

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2012

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

Decision (including any steps)

1. The complainant requested a copy of a 'closed' file which is held at The National Archives on behalf of the public authority. This was withheld under sections 37(1)(a), 40(2) and 41(1) of the FOIA. The Information Commissioner's decision is that the public authority was correct to withhold the information under section 37(1)(a) and he requires no steps to be taken.

Background

2. According to the national archives website, the file in question relates to the Queen's Christmas Broadcast of 1972. It is due to be opened on 1 January 2023.

Request and response

3. On 29 November 2011, the complainant wrote to the public authority and requested information in the following terms:

"I am trying to get access to the contents of a file which is listed on the National Archives register as CAB 164/1362. The register indicates that the file is in the possession of the Cabinet Office.

I would be grateful if you could disclose the full contents of the file."

4. The public authority responded on 16 December 2011. It stated that the information was exempt by virtue of the exemptions at sections 37(1)(a), 40(2) and 41(1) of the FOIA.
5. The complainant asked for an internal review on 3 January 2012. This was provided on 10 April 2012; it maintained the same position.

Scope of the case

6. On 17 April 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He asked him to consider the length of time taken to conduct an internal review and the non-provision of the information.
7. The Information Commissioner has referred to the length of time to conduct an internal review in "*Other matters*" at the end of this notice.

Reasons for decision

8. Section 37(1)(a) provides that:

"Information is exempt information if it relates to-

(a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household".

9. For information relating to communications with the Sovereign, Heir to the Throne and second in line to the throne, this exemption is absolute. This means that if the exemption is engaged there is no requirement to consider whether the public interest nevertheless favours disclosure.
10. The information in scope constitutes correspondence from Her Majesty's Private Secretary on the issue of The Queen's Christmas Broadcast and an internal Cabinet Office document relating to this.
11. For the exemption to be engaged the information must constitute, or relate to, a "communication". So, for example, an internal note held by a government department that simply references the Sovereign will not fall within this definition unless it specifically relates to a relevant communication.
12. Having viewed the withheld information, the Information Commissioner is satisfied that it relates to communications with Her Majesty's Private

Secretary and the exemption at section 37(1)(a) has been correctly engaged. Therefore, the information need not be disclosed.

Other matters

13. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.

Internal review

14. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, the Information Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Information Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
15. The Information Commissioner does not consider this case to be 'exceptional', so is concerned that it took over 20 working days for an internal review to be completed.

Right of appeal

16. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. 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.
18. Any notice of appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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