

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2023

Public Authority: House of Commons

Address: London
SW1A 0AA

Decision (including any steps ordered)

1. The complainant has requested information concerning an incident that occurred on 29 October 2021 at a private function held on House of Commons' premises.
2. The Commissioner's decision is that the House of Commons was entitled to rely on section 34 (parliamentary privilege) to withhold the requested information.
3. The Commissioner does not require the public authority to take any steps.

Background

4. On 29 October 2021, a private function was held on the premises of the House of Commons. An alleged incident, or incidences, occurred which led to the House of Commons stating that the event's organisers may no longer hold events on the premises and had been banned from the Parliamentary Estate.
5. A Freedom of Information request dated 28 March 2022, sought information about the investigation into complaints about the behaviour of attendees of the event in October 2021. The House of Commons

refused that request, the Commissioner upheld that refusal¹. The requester of that request appealed² the Commissioner's decision to the Information Tribunal.

6. During the course of those appeal proceedings, the House of Commons provided the Tribunal with a certificate, issued by Sir Lindsay Hoyle on 25 January 2023, pursuant to section 34(3) FOIA.

7. In light of the certificate issued the Information Tribunal ruled that:

"the certificate places the engagement of section 34 FOIA beyond the discretion of this Tribunal because, as there is conclusive evidence of the issue in dispute, the Tribunal has no jurisdiction to find otherwise, allow the appeal, or make a substituted Decision Notice" (para 6)

and dismissed the appeal under rule 8(2)(a)³ finding it had no jurisdiction.

Request and response

8. On 18 April 2023, the complainant requested information from the House of Commons by saying as follows.

"As you have provided MPs information about their misbehaviour in the past, the same should apply to the incident which occurred on 29th October 2021. Therefore, I request details of what the individual(s) who misbehaved on 29th October 2021 was/were accused of doing or saying? To avoid doubt, this is a different Freedom of Information request to that made previously. By your own admission, this information was written down by Sir Charles Walker when he was carrying out his oversight role of the Catering Department's commercial activity, which was not covered by parliamentary privilege. If the information can be provided this matter can finally be closed, otherwise it will continue until we finally receive justice".

9. On 16 May 2023, the House of Commons responded. It refused to provide the requested information. It cited the following exemption as its basis for doing so.

¹ [ic-178623-r4n0.pdf \(ico.org.uk\)](#)

² EA/ 2022/0407

³ [The Tribunal Procedure \(Upper Tribunal\) Rules 2008 \(legislation.gov.uk\)](#)

- Section 34 (parliamentary privilege).
10. The complainant requested an internal review. The House of Commons sent him the outcome of its internal review on 14 June 2023. It upheld its original position.

Scope of the case

11. The complainant contacted the Commissioner 19 July 2023 to complain about the way his request for information had been handled.
12. The Commissioner considers he has to determine whether the House of Commons was entitled to rely on section 34(1) not to communicate the requested information to the complainant.

Reasons for decision

13. Section 34(1) of the Act states that "information is exempt information if exemption from section 1(1)(b) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament."
14. Section 34(3) states that a certificate signed by the appropriate authority certifying that exemption is required for the purpose of avoiding an infringement of the privileges of either House of Parliament shall be conclusive evidence of that fact. In relation to the House of Commons, the Speaker of that House is the appropriate authority.
15. It is a class based exemption. This means that if information falls within the description of the exemption, then such information is exempt. The exemption is not subject to the public interest test.

Public Authority's Submissions

16. The complainant is the Treasurer of a group to be known as "the Society" for the purposes of this decision notice.
17. The events leading to this appeal began at a lunch at the House of Commons, which was attended by members of the Society on 29th October 2021.
18. While the catering services which were provided and the payment which was made for those services were governed by a contract, the requested information relates to future access to the Parliamentary Estate by members of the Society. Access by visitors to the Parliamentary estate and its facilities is a matter wholly controlled by the two Houses of Parliament as a matter of their exclusive cognizance over their own

affairs. In the House of Commons, decisions concerning access are made by the Administration Committee, one of the House's "domestic committees". The contract had already been completed and had ceased to be relevant: the issue was whether members of the Society would be permitted to enter into any future contracts with the House of Commons.

