

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2024

Public Authority: House of Commons

Address: London
SW1A 0AA

Decision (including any steps ordered)

1. The complainant has requested information about the events and communications surrounding the Opposition Day debate on 21 February 2024. The House of Commons ("HoC") neither confirmed nor denied that it held information within scope of the request, with reliance on section 34 (parliamentary privilege) of FOIA. During the course of the Commissioner's investigation the HoC issued a certificate under section 34(3) confirming that the exemption applied.
2. The Commissioner's decision is that section 34(2) was correctly applied.
3. The Commissioner does not require further steps.

Request and response

4. On 22 February 2024, the complainant wrote to HoC and requested information in the following terms:

"Dear FOI/EIR Team

I trust that you are well.

I would like to request the following information via the Freedom of Information Act and Environmental Information Regulations (EIRs)

Please note I am only interested in information generated between 19 February 2024 and 21 February 2024.

Please note that the reference to written correspondence and communications in the questions below should be taken to mean all traditional forms of correspondence such as letters, faxes, telegrams, and memos. It should also include all emails irrespective of whether they were sent and or received through private or official accounts. It should also include all telephone text messages, all telephone calls, all Gmail messages, all messages sent and or received through encrypted messaging services including but not limited to WhatsApp, any messages sent through any internal parliamentary communication systems.

Please note that in each case I am interested in receiving actual copies of any written correspondence and communications and not just extracts. So, in the case of a letter, for instance, this should include any letter heads, dates and signatures. If you are minded to redact any information, can you identify the location of the redaction in the document provided. This way I should be able to ascertain where in the communication the redacted material occurs and the extent of any redaction.

Please note that the reference to Sir Lindsay Hoyle in the questions below should include Sir Lindsay himself and anyone known to have corresponded and communicated with the relevant individuals on his behalf.

1... During the aforementioned period did Sir Lindsay Hoyle, the Speaker of the House of Commons write to and or communicate with any of the individuals listed below. Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to the Israeli-Hamas war and or the Opposition Day debate of 21 February 2024 and or the SNP's motion for that day and or the suggestions that the Labour party should be allowed to table an amendment to the SNP motion. If the answer is yes can you please provide copies of this correspondence and communication. In the case of any telephone conversations can you provide a recording of those conversations. If a recording doesn't exist can you provide a transcript of the telephone conversation. If a transcript doesn't exist can you provide a note of the conversation.

- (a)... Sir Keir Starmer
- (b)... Sue Gray, who is Sir Keir Starmer's Chief of Staff.
- (c)... Sir Alan Campbell, the Labour party Chief Whip.
- (d)... David Lammy, the Shadow Foreign Secretary.
- (e)... Annelise Dodds, the Chair of the Labour Party.
- (f)... Pat McFadden, the Shadow Chancellor of the Duchy of Lancaster.

2... During the aforementioned period did any of the individuals listed above write to and or communicate with Sir Lindsay Hoyle, the Speaker

of the House of Commons. Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to the Israeli-Hamas war and or the Opposition Day debate of 21 February 2024 and or the SNP's motion for that day and or the idea that the Labour party should be able to table an amendment to the SNP motion. If the answer is yes can you please provide copies of this correspondence and communication. In the case of any telephone conversations can you provide a recording of those conversations. If recordings do not exist can you please provide a transcript (s). If a transcript of the conversation is not possible can you provide a note of the correspondence.

3... During the aforementioned period did the Speaker meet with any of the individuals listed in question one. In the case of each individual and each meeting can you provide the date, time and venue of the meeting. In the case of each individual and each meeting can you provide copies of any written notes which relate to those meetings and the content of those meetings.

4... Irrespective of whether you hold documentation/information of the kind described above in questions one to three does the Speaker hold correspondence and or communications and or documents which mention and or in any way relate to his continuing role of Speaker and or a future election for the role of Speaker and or his potential membership of the House of Lords. If the answer is yes can you please provide copies of this correspondence and communication and documentation."

