

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 October 2015

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

### Decision (including any steps ordered)

---

1. The complainant submitted a request to the public authority for information redacted from an open file in the National Archives and retained by the public authority. The authority denied the request in reliance on the exemptions at sections 37(1)(a), 40(2) and 41(1) FOIA
2. The Commissioner's decision is that the public authority was entitled to withhold the information redacted from file PREM 11/4443 (the withheld information) in reliance on the exemption at section 37(1)(a) FOIA.
3. No steps required.

### Request and response

---

4. The complainant submitted the following request to the public authority on 12 November 2014:

*'I would like to get access to what appears to be 82 separate pieces of redacted information from an open file in the National Archives.*

*The file has the reference PREM 11/4443.*

*The National Archives have told me that the Cabinet Office holds the 82 pieces of information. They have not yet been transferred to the National Archives.*

*I am – of course aware that the Constitutional Reform and Governance Act 2010 brought in extra protection for senior members of the Royal Family and the Royal Household.*

*But I note this protection only covers actual communications with those members of the Royal Family and or the Royal Household.*

*It does not provide a blanket exemption for even these members of the Royal Family.*

*It seems from studying the file that most of the information redacted relates to communications between politicians and civil servants.*

*It is likely that most of it can be released.*

*I also note that this is historic information much of which is more than 50 years old.'*

5. The public authority informed the complainant on 9 January 2015 that it considered the information redacted from file PREM 11/4443 exempt from disclosure on the basis of the provisions in sections in 37(1)(a), 40(2) and 41(1) FOIA.
6. The complainant disagreed and requested an internal review on 12 January 2015.
7. The public authority wrote back to the complainant on 23 February 2015 with details of the outcome of the internal review. The review upheld the original decision.

## **Scope of the case**

---

8. The complainant contacted the Commissioner on 25 February 2015 in order to complain about the public authority's handling of his request. He challenged the application of the exemptions on a number of grounds, some of which have been reproduced further below.
9. During the course of the Commissioner's investigation, the public authority noted that the some of the redacted information includes copies of the proposed final form for the 1952 and 1962 Queen's Christmas broadcasts. The authority concluded that this information was readily accessible to the complainant and should not have been withheld on the basis of section 37(1)(a) because the final versions of the broadcasts delivered are available on the official website of the British

Monarchy.<sup>1</sup> The public authority consequently withheld copies of the 1952 and 1962 broadcasts on the basis of section 21(1) FOIA.<sup>2</sup>

10. The scope of the Commissioner's investigation therefore was to determine whether the public authority was entitled to rely on the exemptions at sections 37(1)(a), 40(2) and 41(1) to withhold the information retained from file PREM 11/4443 save the information withheld by the authority on the basis of section 21(1) (the withheld information). In the course of the investigation the withheld information was reviewed by the Commissioner's staff at the public authority's offices.

## Reasons for decision

---

### Section 37(1)(a) – Communications with Her Majesty

11. Section 37(1)(a) of FOIA states that information is exempt if it relates to communications with the Sovereign.
12. The exemption is absolute (as a result of its amendment by the Constitutional Reform and Governance Act 2010). It does not require a consideration of the balance of the public interest once it is engaged.
13. The complainant's submissions challenging the application of this exemption are reproduced below.

*'I have studied those part [sic] of the file which are open to the public and it is my contention that the document is likely to include material which would not be exempted under The Constitutional Reform and Governance Act 2010.*

*This information is likely to include information about the Queen and the Royal Family which does not constitute actual communications.*

*It is also likely to include official exchanges between politicians and civil servants.*

*I note that the information in the file is at least fifty years old.'*

---

<sup>1</sup>

<http://www.royal.gov.uk/ImagesandBroadcasts/TheQueensChristmasBroadcasts/ChristmasBroadcasts/ChristmasBroadcast1952.aspx>

<sup>2</sup> Information accessible to applicant by other means.

14. The Commissioner is satisfied that the withheld information clearly falls within the scope of the exemption at section 37(1)(a). The Commissioner is satisfied that the file consists predominantly of correspondence between Buckingham Palace and the Prime Minister's Office regarding the Queen's Christmas broadcasts. The withheld information also consists of a small amount of information which though not contained in correspondence directly between Buckingham Palace and the Prime Minister's Office, relates to the Queen's broadcast, flowing from communications with Buckingham Palace regarding the broadcasts. For the avoidance of doubt, the correspondence from Buckingham Palace in relation to the broadcasts was sent on behalf of the Queen.
15. With effect from 19 January 2011, the Constitutional Reform and Governance Act amended section 63 of the FOIA<sup>3</sup> so that information covered by sections 37(1)(a) to (ad) cannot be exempt after a period of five years from the death of the person referred to in the section, or after a period of 20 years from the creation of the record containing the information, whichever is the later. Therefore, although the withheld information is at least 50 years old, section 37(1)(a) will only cease to apply five years after the Queen's death.
16. The public authority was therefore entitled to withhold the withheld information in reliance on the exemption at section 37(1)(a).
17. In light of his decision the Commissioner did not consider the public authority's reliance on the exemptions at sections 40(2) and 41(1).

---

<sup>3</sup> See section 63(2E) FOIA

## Right of appeal

---

18. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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 .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**