

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2023

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

Decision (including any steps ordered)

1. The complainant has requested a copy of a closed file, T 233/2026 . The National Archives (TNA) refused to provide the requested information, citing section 37(1)(a) (Communications with His Majesty and the awarding of honours).
2. The Commissioner's decision is that TNA was correct to refuse the request under section 37(1)(a).
3. The Commissioner does not require further steps.

Request and response

4. On 13 April 2023, the complainant wrote to TNA and requested that a specific file be opened to the public. The file in question is:
"T 233/2026 - Arrangements for dealing with Civil List Act 1952 Class V."

5. TNA responded on 2 June 2023. It refused to disclose the requested information, citing section 37(1)(a).
6. The complainant requested an internal review on 6 June 2023, stating 'Some parts of the file may be exempt under this exemption but it may be that not all of the file is covered by the exemption...I would therefore like to ask the National Archives to reexamine whether the whole of this file can fairly be said to fall under this exemption.'
7. TNA provided the outcome to its internal review on 4 September 2023. It upheld its previous position but didn't address the complainant's specific concerns.

Reasons for decision

Section 37 - Communications with His Majesty and the awarding of honours

8. Section 37 of FOIA states:
 - "(1) Information is exempt information if it relates to-
 - (a) communications with the Sovereign, (aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,
 - (ab) communications with a person who has subsequently acceded to the Throne, or become heir to, or second in line to, the Throne."
9. The exemption also covers communications made or received by a person or organisation who is acting on behalf of any of the Sovereign or the Heir to the Throne, for example, HRH's private secretary or a representative of Buckingham Palace.
10. Section 37 is an absolute exemption – this means if information engages the exemption then it's automatically exempt. There is no requirement for TNA to consider the public interest in disclosing or withholding the requested information.

11. For the purpose of section 37(1)(a), information only becomes a historic record¹ (in which case section 37 couldn't apply) when the later of the following time periods has passed:
 - Five years from the date of the "relevant death"; or
 - 20 years from the creation of the record containing the information.
12. TNA has explained that the Sovereign in question, for the purpose of section 37, is Queen Elizabeth II. Since Queen Elizabeth II died in September 2022, the Commissioner is satisfied that the later of the above time periods hasn't yet passed and so section 37(1)(a) still applies.
13. The Commissioner won't explicitly describe the contents of the file – to do so would undermine the point of section 37(1)(a). However, he notes that the request relates to The Civil List Act 1952.²
14. This Act covers money paid to individuals, by the government, for service to the state or as honorary pensions. It covers the monies paid by the Government to the Sovereign, towards performing their official duties. This includes monies for staff salaries, state visits, public engagements, ceremonial functions and the upkeep of the Royal Households.
15. The Commissioner has seen the withheld information and he's satisfied that the file falls under section 37(1)(a), as it constitutes correspondence with Buckingham Palace on behalf of the late Queen Elizabeth II.
16. As part of this investigation, the Commissioner asked TNA to consider whether **all** of the withheld information engages section 37(1)(a) because this was the complainant's concern. When asked if disclosure of a redacted version of the document was possible, TNA explained:

"any physical interference with historical documents is likely to cause some damage, TNA must be very sure that redacting a file would be of use by adding anything meaningful to the information already available in the public domain on this case.

¹ [Freedom of Information Act 2000 \(legislation.gov.uk\)](https://legislation.gov.uk)

² [Civil List Act 1952 \(legislation.gov.uk\)](https://legislation.gov.uk)

In this particular instance, the volume of exempt material, the scarcity of releasable material and the effect redaction would have on a reader's ability to understand the historical narrative of the record, precludes the possibility of a redacted release. 9 pages within T 233/2026 have been identified as suitable for disclosure. These consist of HM Treasury minutes which outline the approved actions for each year. However, the minimal release of these 9 pages would not provide any beneficial meaning to the context or historical narrative of the record. TNA is therefore of the view that, considered as a collected body of information, on balance, the information would be best served by the continued closure of the whole record."

17. To reiterate, the Commissioner has seen the withheld information as part of his investigation – it's a 174-page file which is made up of physical pages, mostly handwritten letters and correspondence that are over 70 years old.
18. The Commissioner has studied the nine pages (which are scattered throughout the file). He concurs with TNA when it says disclosure of a redacted version of the record isn't possible due to the age of the information and the way in which the minutes fall within the file.
19. Bearing in mind TNA's duty to protect and retain historical documents, the Commissioner has decided that TNA is entitled to withhold the entirety of the file under section 37(1)(a).

Other matters

20. Whilst the Commissioner agrees with TNA that disclosure of a redacted version of the record isn't possible, he notes this wasn't explained to the complainant during TNA's initial handling of the request. Had it been, this complaint to the Commissioner might have been avoided.

Right of appeal

21. 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

22. 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.
23. 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

Alice Gradwell
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