

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2023

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

Decision (including any steps ordered)

1. The complainant has requested a closed extract from the parent record: PREM 19/4418/1 – 'ROYAL FAMILY. Prince Charles' interest in youth unemployment: The Princes Trust; The Princes Youth Business Trust; part 1'. The National Archives (TNA) withheld the information under sections 37(1)(a), 40(2) and 41(1) of FOIA, which concern communications with the Sovereign, personal data and information provided in confidence, respectively.
2. The Commissioner's decision is that TNA incorrectly cited section 37(1)(a). However, TNA is entitled to withhold the information, none of which is environmental information, under section 37(1)(ab) of FOIA. This is because the information comprises communications with a person who has subsequently acceded to the Throne. It is not necessary for TNA to take any corrective steps.

Request and response

3. The complainant made the following information request to TNA on 25 October 2022:

"... I would like access to a series of letters which have been removed from the file PREM 19/4418 which I viewed at the National Archives yesterday (30 August 2022).

The letters are listed below.

In each case I would like to request an actual copy of the letter [including the letterhead, any other design features, and the signature(s)] rather than just excerpts from the letter. If information must be redacted can you redact it where it appears in the actual letter that way, I will be able to judge the extent and location of the redaction. Please do not redact the name of the Prince of Wales (irrespective of which title he used) from the correspondence. With the exception of the Prince of Wales please redact the name and personal details of any individual who you suspect may still be alive. Please do not redact the name of Mrs Thatcher who died in 2013 or Michael Adeane who died in 1984. I note all correspondence is now more than twenty years old.

Would like to request copies of the following letters.

Letter and Attachment from Riddell to Turnbull, 5 February 1990
Letter from Whitmore to Adeane, 16 November 1981
Letter from Dykes to Whitmore, 13 November 1981
Letter from Whitmore to Dykes, dated 4 November 1981
Letter from Adeane to Whitmore, dated 3 November 1981
Letter from the prime minister to the Prince of Wales, dated 27 October 1981
Letter from Whitmore to Dykes, 13 October 1981"

4. TNA's final position was to withhold the requested information under sections 37, 40(2) and 41 of FOIA.
5. In their complaint to the Commissioner the complainant asked the Commissioner to consider whether any of the information in scope is environmental information which should be handled under the Environmental Information Regulations.
6. The Commissioner has reviewed the withheld information. Within this information TNA has highlighted where un-redacted information is available to public access within the parent record. The Commissioner considers that this information could broadly be categorised as environmental information. But TNA has advised that this particular information was already available to the public at the time access to the closed extracts was requested ie it was not being withheld. Having reviewed all the withheld information the Commissioner is satisfied that it contains no other environmental information.

Reasons for decision

7. This reasoning is focussed in the first instance on TNA's application of section 37(1) of FOIA to the withheld information. If necessary, the Commissioner will consider TNA's reliance on sections 40(2) and/or 41(1).

Section 37 – communications with His Majesty, etc and honours

8. Section 37(1)(a) of FOIA, which TNA cited, states that information is exempt information if it relates to communications with the Sovereign.
9. Under section 37(1)(ab) information is exempt if it relates to communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne.
10. The information the complainant has requested is correspondence from 1981 and 1990 between particular individuals, including correspondence directly to the then HRH Prince of Wales from the then Prime Minister, Margaret Thatcher.
11. At the time of the request in October 2022, HRH Prince of Wales had acceded to the Throne and was the Sovereign at that point. However, he was not the Sovereign at the time the requested information was generated. As such, the Commissioner considers that section 37(1)(ab) is the more appropriate exemption.
12. Following a Constitutional Reform and Governance Act 2010 amendment, after January 2011 section 37(1) became an absolute exemption. This means that where the exemption is engaged there is no public interest test; the withheld information simply has to fall within scope of the exemption.
13. In its internal review, discussing section 37(1)(a) TNA advised the complainant that that exemption concerns information that relates to communications with, or on behalf of, the Sovereign. As such, it considered that all the requested information engaged the exemption.
14. In his published guidance on section 37, in relation to section 37(1), the Commissioner confirms that the exemption also covers communications made or received by a person (or organisation) who was acting on behalf of the Sovereign (or a person who has subsequently acceded to the Throne).
15. In its submission to the Commissioner TNA has summarised the context and content of the information. It has confirmed its view that this material constitutes information created and shared on behalf of, HM

King Charles III. TNA says the information also contains the private and personal information of HM King Charles III, provided by him or on his behalf in confidence, and can therefore be considered communications with "the Sovereign".

16. TNA has referred to the Commissioner's decision in IC-66499-D5B2¹ (2021). This concerned similar material within a record TNA held and it outlined that, "the term 'relates to' should be interpreted broadly. In practice this means that the scope of the exemption will cover more than just the actual communications themselves; it will also apply to information that refers to, or is derived from those communications".
17. TNA has also noted the Commissioner's decision in FS50568624² (2015) which confirmed that section 37(1) covers communications officials made acting on behalf of the Sovereign.
18. As noted, the Commissioner has reviewed the information in scope, which TNA has provided to him. He is satisfied that the information relates to communications with or on behalf of a person who has subsequently acceded to the Throne (rather than with the Sovereign). The Commissioner's decision is therefore that the information engages section 37(1)(ab) of FOIA.
19. As section 37(1) is an absolute exemption, there is nothing further to consider in relation to section 37. Nor is it necessary to consider TNA's application of section 40(2) and 41(1) to the information.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2619537/ic-66499-d5b2.pdf>

² https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1424171/fs_50568624.pdf

Right of appeal

20. 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

21. 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.
22. 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