5. HoC responded on 21 March 2024. It stated that:

"Parliamentary privilege relates both to proceedings and matters closely related to or preparatory to those proceedings, including meetings about or preparatory to parliamentary business. It also includes the House's exclusive cognisance over its own precincts and proceedings. Therefore, in order to prevent an infringement of parliamentary privilege, the information requested is exempt under section 34 of the Freedom of Information Act 2000 (FOIA). This is an absolute exemption and the public interest test does not apply."

6. Following an internal review HoC wrote to the complainant on 5 April 2024. It stated that:

"We have reviewed our original response and concluded that any information held would be subject to parliamentary privilege. Therefore, the original decision to neither confirm nor deny if we hold any relevant information in accordance with section 34 of the Freedom of Information Act 2000 (FOIA) is upheld."

Scope of the case

7. The complainant contacted the Commissioner on 17 April 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether HoC is entitled to rely on section 34 to neither confirm nor deny whether it holds information within scope of the request.

Reasons for decision

Neither confirm nor deny

9. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds information of the description specified in the request.
10. In this case, the HoC would neither confirm nor deny whether it holds the requested information, citing the neither confirm nor deny (NCND) exclusion at section 34(2) of FOIA.
11. For the avoidance of doubt, nothing in this decision notice should be taken to mean that the HoC does, or does not, hold the information to which section 34(2) had been applied.

Section 34 – Parliamentary privilege

12. Section 34 of FOIA states:

“(1) 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.

(2) The duty to confirm or deny does not apply if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.”

13. Section 34 is a class based exemption, meaning that if the requested information falls within the description of the exemption, then it is exempt. It is not subject to a public interest test.

14. The Commissioner has issued guidance on section 34¹.
15. The guidance explains that, whilst there is no definitive guide as to what constitutes parliamentary privilege, it will include:

“...the right of each House to manage its own affairs and to exercise sole jurisdiction over its own proceedings. This right is known as “exclusive cognizance”, which means “exclusive jurisdiction”. For the purposes of the FOIA, the key point is that, as part of its privilege, the relevant House has the right to control publication of its proceedings.”
16. The guidance explains that ‘proceedings’ will include proceedings within committees formally appointed by the House (and their subcommittees), including oral and written evidence and deliberations. It confirms that:

“As each House has the right to control its own affairs, including the right to control publication of its proceedings, any unpublished information relating to proceedings in Parliament may be covered by the exemption.”
17. Section 34(3) of FOIA provides that a certificate signed by the appropriate authority, certifying that exemption from the duty under section 1(1)(a) 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 HoC, the Speaker of that House is the appropriate authority.
18. During the Commissioner’s investigation, on 4 September 2024, pursuant to section 34(3), the Speaker of the House of Commons issued a certificate recording as follows:

“I hereby certify that an exemption from section 1(1)(a) and section 1(1)(b) of the Freedom of Information Act is required for the purpose of avoiding an infringement of the privileges of the House of Commons.”
19. The certificate makes clear that the information sought at parts (1) to (4) of the complainant’s request, being:
 - Correspondence and communications
 - Recordings of telephone conversations, transcripts of telephone conversations and associated notes

¹ https://ico.org.uk/media/for-organisations/documents/1161/section_34_parliamentary_privilege.pdf

- Letters
- Dates of meetings and written notes relating to those meetings

is exempt from the section 1(1)(a) duty to confirm or deny whether information is held.

20. The Commissioner is satisfied that the requested information is information of this description.
21. As noted above, the Speaker's certificate is conclusive evidence (irrespective of the complainant's submissions) that the exemption applies, and nothing in FOIA requires, or permits, the Commissioner to look beyond the certificate. Accordingly, the Commissioner the Commissioner finds that the NCND exemption afforded by section 34(2) of FOIA applies.
22. The exemption applies to the request in its entirety.

Right of appeal

23. 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

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jonathan Slee
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