19. Following reports about poor behaviour by members of the Society at the lunch, the matter was referred to the Administration Committee of the House of Commons, which has delegated decisions about access by particular individuals or groups to the Parliamentary estate to its Chair. The Chair wrote to the Appellant in that capacity on 22 November 2021, to inform him that the Society may no longer hold events on the premises and has been banned from the Parliamentary Estate.
20. As referred to in paragraph 11 of the Information Commissioner's guidance on Parliamentary privilege, "proceedings within committees, formally appointed by the House (and their subcommittees), including oral and written evidence and deliberations" are an example of proceedings in Parliament.
21. The Administration Committee is a Select Committee, which is appointed under and operates in accordance with Standing Order No. 139 of the Standing Orders of the House of Commons, "to consider the services provided for and by the House and to make recommendations thereon to the House of Commons Commission or to the Speaker." Among other matters, the Administration Committee is responsible for making decisions about access to the Parliamentary Estate and the services which are provided to members of the public, including catering. As a Committee operating under the Standing Orders, its proceedings (including written evidence and its deliberations) are therefore subject to Parliamentary privilege.
22. As referred to in paragraph 12 of the Information Commissioner's guidance, the House of Commons has exclusive cognizance over its own proceedings. It is part of the privilege of each House of Parliament that they, and no other person, determine when and how Parliamentary material is to be published. The Administration Committee has decided that it does not wish to publish the requested information. Therefore, exemption from disclosure is required to avoid an infringement of the privileges of the House of Commons.
23. As stated in section 34(3) of the Act, a certificate signed by the Speaker of the House of Commons, certifying that exemption is required for the purpose of avoiding an infringement of the privileges of either House of Parliament is conclusive evidence of that fact. The House of Commons provided such a certificate signed by the Speaker dated 25 January 2023.

Complainant's Submission

24. The exemption certificate issued under section 34(3) of the Freedom of Information Act 2000 (FOIA) is dated 25 January 2023, nearly three months before his FOI request which is dated 18 April 2023.
25. Moreover, it specifically states in paragraph one that, "This Certificate relates to a request to the House of Commons for information relating to a decision to prohibit an organisation from holding events on the Parliamentary Estate following an event on 29th October 2021."
26. The complainant states that he has never challenged the decision to prohibit the Society from holding events on the Parliamentary Estate nor requested information in respect of that decision. All he has asked for is the information regarding the allegation that an individual or individuals from his group misbehaved on 29th October 2021, i.e. what did they do or say to cause the accusation? Therefore, the issued certificate would appear not to be germane to this case and defective. Furthermore, the House of Commons Compliance Team also appear to consider the certificate irrelevant to this matter; otherwise they would have mentioned it in their initial response to his request dated 18 April 2023. Accordingly, he asks that the certificate be struck out from this case as it is not relevant to the matter in hand.
27. The evidence presented to date shows quite clearly that the function organised on 29 October 2021 was purely a commercial event and as the contract states in section 30, the FOIA applies. Therefore, there is no reason the Information Commissioner should not consider this matter.

Commissioner Reasonings

28. The information requested is the "details of what the individual(s) who misbehaved on 29th October 2021 was/were accused of doing or saying?". This to the Commissioner, plainly relates to the information that was a factor in the House of Commons's decision to prohibit an organisation from holding events on the Parliamentary Estate following an event on 29th October 2021.
29. As stated above, on the 25 January 2023 pursuant to section 34(3), Sir Lindsey Hoyle the Speaker of the House of Commons issued a certificate which said as follows.

"This certificate relates to a request to the House of Commons for information relating to a decision to prohibit an organisation from holding events on the parliamentary estate following an event on the 29 October 2021.

In relation to the above information, I hereby certify that an exemption from section 1(1)(b) of the Freedom of Information act 2000 is required for the purpose of avoiding an infringement of the privileges of the House of Commons.”

30. The certificate is clear, information relating to a decision to prohibit an organisation from holding events on the parliamentary estate following an event on the 29 October 2021 is exempt from disclosure under FOIA. The Commissioner is satisfied that the requested information is information relating to the prohibition of an organisation from holding events on the parliamentary estate following an event on the 29 October 2021.
31. As noted above, the Speaker’s certificate is conclusive evidence (irrespective of the complainant’s submissions) that the exemption applies, and nothing in the Act requires or permits the Commissioner to look beyond the certificate. Accordingly the Commissioner finds that the exemption afforded by section 34(1) applies.

32. 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

33. 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.

34. 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
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