

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 03 June 2014

Public Authority: The National Archives
Address: Ruskin Avenue
Kew
Richmond
Surrey
TW9 4DU

Decision (including any steps ordered)

1. The complainant has requested access to information contained in a closed file at The National Archives (TNA). On reviewing the file TNA decided to release one document from it. However it withheld the rest of the information under section 37(1)(a), the exemption relating to communications with the Sovereign. It also applied the exemptions provided by section 40(2) – third party personal data, and section 41 – information provided in confidence.
2. The Commissioner's decision is that TNA were entitled to withhold the information in question under section 37(1)(a).
3. The Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. On 30 October 2013, the complainant wrote to TNA and requested information in the following terms:

"I would like to request access to the following two 'closed' files under the freedom of Information Act. I understand both files are held by the National Archives.

They are PREM 11/3501 which is closed to 2062

PREM 1/3436 – which is closed to 2038.”

5. On 4 November 2013 TNA informed the complainant that the reference PREM 1/3436 did not relate to any of the information it held.
6. On 11 December 2013 TNA provided its response in respect of the request for file PREM 11/3501. The public authority informed the complainant that a limited amount of information from the file would be made available to the public on the 17 December 2013. It transpired that the information in question consisted of one press cutting. TNA withheld the remaining information. It stated that the withheld information was exempt under section 37(1)(a) – communications with Her Majesty, section 40(2) – third party personal data and section 41 – information provided in confidence.
7. Following an internal review TNA wrote to the complainant on 17 February 2014. It stated that it still considered the information to be exempt under the sections cited above. It did however undertake to disclose the title of file reference PREM 1/3456. In due course TNA provided the file title 'HM The Queen visit to Sierra Leone, 1960 – 1961'.

Scope of the case

8. The complainant contacted the Commissioner on 18 February 2014. He did not challenge TNA's explanation that it did not hold any information fitting the description PREM 1/3436. His complaint related solely to TNA's refusal to disclose information from the file reference PREM 11/3501.
9. The complainant argued that the file would not only contain communications with the Sovereign or the Royal Household. He speculated that it was likely to contain correspondence between individual civil servants and, or, Ministers and civil servants, which he considered would not attract the exemption. In respect of TNA's claim that the information constituted the personal data of third parties, he argued that due to the age of the information it was likely that many of the individuals concerned would now be dead.
10. He also referred to his letter requesting TNA to carry out an internal review of its handling of his request. In that letter he had argued that he should be given copies of all the actual documents showing all the redactions that had been made from them.
11. The Commissioner considers that the matter to be decided is whether TNA is entitled to rely on any of the exemptions cited to withhold the information requested by the complainant. The Commissioner will first

look at the application of section 37(1)(a). Only if that exemption is not engaged will he consider the remaining exemptions.

Reasons for decision

12. Section 37(1)(a) of FOIA states that information is exempt if it relates to communications with the Sovereign.
13. It should be noted that originally the exemption provided by section 37(1)(a) was far broader in that it could also apply to communications with other members of the Royal Family or the Royal Household. However the Constitutional Reform and Governance Act 2010 (CRAG) amended the provision. There are now a series of separate exemptions relating to communications with particular members of the Royal Family and the Royal Household. As a result section 37(1)(a) now only applies to information relating to communications with the Sovereign. Furthermore the amendments under CRAG included the removal of the public interest test from section 37(1)(a) so any information relating to communications with the Sovereign are now absolutely exempt.
14. Communications with the Sovereign are not necessarily made directly by, or to Her Majesty. The exemption will also include communications made or received on her behalf by her officials. Furthermore the communication need not be a written one; the exemption would apply equally to discussions with the Sovereign, in person or via telecommunications.
15. The exemption does not apply only to the communications themselves but to information relating to those communications. For example, it would obviously apply to information in a document reporting on the details of such a communication.
16. Therefore even if the complainant is right when he argues that some of the documents may be internal documents between civil servants, or between civil servants and ministers, this does not necessarily mean that the exemption will not apply. It will apply if they relate to communications with the Sovereign.
17. The Commissioner has viewed the information from the file captured by the request. It is one from a series held by TNA described as 'Prime Minister's Office: Correspondence and Papers, 1951 – 1964. Royal Family'. As revealed by the file name disclosed by TNA at the internal review stage, the actual file targeted by the complainant is one containing documents from 1960 – 1961 on the Queen's visit to Sierra Leone. It is understood that actual visit took place in 1961.

18. The majority of the documents that have been withheld are communications between the then Prime Minister, Harold MacMillan, or his officials and those acting on behalf of Her Majesty. These include Her Majesty's Private Secretary. A minority of the information consists of internal communications between the Prime Minister and his officials. However this information either briefs the Prime Minister on communications made on behalf of Her Majesty, or relate to the Prime Minister's response to communications with Her Majesty.
19. The Commissioner is satisfied that all the information that was withheld from PREM 11/3501 is either a communication with the Sovereign or relates to such communications. There is no need for the information to be sensitive in any way for the exemption to apply. It is sufficient that the information falls within the class of information described by the exemption. The Commissioner finds that the information is exempt by virtue of section 37(1)(a). Section 37(1)(a) is now an absolute exemption and therefore there is no need to consider the public interest test.
20. As the Commissioner has found that all the withheld information is exempt under section 37(1)(a) he has not gone on to consider TNA's application of the other exemptions it relied on.

Other matters

21. Although not forming part of the decision the Commissioner considers it would be helpful to comment on one of the issues raised by the complainant. He has argued that he should have been provided with copies of all the documents from the file showing where information has been redacted.
22. The Commissioner would accept that the right of access to information extends to all the information contained in a document. This can include for example, headers, the address to which a piece of correspondence has been sent and any annotations. There will undoubtedly be occasions where this means that only information in part of a document is covered by an exemption. In such a situation the public authority would be obliged to disclose the non-exempt information.
23. However in this particular case the Commissioner is satisfied that all the information from the documents contained in the file is exempt from disclosure. Clearly letter heads and the details of senders and recipients contained in correspondence, together with any annotations, is all information relating to the communication. Therefore it would be covered by the exemption.

24. The Commissioner does not consider the right of access extends to being provided with copies of documents which consist only of completely blanked out sheets.

Right of appeal

25. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF