

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 April 2015

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). TNA withheld the information under section 37(1)(a), the exemption relating to communications with the Sovereign, section 40(2) – third party personal data, and section 41 – information provided in confidence.
2. The Commissioner's decision is that TNA has correctly withheld the requested information by virtue of section 37(1)(a).
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Background

4. The file in question is the closed extracts from the open file PREM 15/1179 Prime Minister's Office: Audiences with The Queen: 1970-72.

Request and response

5. On 27 October 2014, the complainant wrote to TNA and requested information in the following terms:

'I would like to request access to a file which is listed as being closed on the National Archives catalogue.

The file has the reference PREM 15/1179/1 and contains closed extracts relating to correspondence and papers about the Royal Family'

6. TNA responded on 3 December 2014. It refused to provide the requested information citing sections 37(1)(a), 40(2) and 41 of the FOIA as its basis for doing so.
7. The complainant requested an internal review on 3 December 2014. He argued that much of the information sought is historic in nature and that the section 37 exemption *'is only confined to information which is classed as actual communications'*.
8. TNA provided the outcome of its internal review on 2 February 2015. It maintained its original position.

Scope of the case

9. The complainant contacted the Commissioner on 3 February 2015 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of this case to be to determine if TNA has correctly applied the exemptions it has cited. 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

11. Section 37(1) states that information is exempt information if it relates to –
 - (a) communications with the Sovereign.
12. Sections 37(1)(a) is a 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 the 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. The exemption covers information which relates to such a communication. The complainant's assertion that it "is only confined to information which is classed as actual communications" is not correct.

14. The information in scope constitutes personal and private communications with, on behalf of, and expressions of the views of, the Sovereign, through her officials. It also lists the subjects to be discussed at the private audiences between The Queen and the Prime Minister of the day. TNA advised of the longstanding constitutional convention that the audiences and the topics discussed remain private and confidential.
15. For the exemption section 37(1)(a) 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.
16. Having viewed the withheld information, the Commissioner is satisfied that all the information that was withheld is either a communication with the Sovereign's representatives on the Sovereign's behalf or relates to such a communication and therefore the exemption at section 37(1)(a) has been correctly engaged.
17. 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).
18. 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.

Right of appeal

19. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

20. 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.
21. 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