

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2019

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

Decision (including any steps ordered)

1. The complainant requested access to a closed file. The National Archives (TNA) withheld the information on the basis of the exemptions at sections 37(1)(a) and (b), 27(1), 40(2) and 41(1) of the FOIA.
2. The Commissioner's decision is that TNA was entitled to withhold the information on the basis of the exemption at section 37(1)(a) - communications with or on behalf of the Sovereign. The Commissioner also finds that TNA breached section 10 of FOIA.

Request and response

3. On 25 June 2018 the complainant requested access to a closed file:
*'Document reference: PREM 13/1165
I would like to request access to contents of this closed file under The Environmental Information Regulations. I note that The Queen is not exempt from the Environmental Information Regulations and any environmental information in the file - as defined by the EIRs - should be disclosed.'*
4. On 11 July 2018 TNA confirmed that the record does not contain environmental information.
5. There followed some correspondence on the consideration of the request under FOIA and then regular updates on the extensions required for a consideration of the public interest test to the applied qualified exemptions.

6. On 28 December 2018 TNA provided a response citing sections 27(1)(a)(c)(d) - international relations; 37(1)(b) - conferring by the Crown of any honour or dignity and 37(1)(a) - communications with or on behalf of the Sovereign to refuse the information.
7. The complainant requested an internal review on 2 January 2019. There followed a number of updates from TNA regarding the late response to the request for an internal review.
8. On 10 April 2019 TNA provided the outcome of its internal review. It upheld the decision to apply sections 27(1)(a)(c)(d); 37(1)(b) and 37(1)(a). It also applied sections 40(2) - personal data and 41(1) - provided in confidence to some parts of the withheld information. It also accepted and apologised for the unreasonable amount of time taken for TNA to respond to the FOIA request.

Scope of the case

9. On 16 April 2019 the complainant contacted the Commissioner to complain about the way his request for information had been handled including the timeliness of the responses.
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 this exemption is not engaged will she consider the remaining exemptions.

Reasons for decision

Section 37(1)(a)

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

'Information is exempt information if it relates to communications with the Sovereign.'

11. It is a classed based 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.
12. 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.

13. 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.
14. Consequently, she finds that TNA was entitled to withhold the information on the basis of section 37(1)(a). She has not gone on to determine if TNA has correctly applied the other exemptions it has cited.

Procedural Matters

15. By virtue of section 10(1) FOIA, a public authority is required to respond to a request for information within 20 working days. However, the Freedom of Information (Time for Compliance with Request) Regulations 2004 allows TNA 30 working days to comply with a request for information in a transferred record which remains closed.
16. TNA acknowledged and apologised for the delay in its response to the complainant (103 working days). The Commissioner finds that TNA breached section 10 of the FOIA.

Other matters

17. The FOIA does not stipulate a time limit for public authorities to issue internal reviews. However, as a matter of good practice, the Commissioner considers that a public authority should take no more than 20 working days to issue an internal review and in exceptional circumstances, 40 working days.
18. TNA acknowledged and apologised for the delay in its response to the complainant (97 working days). The Commissioner therefore wishes to record her concern that it took the TNA over 20 working days to issue the outcome of its internal review to the complainant. She expects TNA to complete internal reviews of responses to requests for information more promptly in future.

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: 0116 249 4253

Email: grc@justice.gov.uk

Website: 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

Robert Mehan
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF