alerting the housekeeper at Chequers of impending visitors, it is the opinion of the Commissioner that this information in all probability would only have been held briefly and only for the particular transient reason specified. He is satisfied that the CO does not maintain a list of personal and private visitors to Chequers.
27. Having considered the nature of the requested information and the CO's explanations and submissions, the Commissioner is satisfied, on the balance of probabilities, that the information described in the complainant's request of 9 August 2008 is not held by the public authority.
28. The Commissioner also notes that had the information in fact been held by the CO, it would have constituted the personal information of third parties, the disclosure of which would, in all probability, have breached the data protection principles. It would therefore have been absolutely exempt under section 40(2) of the Act. However, as he has concluded that the information was not in fact held by the CO, the Commissioner has not pursued this particular point further.

The Decision

29. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

30. The Commissioner requires no steps to be taken.

Right of Appeal

31. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 24th day of May 2010

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

Section 3(2) provides that –

"For the purposes of this Act, information is held by a public authority if –

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."