

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 March 2019

Public Authority: The National Archives (TNA)
Address: Ruskin Avenue
Kew
Richmond
Surrey
TW9 4DU

Decision (including any steps ordered)

1. The complainant has requested Closed file PREM 15/1184/1. TNA refused to disclose the requested information under section 37(1)(a), 40(2) and 41 FOIA.
2. The Commissioner's decision is that TNA has correctly applied section 37(1)(a) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 13 August 2018 the complainant made the following request for information under the FOIA for:

Closed file PREM 15/1184/1
5. On 12 September 2018 TNA responded. It refused to disclose the requested information under section 37(1)(a), 40(2) and 41 FOIA.
6. The complainant requested an internal review on 12 September 2018. TNA sent the outcome of its internal review. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 8 January 2019 to complain about the way his request for information had been handled. The complainant considers that the request should potentially have been dealt with under the Environmental Information Regulations 2004 (EIR) rather than under FOIA.
8. The Commissioner has considered whether TNA was correct to deal with the request under FOIA and whether or not it has correctly applied the exemptions it has cited to the withheld information.

Reasons for decision

Is the withheld information environmental?

9. TNA has said that the withheld extract contained in closed file PREM 15/1184/1 contains HM The Queen's private opinion on a particular matter which does not relate to the environment. The National Archives does not consider any of the withheld information to be environmental information under regulation 2 EIR.
10. Upon viewing the withheld information, the Commissioner does not consider that the requested information falls within the definition of environmental information as set out at regulation 2(1) of the EIR.
11. TNA was therefore correct to process the request under FOIA.

Section 37(1)(a)

12. Section 37(1) states that information is exempt information if it relates to –
 - (a) communications with the Sovereign.
13. Sections 37(1)(a) is a class-based and absolute exemption. This means that if the information in question falls within the class of information described in the exemption in question, it is exempt from disclosure under FOIA. It is not subject to a balance of the public interest test.

14. Communications with the Sovereign are not necessarily made directly by, or to Her Majesty. The exemption will also include communications made or received on her behalf by her officials. Furthermore the communication need not be a written one; the exemption would apply equally to discussions with the Sovereign, in person or via telecommunications. The exemption covers information which relates to such a communication.
15. The information in scope constitutes a private communication on behalf of, and expressions of the views of, the Sovereign, through her officials.
16. For the exemption under section 37(1)(a) to be engaged the information must constitute, or relate to, a "communication". So, for example, an internal note held by a government department that simply references the Sovereign will not fall within this definition unless it specifically relates to a relevant communication.
17. Having viewed the withheld information, the Commissioner is satisfied that all the information that was withheld is a communication with the Sovereign's representatives on the Sovereign's behalf and therefore the exemption at section 37(1)(a) has been correctly engaged.
18. There is no need for the information to be sensitive in any way for the exemption to apply. It is sufficient that the information falls within the class of information described by the exemption. The Commissioner finds that the information is exempt by virtue of section 37(1)(a).
19. As the Commissioner has found that all the withheld information is exempt under section 37(1)(a) she has not gone on to consider TNA's application of the other exemptions it relied on.

Right of appeal

20. 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: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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.....

Gemma Garvey
Senior Case Officer

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Wycliffe House
Water Lane
Wilmslow
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