

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 February 2016

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information relating to the wills of three members of the Royal Family. The Ministry of Justice (MoJ) confirmed it holds the requested information but refused to provide it citing section 44 of FOIA (prohibitions on disclosure).
2. The Commissioner's decision is that section 44 was correctly applied. The Commissioner finds, however, that in failing to respond to the complainant's request within the statutory timescale MoJ breached section 10(1) of FOIA. He requires no steps to be taken.

Request and response

3. On 19 May 2015 the complainant wrote to MoJ and requested information in the following terms:

"...Does the Ministry of Justice and or Her Majestys Courts and Tribunal Service and or the Probate Service hold copies of the wills of the following three members of the Royal Family. If the answer is yes can you please provide copies of the wills and all of their contents.

Louis Mountbatten, 1st Earl Mountbatten of Burma. (Louis, Francis, Albert, Victor Nicholas Mountbatten) who died on 27 August 1979.

Princess Margaret Countess of Snowdon who died on 9 February 2002.

Queen Elizabeth the Queen Mother who died on 30 March 2002.

As all three individuals are dead I do not anticipate any data protection implications.

It is my understanding that all UK wills are public documents which should be freely available to members of the press and public....”.

4. In the absence of a timely response, the complainant requested a review of MoJ's handling of the request on 7 July 2015.
5. The MoJ responded on 11 August 2015. It confirmed that it held the requested information but refused to provide it citing section 44(1)(c) FOIA (prohibitions on disclosure) as its basis for doing so. With regard to the delay in responding, MoJ explained that this was due to a procedural oversight.
6. Following an internal review of its decision to withhold the requested information, the MoJ wrote to the complainant on 8 September 2015. It upheld its decision with respect to its application of section 44(1) of FOIA, clarifying the approach to the effect that both section 44(1)(c) and section 44(1)(a) applied.

Scope of the case

7. The complainant contacted the Commissioner on 6 October 2015 to complain about the way his request for information had been handled. He disputes that disclosure of the requested information would lead to an action for contempt of court.
8. The analysis below considers MoJ's application of section 44 FOIA to the requested information – the wills of three named members of the Royal Family. The Commissioner has also considered the timeliness with which the MoJ responded to this request.

Reasons for decision

Section 44 prohibitions on disclosure

9. Section 44 of the FOIA provides that:

“(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation, or

(c) would constitute or be punishable as a contempt of court."

10. Section 44 is a class based exemption: if the information conforms to the class described in this section, the exemption is engaged.

11. During the course of the Commissioner's investigation, MoJ confirmed that it is relying on section 44(1)(a) and 44(1)(c) to withhold the requested information.

12. By way of explanation about its citing of section 44, MoJ told the complainant:

"...all wills given probate are held on a register which can be searched by the public. Wills can be "sealed" by the court, on application, if inspection would be inappropriate".

13. MoJ also told him:

"In this case the wills that you have requested are sealed and the enactment prohibiting release of the information is a judicial order made under section 58 of the Non-Contentious Probate Rules (1987)".

14. Referring to the Non-Contentious Probate Rules (1987), the complainant told the MoJ:

"..I note these particular rules were drafted prior to the introduction of the Freedom of Information Act 2005. I do not accept that disclosure would lead to an action for contempt of court".

15. In that respect, MoJ told the complainant:

"Please note that the Freedom of Information Act does not override other laws that prevent disclosure, which is why section 44 is engaged in this instance".

16. With respect to section 44 FOIA, the Commissioner's website states¹:

"This exemption is often used by regulators. For example, the Information Commissioner is prohibited by section 59 of the Data

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

Protection Act from disclosing certain information he has obtained in the course of his duties, except in specified circumstances.

The Freedom of Information Act does not override other laws that prevent disclosure, which we call 'statutory bars'."

17. The Commissioner is satisfied that the FOIA does not override other laws that prevent disclosure, including those enacted prior to the FOIA.

Would disclosure constitute or be punishable as a contempt of court?

18. In correspondence with the Commissioner, MoJ referred to the following existing legislation which it considers relevant in this case:

"Section 124 of the Senior Courts Act 1981 provides:

124 Place for deposit of original wills and other documents.

"All original wills and other documents which are under the control of the High Court in the Principal Registry or in any district probate registry shall be deposited and preserved in such places as may be provided for in directions given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005; and any wills or other documents so deposited shall, subject to the control of the High Court and to probate rules, be open to inspection."

Rule 58 of the Non-contentious probate rules 1987 (as amended) states:

"Inspection of copies of original wills and other documents

58. An original will or other document referred to in section 124 of the Act shall not be open to inspection if, in the opinion of a registrar, such inspection would be undesirable or otherwise inappropriate".

19. In support of its application of section 44 of the FOIA in this case, MoJ explained how it considers this section applies. It told the Commissioner:

"In respect of the wills in question, these have been sealed by the court under the above rule. Disclosure under the FOIA would be in breach of the above enactment which engages section 44 (1)(a) of the FOIA and would also be in contempt of the Judicial order sealing the will engaging section 44 (1)(c) of the Act".

20. It also told him:

"Breaching a court order is contempt of court because court orders are made to be performed and observed".

21. The Commissioner has issued guidance on section 44². That guidance states:

"Section 44 (1) (c) provides for the exemption of information if its disclosure would constitute or be punishable as a contempt of court. Contempt of court serves the primary function of protecting the integrity of court proceedings. The Contempt of Court Act 1981 and the common law set out when proceedings become active. A public authority may be subject to a court order requiring it not to disclose particular information. Information subject to a court order prohibiting its disclosure would be covered by s44 (1) (c)".

22. From the evidence he has been provided with, the Commissioner is satisfied that the requested wills are sealed by judicial order by virtue of section 58 of the non-contentions probate rules (1987).

23. Having considered the matter, the Commissioner accepts that disclosure in response to the request would breach the order and that, in doing so, disclosure would constitute contempt of court. The exemption provided by section 44(1)(c) is therefore engaged in relation to this information.

24. Section 44 is an absolute exemption, which means that if information is covered by any of the subsections in section 44 then it is exempt from disclosure. There is no need to consider whether there might be a stronger public interest in disclosing the information than in not disclosing it.

Section 10 time for compliance

25. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"no later than the twentieth working day following the date of receipt"*.

26. In this case MoJ acknowledges that it responded to the request outside of the statutory deadline, thereby breaching section 10(1) of the FOIA.

² https://ico.org.uk/media/for-organisations/documents/1186/awareness_guidance_27_-_prohibitions_on_disclosure.pdf

Right of appeal

27. 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

28. 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.
29. 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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