

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 February 2016

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested a file dating from 1954 to 1957 concerning the conferment of the title of Prince on the Duke of Edinburgh. The Home Office withheld the majority of this information under the exemption provided by section 37(1)(a) of the FOIA (communications with the Sovereign) and the remainder under 37(1)(b) (conferring of honours).
2. The Commissioner finds that sections 37(1)(a) and 37(1)(b) were both applied correctly and requires no steps to be taken.

Request and response

3. On 27 October 2014, the complainant wrote to the Home Office and requested the following information mentioned in the National Archives catalogue, but retained by the Home Office:

"HO 290/97. Its original departmental reference is RYL 315/2/3. The file is entitled Duke of Edinburgh: conferment of title of Prince. 1954 - 1957."

4. After a significant delay, the Home Office responded substantively on 19 February 2015. It refused the request and cited the exemptions provided by sections 37(1)(a) (communications with Her Majesty), 37(1)(b) (the conferring of honours), 40(2) (personal information) and 41(1) (information provided in confidence) of the FOIA.

5. The complainant responded on 4 March 2015 and requested an internal review. The Home Office responded with the outcome of the internal review on 1 April 2015. The conclusion of this was that the refusal under the exemptions cited previously was upheld.

Scope of the case

6. The complainant contacted the Commissioner initially on 19 February 2015 to complain at that stage about the failure by the Home Office to provide a substantive response to his request. Following the provision of the response and the completion of the internal review, the complainant contacted the ICO again on 8 April 2015 to complain about the handling of his request. The complainant specified as the grounds for his complaint the refusal by the Home Office to disclose the information he had requested and the delay by the Home Office in responding to his request.
7. During the investigation of this case, the Home Office changed its position in relation to a small minority of the information within the file and disclosed that information to the complainant. The following analysis does not cover that information.

Reasons for decision

Section 17

8. Section 17(1) of the FOIA requires that a response refusing an information request must be sent within 20 working days of the date of the request. Section 17(3) allows that the time may be extended where necessary in order to consider the balance of the public interest in relation to a qualified exemption. The Commissioner's guideline on section 17(3) is that this should normally be no more than an extra 20 working days, which is 40 working days in total to deal with the request. Any extension beyond this time should be exceptional and public authorities must be able to justify it.
9. In this case the Home Office took considerably longer than 40 working days to provide a substantive response to the request. The explanation given for this in the internal review response was that this was due to consultations taking place with third parties. Whilst a public authority may choose to consult with third parties about an information request, it remains the responsibility of the public authority that received the request to ensure that a prompt response is provided.

10. In this case the view of the Commissioner is that the Home Office took an unreasonable period of time to respond to the request and in so doing breached the requirement of section 17(1) of the FOIA.

Section 37(1)(a)

11. This section provides an exemption for information that relates to communications with the Sovereign. Consideration of this exemption involves only a single stage; if information relates to communications with the Sovereign, it is exempt. There is no requirement to consider what the outcome of disclosure of the information may be, nor whether the public interest favours disclosure.
12. Communications with the Sovereign can include communications sent by or to others acting on the Sovereign's behalf. It is also the case that this exemption is not limited to communications themselves; it applies to any information that *relates to* relevant communications.
13. During the investigation of this case a representative of the Commissioner visited the Home Office and inspected the withheld information. This consists of the file listed in the National Archives catalogue, but retained by the Home Office, that was specified in the request. As the title of this file suggests, it contains papers concerning the conferment of the title of Prince on the Duke of Edinburgh dating from 1954 to 1957.
14. Through the inspection it was identified that the information could be separated into three broad categories; first, documents that refer to discussions with The Queen, secondly correspondence to or from others acting on the behalf of Her Majesty and third, correspondence that the Home Office argued related to communications with the Sovereign by virtue of being part of the process of conferring the new title.
15. Clearly the first two categories are within the class described in section 37(1)(a) and so are exempt by virtue of that section. The correct conclusion was somewhat less clear in relation to the third category. Whilst it is not necessary for information to be a communication with the Sovereign for this exemption to be engaged, it must be at least reasonably proximate to such communications to be exempt. There is a point at which the Commissioner will find that the relationship to communications with the Sovereign is so remote that this exemption cannot be engaged.
16. In this case, the Commissioner recognises that the process of conferring the title of Prince on the Duke of Edinburgh was closely related to communications with the Sovereign. As they relate to a process that began with and involved communications with the Sovereign, the

Commissioner accepts that the materials in this third category do relate to those communications and so are exempt.

