

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 June 2022

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested the closed extract of a file titled 'Opening of Parliament: position of Prince Philip and Prince Charles'. The National Archives (TNA) has withheld the information under section 37(1)(a)(communications with the Sovereign), section 40(2)(personal data) and section 41(1)(information provided in confidence).
2. The Commissioner's decision is as follows:
  - The information that TNA has withheld is exempt from disclosure under section 37(1)(a) of FOIA.
  - TNA did not comply with section 17(1) of FOIA as it did not refuse the request within the required timescale.
3. The Commissioner does not require TNA to take any remedial steps.

#### **Request and response**

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4. On 29 March 2021 the complainant wrote to TNA and requested information in the following terms:

"... I would like to submit a new request under the Freedom of Information Act and the Environmental Information Regulations

(EIRs)... I would like to request copies of the documents which are listed on the Discovery Catalogue as 'Closed Extracts LCO 65/52/1

I note that the material relates to the period 1966 to 1973 and is more than twenty years old..."

5. On 27 April 2021 TNA advised the complainant that it had closed the EIR request as it had not identified any environmental information within scope of their request.
6. TNA provided a refusal notice under FOIA on 19 May 2021. It withheld the requested information under sections 37(1), 40(2) and 41(1).
7. On 28 May 2021, the complainant requested an internal review of TNA's FOIA response of 19 May 2021.
8. TNA provided an internal review on 5 July 2021. It upheld its reliance on the section 37, 40(2) and 41 FOIA exemptions to withhold the requested information. TNA acknowledged it had taken too long to respond to the complainant's FOIA request.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 10 August 2021 to complain about the way their request for information had been handled.
10. The Commissioner has first considered whether any of the withheld information can be categorised as environmental information. His investigation will then consider whether TNA can withhold that information under the FOIA exemptions it has cited, or the EIR's equivalent exceptions. Finally, the Commissioner will consider the timeliness of TNA's refusal.

### **Reasons for decision**

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#### **Is any of the withheld information environmental information?**

11. Information is 'environmental information' and must be considered for disclosure, if held, under the terms of the EIR rather than FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
12. Regulation 2(1)(a) defines environmental information as information that concerns the state of the elements of the environment, such as water, soil or landscape.

13. Regulation 2(1)(c) defines environmental information as information on measures affecting or likely to affect the elements and factors referred to in (a).
14. The withheld information in this case concerns administrative matters associated with the Queen's attendance at the State Opening of Parliament in 1967.
15. Clearly, there could be no close link between information about the State Opening of Parliament in 1967 and the elements of the environment, such that the withheld information could be categorised as environmental information. The Commissioner is satisfied that the information cannot be categorised as environmental information under regulation 2(1) of the EIR and TNA was correct to manage the complainant's request under FOIA.

### **Section 37 – Communications with Her Majesty, etc and Honours**

16. Under section 37(1)(a) of FOIA information is exempt information if it relates to communications with the Sovereign. Following a Constitutional Reform and Governance Act 2010 amendment, after January 2011 section 37(1)(a) became an absolute exemption. This means that where the exemption is engaged there no public interest test; the withheld information simply has to fit the exemption.
17. The open file LCO 65/52 that is the parent of the closed extract that are the focus of the complainant's interest - LCO 65/52/1- relates to the drafting of the public announcement of HM The Queen's attendance at the State Opening of Parliament in 1967.
18. The Commissioner has had sight of the information withheld from the parent file. The information is as TNA has described in its submission to him, but he does not intend to reproduce that description in this notice. The Commissioner is satisfied that the withheld information consists entirely of information relating to communications with or by HM The Queen about the State Opening of Parliament, provided in confidence.
19. TNA says its decision to maintain the application of section 37(1)(a) is consistent with the Commissioner's decision to uphold its application of this exemption for similar information (albeit in a different file) which

related to correspondence from Her Majesty's Private Secretary – FS50445018<sup>1</sup>.

20. TNA has noted that the Commissioner also upheld its application of the section 37(1)(a) exemption in FS50802747<sup>2</sup>. This decision outlined how, for this exemption to be engaged, the correspondence does not need to be made directly by Her Majesty, and “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.”
21. The Commissioner is satisfied that TNA is entitled to withhold information held in LCO 65/52/1 on the basis of the exemption at section 37(1)(a) of FOIA. This is because the information relates to communications with the Sovereign. As section 37(1)(a) is an absolute exemption, there is no further consideration to be made and no public interest to consider.
22. For the above reason, the Commissioner has not gone on to look at either sections 40(2) or 41 of FOIA which TNA also applied to the withheld information.

### **Section 17 – refusal of request**

23. Under section 10(1) of FOIA a public authority must comply with section 1(1) – that is, confirm whether it holds requested information and communicate the information to the applicant if it is held and is not exempt information - within 20 working days following the date of receipt of the request.
24. Under the 'Freedom of Information (Time for Compliance with Request) Regulations 2004', TNA is granted an additional 10 working days to process requests. This to allow TNA to consult with the transferring department and other bodies – the Ministry of Justice and The Royal Household in this case. This provision therefore allows TNA a maximum of 30 working days to provide a statutory response to a requester.

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2012/760874/fs\\_50445018.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2012/760874/fs_50445018.pdf)

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615329/fs50802747.pdf>

25. Under section 17(1) of FOIA a public authority that is relying on a claim that information is exempt information must give the applicant a refusal notice within the time for complying with section 1(1).
26. The complainant in this case submitted their request on 29 March 2021 and TNA provided a refusal notice under FOIA on 19 May 2021. This exceeded its 30 working day provision, which TNA acknowledged in its internal review. The Commissioner therefore finds that TNA did not comply with section 17(1) of FOIA.

## **Right of appeal**

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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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**