

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2019

Public Authority: Cabinet Office
Address: 70 Whitehall
London SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested the information in PREM 19/3668 concerning the collapse of the Bank of Credit and Commerce International (BCCI). The Cabinet Office refused to provide this citing section 44 (Prohibitions on disclosure) and section 41 (Information provided in confidence. It upheld this at internal review.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 44 as its basis for withholding the requested information.
3. No steps are required.

Request and response

4. On 11 September 2018, the complainant requested information of the following description:

"Please may I see the contents of the file PREM 19/3668 concerning the collapse of BCCI.

If you need further details in order to identify the information requested or a fee is payable please let me know as soon as possible.

If you are of the view that there may be further information of the kind requested but it is held by another public authority please let me know as soon as possible. Please continue with this application as soon as possible.

I believe that the information requested is required in the public interest for the following reasons:

1. To uphold public confidence that information prepared for the prime minister about the collapse of banks is made public after a reasonable interval;
 2. To provide assurance that the Government behaved fairly in response to the bank's collapse;
 3. To ensure that money is correctly spent on Government policy towards banks."
5. On 27 September 2018, the Cabinet Office responded.
 6. It refused to provide the requested information. It cited the following exemptions as its basis for doing so:
 - section 41 (confidentiality)
 - section 44 (legal prohibition on disclosure)
 7. The complainant requested an internal review on 27 September 2018. The Cabinet Office sent him the outcome of its internal review on 12 October 2018. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 12 October 2018 to complain about the way his request for information had been handled.
9. During the course of the investigation, the Cabinet Office provided a response but did not readily provide access to the withheld information. The Commissioner threatened service of an Information Notice in order to see a copy of the information to which the exemptions had been applied. Eventually, the Cabinet Office invited a senior representative of the Commissioner to view the withheld information and to discuss the detail of its response.
10. In its written response, it clarified its position on this matter. It withdrew reliance on section 41, maintained reliance on section 44 and introduced reliance on section 35(1)(c) (provision of advice by Law Officers, etc), section 27(1)(a) and (c) (prejudice to international relations) and section 21(1) (information accessible to the applicant by other means) as its basis for refusing to provide the requested information. It also refused to confirm or deny under section 23(5) whether it held any information within the scope of the request which may have been supplied by or which relates to bodies dealing with security matters.

Reasons for decision

Refusal to provide requested information

11. Section 44(1) of FOIA states that

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it—

(a) is prohibited by or under any enactment

12. The Cabinet Office explained that the applicable prohibition on disclosure was under section 348 of the Financial Services and Markets Act 2000 ("FSMA"). It further explained that this legislation superseded the Banking Act (the legislation applicable at the time the information was provided in confidence) and that the confidentiality provisions of the Banking Act were transferred into confidentiality under the FSMA. It explained that a breach of this provision of the FSMA was a criminal offence.
13. Citing section 348 of the FSMA, it explained that the Bank of England (in its capacity as the Prudential Regulation Authority) was the primary recipient in this case as was HM Treasury and that it, the Cabinet Office was a recipient of the information for the purposes of FSMA.¹ It also argued that the information in question fell within the definition of confidential information in section 348 of the FSMA.
14. The Commissioner sought to test this argument by specific reference to the withheld information but, as noted above, was not readily able to do so. Eventually, a senior representative of the Commissioner was able to view the withheld information and to discuss the detail with the Cabinet Office in writing and in person in order to test its assertions.
15. Having viewed the withheld information and having considered whether or not the information could properly be withheld under section 44 of the FOIA, the Commissioner is satisfied that it can be. This is because she is satisfied that the information in question is covered by section 44 of the FOIA by virtue of the FSMA. It was not originally clear that this was the case and the Commissioner's representative queried this specific issue when viewing the information in situ.

¹ <http://www.legislation.gov.uk/ukpga/2000/8/section/348> "Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of (a) the person from whom the primary recipient obtained the information; and (b) if different, the person to whom it relates."

16. The Commissioner has concluded that the Cabinet Office can rely on section 44 as a basis for withholding all the information to which this has been applied.
17. As the Commissioner has found that all of the information is exempt under section 44, she has not gone on to consider the application of other exemptions cited.

Other matters

18. The Commissioner is extremely disappointed that the Cabinet Office did not provide the Commissioner with access to the withheld information upon request. It was only after protracted correspondence including the threat of service of an Information Notice that the Commissioner obtained full cooperation from the Cabinet Office in her investigation of this complaint.

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: 0870 739 5836
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

**Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**