17. In relation to all of the information for which section 37(1)(a) was cited, the conclusion of the Commissioner is that this information does relate to communications with the Sovereign and so the exemption provided by section 37(1)(a) of the FOIA is engaged. The Home Office was not, therefore, obliged to disclose this information.

Section 37(1)(b)

18. In relation to two remaining documents, the Home Office relied on the exemption provided by section 37(1)(b). This section provides that information is exempt if it relates to the conferring by the Crown of any honour or dignity. Consideration of this exemption involves two stages. First the exemption must be engaged as a result of the information within the scope of the request falling within the class described in this section. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
19. Covering first whether this exemption is engaged, the information in question relates to the conferring upon the Duke of Edinburgh the title of Prince. As such, it is clearly within the scope of the exemption and so section 37(1)(b) is engaged.
20. The next step is to consider whether the balance of the public interest favours the maintenance of this exemption. In forming a conclusion here the Commissioner has taken into account the public interest in preserving the confidentiality of the honours process, as well as factors that apply in relation to the specific information in question.
21. The Commissioner set out his approach to s.37(1)(b) in case FS50579583:

"The Commissioner accepts as a general principle the argument that for the honours system to operate efficiently and effectively there needs to be a level of confidentiality which allows those involved in the system to comment on and discuss nominations freely and frankly. Furthermore, the Commissioner accepts that if views and opinions, provided in confidence, were subsequently disclosed then it is likely that those asked to make similar contributions in the future may be reluctant to do so or would make a less candid contribution. Moreover, the Commissioner also accepts that disclosure of information that would erode this confidentiality, and thus damage the effectiveness of the system, would not be in the public interest."

22. The Commissioner has considered the two documents in question separately here. The first of these is a handwritten note within the file that comments on some issues relating to the conferring of the title of Prince. The Commissioner recognises that there is a general public interest in the contents of the file; they record the process of granting a new title to an individual who has been a significant public figure for several decades. However, the Commissioner notes that there is no significant ongoing public debate about the awarding of the title. The public interest is about informing the historical record.
23. However, his view is also that the public interest in the document in question when it is considered in isolation is limited. This relates to the detail of the granting of that honour, rather than the wider narrative as is covered in the file as a whole. As the public interest in this single document is limited, the Commissioner finds that the public interest in preserving the confidentiality of the honours process tips the balance. His conclusion in relation to this first document is, therefore, that the public interest in maintenance of the exemption outweighs the public interest in disclosure and so the Home Office was not obliged to disclose this document.
24. The second document is a note from the start of the file that describes the content of the rest of the file. Part of this note was disclosed to the complainant during the investigation of this case and this analysis concerns the remainder, which continued to be withheld.
25. The Commissioner accepts that this relates to the conferring of an honour by virtue of it being part of this file.
26. The withheld content in question was not recorded during the process of granting the title of Prince to the Duke of Edinburgh; it was created later. However, having considered the content the Commissioner accepts that disclosure would have a detrimental effect on the confidentiality of the process of awarding honours and dignities, and how the process may operate in future. The Commissioner finds that there is a significant public interest in disclosure of the information, but the countervailing public interest in maintaining the exemption is stronger.
27. In relation to the content of that note that continued to be withheld, the conclusion of the Commissioner is that the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

Other matters

28. As well as the finding above that the Home Office breached section 17(1) through the delay in responding to the request, the Commissioner has also made a separate record of that breach and this matter may be revisited should evidence from other cases suggest that this is necessary.
29. In particular, the Home Office should be aware that where it is consulting with others about how to respond to a request, it may not be reasonable to withhold a response until such time as responses to the consultation have been provided. As stated above, in such circumstances responsibility to ensure a prompt response remains with the Home Office.

Right of appeal

30. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

31. 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.
32. 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

Steve Wood
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