

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2023

Public Authority: Churchill College

Address: Cambridge
CB3 0DS

Decision (including any steps ordered)

1. The complainant requested information relating to the taxation treatment of Queen Elizabeth II contained within the diaries of Sir John Colville. Churchill College (the "College") refused the request, arguing that it does not hold the information for the purposes of the FOIA.
2. The Commissioner's decision is that the College does not hold the requested information for the purposes of the FOIA.
3. The Commissioner does not require the College to take any steps.

Request and response

4. On 2 December 2022 the complainant wrote to Churchill College (the "College") and requested the following information:

"Any and all material from within GBR/0014/CLVL 1/10, which is part of the papers of Sir John Colville and which is titled "Diary, 1947 - 1957", that references, discusses or otherwise relates to the taxation treatment of Queen Elizabeth II. I would be happy to accept this information either via an in-person visit (so that I can photograph the relevant material) or as images sent by email from the Churchill Archives Centre."

5. The College's initial position was that it considered that the information was not held for the purposes of the FOIA as it was held on behalf of another person, as provided for in section 3(2) of the FOIA. At the internal review stage the College revised its position, confirming that the information was held and that it was being withheld under the exemption for communications with the royal family (section 37).
6. The College's final position, confirmed in submissions to the Commissioner, is that it does not hold the information for the purposes of the FOIA.

Reasons for decision

7. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

8. Section 3(2) of FOIA states:

"3.(2) For the purposes of this Act, information is held by a public authority if-

(a) it is held by the public authority, otherwise of behalf of another person, or

(b) it is held by another person on behalf of the authority."

9. Whilst a public authority may have physical possession of certain information, it may not "hold" that information for the purposes of the FOIA. Information will not be "held" by a public authority if it only keeps that information on behalf of another person or legal entity.
10. The Upper Tribunal in *University of Newcastle upon Tyne v Information Commissioner and British Union for the Abolition of Vivisection* [2011] UKUT 185 (AAC), approved an earlier ruling by the First Tier Tribunal that:

"s.1 [of the FOIA] would not apply merely because information is contained in a document that happens to be physically on the authority's premises: there must be an appropriate connection between the information and the authority, so that it can be properly said that the information is held by the authority."
11. The question of whether information is "held" by a public authority for its own purposes will be determined by the facts in each case, but the Commissioner's guidance sets out a number of factors to be considered including whether:
 - the authority provides clerical and administrative support for the other person, whether legally required to or not;
 - the authority controls access to the information;
 - the authority itself decides what information is retained, altered or deleted;
 - the authority deals with enquiries about the information; or
 - costs arising from holding the information are included in the authority's overall budget.
12. The College has argued that the requested information sits outside the scope of the FOIA as the Colville collection was not generated by a public authority, it is on loan and the owner's rights to withdraw the material are not constrained.
13. The College confirmed to the Commissioner that, in 2005, in accordance with guidance issued by the National Archives, it undertook an FOIA assessment of the papers of Sir John Colville. This assessment reached the following conclusions:
 - There was very little involvement of any public body in the creation of this archive collection. It was created for private purposes.
 - There has been very little direct public funding for its preservation.

- The collection is on loan to Churchill College from the Colville family. The owner of the collection has retained control over access to the closed item in the collection and, as the owner of the majority of the copyright within it, has considerable control over the use of the information within the collection.
 - The owner's rights to withdraw the collection from Churchill College are not constrained.
14. The College has further argued that, as the collection is on loan to Churchill College, the prevailing assumption at the time of deposit was (and remains) that the owner would retain control over access to the information and its use. The College considers that failure to observe the owner's wishes over access would be unprofessional and irresponsible.
 15. Having considered the available evidence, the Commissioner is satisfied that the factors identified in paragraph 11 above, which assist in determining whether information is held for an authority's own purposes (and, hence, render it held under the FOIA), are not present in this case.
 16. The Commissioner has, therefore, concluded that the College correctly confirmed that it does not hold the requested information for the purposes of the FOIA.

Right of appeal

17. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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

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