

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 September 2024

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

Decision (including any steps ordered)

1. The complainant submitted a request to the House of Commons (HoC) seeking information about submissions received in response to the Public Bill Committee's call for evidence about the Leasehold and Freehold Reform Bill. The HoC sought to refuse parts of the request on the basis of section 34(1) (parliamentary privilege) and refused to confirm or deny whether it held information falling within the scope of another part of the request on the basis of section 34(2). The Speaker of the HoC issued a certificate certifying that these exemptions applied.
2. The Commissioner's decision is that section 34(1) of FOIA provides a basis upon which to withhold the information falling within the scope of parts 1-3 of the request, and that section 34(2) allows the HoC to refuse to confirm or deny whether it holds any information falling within the scope of part 4 of the request.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the HoC on 28 February 2024:

"under Freedom of Information Act 2000, I would like to ask in respect of the Leasehold and Freehold Bill 2023/2024 Call for Evidence <https://www.parliament.uk/business/news/2023/december-2023/leasehold-and-freehold-reform-bill-call-for-evidence/> :

- 1) How many written submissions were received in total
- 2) How many written submissions were received from individual leaseholders
- 3) How many written submissions were received from a group of 2 or more leaseholders
- 4) How many of 2 and 3 above were circulated to the MPs appointed to examine the Bill during the committee stage in the Public Bill Committee.

To avoid any misunderstanding, I wish to clarify that I have accessed the website <https://bills.parliament.uk/bills/3523/publications> where 62 Written Evidence have been published. I wish to know the TOTAL NUMBER OF WRITTEN EVIDENCE RECEIVED (as per Q. 1, 2 and 3 above) to compare it with the 62 Written Evidence that were PUBLISHED."

5. The HoC responded on 25 March 2024 as follows:

"Whilst the committee has published information on the written submissions received, we can neither confirm nor deny if any other submissions were received or circulated, in accordance with the exemption at section 34 of the Freedom of Information Act 2000. This exemption is necessary to prevent an infringement of parliamentary privilege and, as an absolute exemption, the public interest test does not apply."

6. The complainant contacted the HoC on 26 March 2024 and asked it to conduct an internal review of this refusal.
7. The HoC informed him of the outcome of the review on 18 April 2024. This upheld the application of section 34(2) of FOIA to the request.

Scope of the case

8. The complainant contacted the Commissioner on 20 April 2024 to complain about the HoC's refusal to comply with this request.
9. During the course of the Commissioner's investigation, the HoC clarified its position as follows:

- In respect of parts 1-3 of the request it is content to confirm that information falling within the scope of these parts of the request is held, albeit that it considers such information to be exempt from disclosure on the basis of section 34(1) of FOIA.
- Its position remains that section 34(2) of applies to part 4 of the request and it is not obliged to confirm or deny whether it holds any information in this part of the request.
- It also explained that the Speaker of the HoC had issued a certificate on 4 September 2024 under section 34(3) which provides conclusive evidence of the application of section 34(1) to parts 1-3 of the request and conclusive evidence of the application of section 34(2) to part 4 of the request.

Reasons for decision

Section 34 – Parliamentary privilege

10. 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.”

11. 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.

12. The Commissioner has issued guidance on section 34.¹

13. 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

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

the FOIA, the key point is that, as part of its privilege, the relevant House has the right to control publication of its proceedings.”

14. 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.”

15. Section 34(3) of FOIA provides that a certificate signed by the appropriate authority, certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, 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.
16. As noted above, during the Commissioner’s investigation pursuant to section 34(3), the Speaker of the HoC issued a certificate recording as follows that:
 - In relation to parts 1-3 of the request, an exemption from section 1(1)(b) was necessary for the purposes of avoiding an infringement of the privileges of the HoC; and
 - In relation to part 4 of the request, an exemption from section 1(1)(a) and (1)(1)(b) was required for the purposes of avoiding an infringement of the privileges of the HoC.
17. As noted above, the Speaker’s certificate is conclusive evidence that the exemptions contained in section 34 apply, and nothing in FOIA requires, or permits, the Commissioner to look beyond the certificate. Accordingly, the Commissioner finds that the information sought by parts 1-3 of the request is exempt from disclosure on the basis of section 34(1) and that the HoC is not obliged to confirm or deny whether it holds any information falling within the scope of part 4 of the request on the basis of section 34(2) of FOIA.

Right of appeal

18. 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

19. 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.
20. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF