

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2024

Public Authority: House of Commons
Address: London
SW1A 0AA

Decision (including any steps ordered)

1. The complainant has requested information concerning MPs' pass data
2. The Commissioner's decision is that the House of Commons was entitled to rely on section 36 to withhold the requested information.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 9 August 2023, the complainant wrote to the House of Commons and requested information in the following terms:

"Please can you provide any available, documented/recorded rationale for why there is an exception to the 650 MPs' pass data (versus others who hold passes) in relation to the following from your clarifications: "It may help you to know that we record the usage of passes for security purposes only. We simply hold a record of the date and time each occasion a pass is used. This data is retained for a limited period, as laid down by our record retention policy. We hold most information for 3 years, with the exception of the 650 MPs' pass data, which is only retained for 7 days before being deleted".

5. On 10 October 2023 the House of Commons responded. It refused to provide the requested information. It cited the following exemption as its basis for doing so:
 - Section 36(2)(b)(ii) (disclosure of the information would be likely to inhibit the free and frank exchange of views for the purposes of deliberation)
6. The complainant requested an internal review. The House of Commons sent him the outcome of its internal review on 22 November 2023. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 22 November 2023 to complain about the way the request for information had been handled.
8. The Commissioner considers he has to determine whether the House of Commons was entitled to rely on section 36 (FOIA) to withhold the requested information.

Reasons for decision

9. On 3 April 2024, the House of Commons told the Commissioner that the Speaker had signed a certificate (dated 26 March 2024) in relation to its reliance on the section 36 FOIA exemption to withhold the requested information. The House of Commons provided the Commissioner with a copy of the certificate. The Speaker is the qualified person for House of Commons.
10. In it the Speaker certifies that in his reasonable opinion disclosure of the information, held by the House of Commons, as requested would be likely to inhibit the free and frank exchange of views for the purposes of deliberation (section 36(2)(b)(ii) FOIA) and would otherwise prejudice the effective conduct of public affairs (section 36(2)(c) FOIA) and that, in accordance with section 36(7) FOIA, the certificate is conclusive evidence of that fact.
11. Given the nature and provenance of the certificate, the Commissioner is obliged by section 36(7) FOIA to accept the certificate as “conclusive evidence” that the opinion is reasonable in both process and substance and that the alleged inhibition would be likely to occur; therefore, the Commissioner accepts that section 36(2) FOIA is engaged.

12. Furthermore, under section 2(3)(e) (FOIA), where section 36 is engaged regarding information held by the House of Commons, the exemption is absolute. This means that where there is a certificate as described above, the information is exempt from disclosure and there is no public interest test.
13. In conclusion the Commissioner, for the reasons explained above, is satisfied that section 36 applies to the withheld information.

Procedural Matters

14. Section 10(1) of the FOIA obliges the authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request. Section 17(1) obliges the authority to issue a refusal notice in regard to any exempt information within the same timescale.
15. The Commissioner notes that the House of Commons' refusal notice was dated 10 October 2023, but the Speaker signed his certificate on 26 March 2024. The Commissioner is not aware of the Speaker having provided his opinion in relation to the request at any point prior to that. Therefore, the exemption was not correctly engaged on 10 October 2023 but only on 26 March 2024. (Nevertheless, it is valid in relation to circumstances as they existed at 20 working days from the date of the request).
16. This places the public authority in breach of sections 10(1) and 17(1) (b) and (c) of the Act. (However, this does not invalidate the application of the exemption as a result of the subsequent step taken).

Right of appeal

17. 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

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Richard Lawanson
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