

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 01 July 2019

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

Decision (including any steps ordered)

1. The complainant requested access to the closed extracts from the open parent file FO/800/847 - Duke of Windsor. The National Archives (TNA) withheld the information on the basis of the exemption at section 37(1)(a) of FOIA - communications with or on behalf of the Sovereign. The Commissioner's decision is that TNA was entitled to withhold the information on the basis of the exemption at section 37(1)(a). The Commissioner does not require TNA to take any steps.

Request and response

2. On 13 August 2018 the complainant requested access to a closed file:
'FO800/847/1 which I understand is a closed extract of 11 pages long.'
3. On 12 September 2018 TNA provided a response citing section 37(1)(a) - communications with or on behalf of the Sovereign - to refuse the information.
4. The complainant requested an internal review on 12 September 2018.
5. TNA provided the outcome of its internal review on 8 November 2018 and upheld the decision to refuse to disclose the information in the file.

Scope of the case

6. On 9 November 2018 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of this case to be to determine if TNA has correctly applied the exemption ay section 37(1)(a).

Reasons for decision

Section 37(1)(a)

8. The exemption at section 37(1)(a) states:

'Information is exempt information if it relates to communications with the Sovereign.'
9. It is a classed based and absolute exemption which means that information falling within the description in section 37(1)(a) automatically engages the exemption regardless of whether there would be any harm in disclosure. It is not subject to a balance of the public interest test.
10. 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.
11. Having carefully viewed the withheld information, the Commissioner is satisfied that all the information that was withheld is a communication with the Sovereign's representatives on the Sovereign's behalf and therefore the exemption at section 37(1)(a) has been correctly engaged.
12. Consequently, she finds that TNA was entitled to withhold the information on the basis of section 37(1)(a).

Right of appeal

13. 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@justice.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

14. 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.
15. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF