

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 July 2015

Public Authority: The National Archives (TNA)
Address: Kew, Richmond
Surrey
TW9 4DU

Decision (including any steps ordered)

1. The complainant has requested information in the closed file 'Prem 19/582 - Royal Family. Duke of Edinburgh's statement on nuclear war: correspondence between the Duke and Fenner Brockway, Lord Brockway'. TNA refused to disclose the requested information under section 37(1)(a), section 37(1)(ac), section 40(2) and section 41 FOIA.
2. The Commissioner's decision is that TNA correctly applied section 37(1)(a) and section 37(1)(ac) in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 15 April 2014 the complainant requested information in the following closed file:

"Prem 19/582 - Royal Family. Duke of Edinburgh's statement on nuclear war: correspondence between the Duke and Fenner Brockway, Lord Brockway."
5. On 2 June 2014 the National Archives responded. It refused to disclose the requested information under section 37(1)(a), section 37(1)(ac), section 40(2) and section 41 FOIA.
6. The complainant requested an internal review on 26 August 2014. The National Archives sent the outcome of its internal review on 23 September 2014 upholding its original position.

Scope of the case

7. The complainant contacted the Commissioner on 2 October 2014 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation TNA disclosed four documents contained within the requested file which had originally been withheld as the Royal Household did not object to the release of these specific documents as they are already in the public domain. The Commissioner has not therefore considered the four documents which were subsequently disclosed during his investigation.
9. The Commissioner has considered whether TNA was correct to apply section 37(1)(a), section 37(1)(ac), section 40(2) or section 41 FOIA to the withheld information.

Reasons for decision

Sections 37(1)(a) and (ac)

10. Section 37(1) states that information is exempt information if it relates to –
 - (a) communications with the Sovereign,
 - (ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs).
11. TNA sought to rely on sections 37(1)(a) and section 37(1)(ac) as its basis for refusing to disclose the requested information.
12. Sections 37(1)(a) is class-based and absolute exemption. This means that if the information in question falls within the class of information described in the exemption in question, it is exempt from disclosure under the Act. It is not subject to a balance of public interest test.
13. 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.

14. The information to which section 37(1)(a) is applicable to constitutes correspondence from Her Majesty's Private Secretary relating to the Duke of Edinburgh's statement on nuclear war.
15. Having viewed the withheld information, the Commissioner is satisfied that some of it relates to communications with Her Majesty's Private Secretary and the exemption at section 37(1)(a) has been correctly engaged in relation to this information. 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 some of the information is exempt by virtue of section 37(1)(a). As stated above section 37(1)(a) is an absolute exemption and therefore there is no need to consider the public interest test.
16. Section 37(1)(ac) of FOIA states that, "Information is exempt information if it relates to—(ac)communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs)".
17. TNA explained that the remaining withheld information also includes communications between a member of the Royal Family (other than those covered by section 37(1)(a) or (ab)) and another person. The Commissioner has reviewed the withheld information and can confirm that this is the case.
18. By definition, such information falls within the exemption. The Commissioner therefore finds that this information is exempt under section 37(1)(ac). However, this is a qualified exemption and therefore it is necessary to consider the public interest test.

Public interest test

Public interest in favour of disclosure

19. TNA argue that there is a general public interest in openness and transparency and in the public being able to access documents relating to the Royal Family. There is also a general public interest in transparency about, and understanding and awareness of the role of, the Royal Family.

Public interest in favour of maintaining the exemption

20. TNA argued that there is a stronger public interest in maintaining the confidentiality of communications to/from Members of the Royal Family. There is a strong public interest that Members of the Royal

Family are able to continue to carry out their duties in this way. That they are able to do so depends on the maintenance of the confidentiality of their communications.

Balance of the public interest

21. The Commissioner does consider that there is a public interest in openness and transparency of documents relating to the Royal family, and in this case specifically HRH the Duke of Edinburgh. However TNA has disclosed some documents which are publicly available from the closed file which goes some way to meeting the public interest in this case. The Commissioner does not consider there to be a particularly strong public interest in disclosure of the content of the remaining withheld information, which is more than thirty years old.
22. The Commissioner also considers that, whilst other members of the Royal Family are not in the same constitutional position as Her Majesty, the need to maintain the neutrality of the Sovereign, and not to undermine diplomatic and goodwill work of all members of the Royal Family, is still relevant in deciding whether disclosure will be in the public interest. The effective performance of the Duke of Edinburgh's role is dependent upon maintaining the expectation of confidentiality of communications such as applied in respect of the information withheld in this case.
23. Upon viewing the withheld information and taking all the public interest arguments into account, the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption in this case.
24. As the Commissioner considers that section 37(1)(a) and (ac) were correctly applied in this case he has not considered section 40(2) or section 41 FOIA any further.

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: 0870 739 5836

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**