

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 October 2013

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

Decision (including any steps ordered)

1. The complainant requested copies of two closed files at The National Archives (TNA). TNA disclosed some information from both files but withheld the remaining information on the basis of the exemptions at sections 37(1)(a), 40(2) and 41(1) FOIA.
2. The Commissioner's decision is that TNA was entitled to withhold the remaining information (referred to as the disputed information in this notice) on the basis of the exemption at section 37(1)(a).
3. The Commissioner does not require TNA to take any steps.

Request and response

4. On 28 January 2013 the complainant wrote to TNA and requested information in the following terms:

'.....I would like to make a Freedom of Information request. I would like copies of the contents of the following three files all of which are classed as closed on the NA's website. The files are PREM 11/2471, PREM 13/1165 and PREM 19/898. It is my contention that the files should be opened with immediate effect. I note that other files relating to audiences involving the Queen and her former Prime Ministers have been opened. Please feel free to remove any actual communications with the Monarch and or the Royal Household – as required by the FOI Act. But it is my contention that the files are likely to contain other material which can be released...'

5. TNA responded on 11 March 2013. It claimed that all of the information in PREM 11/2471 was exempt from disclosure on the basis of sections 37(1)(a), 40(2) and 41(1) FOIA. TNA did not address the remaining parts of the request for information in PREM 13/1165 and PREM 19/898.

6. On 26 March 2013, the complainant requested an internal review in the following terms:

'...I would now like to request an internal review into the handling of the FOI request. The request concerned the contents of file PREM 11/2471. I do not accept that the exemptions you quote would apply to the entire contents of the file. I note that much of the material is historic and that some of the individuals concerned have since died...'

7. On 3 May 2013 TNA wrote back to the complainant with details of the outcome of the internal review. From the contents of that letter, the Commissioner understands that TNA had previously written to the complainant on 26 February 2013 in connection with the request for the information in PREM 13/1165 and that it was conducting a separate internal review in connection with PREM 19/898. In any event, TNA explained that it was opening some of the information in the files (i.e. PREM 11/2471 and PREM 13/1165) to the general public. It considered the remaining information in both files exempt from disclosure on the basis of sections 37(1)(a), 40(2) and 41(1).

Scope of the case

8. On 28 May 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled. His complaint was worded as follows:

'.....As you can see the request was about getting access to two closed files which are known as PREM 13/1165 and PREM 11/2471. These files contain information relating to audiences between the Queen and various Prime Ministers in the 1950s and 1960s. Following my request for internal review the National Archives did invite me down to Kew to look at extracts. But it is my contention that there could be much more material than this and this material should have been released. While I accept that section 37(1) means I probably can't get access to any information which constitutes actual communication with the Monarch.[sic] It is also my contention, however, that the file will probably contain other information in addition to this. I also note that the information I am seeking is historical in nature. I note that we are talking about documents which detail the views of democratically elected politicians and or government civil servants. Everyone involved in the discussions and or correspondence would have been aware that the material was likely to be released at a future date. I am also aware that

the passing of so much times probably means that data Protection issues are not a concern.....I would be grateful if you could also look at the amount of time taken by the National Archives to process the original requests and the subsequent requests for an internal review.'

9. The Commissioner wrote to the complainant on 10 July 2013 and outlined the scope of his investigation. He invited the complainant to write back if there were any other matters he wanted him to consider. The complainant did not write back.
10. The scope of the investigation therefore was to consider whether TNA was entitled to withhold the information it had not opened to the general public in files PREM 11/2471 and PREM 13/1165 (the disputed information) on the basis of the exemptions at sections 37(1)(a), 40(2) and 41(1). The Commissioner also considered the length of time it took for TNA to respond to the requests and complete the internal review.

Reasons for decision

Section 37(1)(a)

11. The exemption at section 37(1)(a) states:
'Information is exempt information if it relates to communications with the Sovereign.'
12. 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.
13. Following changes made by the Constitutional Reform and Governance Act 2010, the exemption is an absolute exemption, which means that it is not subject to a public interest test.
14. PREM 11/2471 is described as follows: *Prime Minister's audiences of HM The Queen; covering dates 1958*. PREM 13/1165 is described as follows: *ROYAL FAMILY. Papers relating to Prime Minister's weekly Audience of HM The Queen; covering dates 1965-1966*.
15. The Commissioner has carefully considered the disputed information and he is satisfied that it *relates to* communications with Her Majesty The Queen. This includes communications with Her Majesty's representatives on Her behalf. The Commissioner interprets the phrase *relates to* broadly.
16. Consequently, he finds that the public authority was entitled to withhold the disputed information on the basis of section 37(1)(a).

17. In view of his decision, he has not gone on to consider the applicability of sections 40(2) and 41(1).

Procedural Matters

18. 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.
19. The Commissioner therefore finds that TNA responded to the requests for information in PREM 11/2471 and PREM 13/1165 within the statutory 30 working days.

Other matters

20. 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.
21. The Commissioner therefore wishes to record his concern that it took the TNA over 20 working days to issue the outcome of its internal review to the complaint. He expects TNA to complete internal reviews of responses to requests for information more promptly in future.

Right of appeal

22. 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: informationtribunal@hmcts.gsi.gov.uk

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

23. 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.
24. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF