

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 June 2021

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

Decision (including any steps ordered)

1. The complainant submitted a request to the House of Commons (HoC) seeking a copy of a letter he believes was received by the Clerk and Speaker of the HoC regarding the arrest of an MP during the months of July and August 2020. The HoC relied on section 34(2) (Parliamentary privilege) of FOIA to refuse to confirm or deny whether it held the requested information.
2. The Commissioner is satisfied that the HoC can rely on section 34(2) to refuse to confirm or deny whether it holds any information falling within the scope of the request.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the HoC on 3 August 2020:

'Under an above request [ie under the Freedom of Information Act] might I seek a copy of the letter received by the clerk of the house and Mr Speaker under protocol laid down in erskine May to the notification of the arrest/detention of a member of the house during the months of July & August 2020 to date'

5. The HoC responded to the request on 2 September 2020. The HoC explained that:

'Any information held by the House of Commons Committee in relation to your request is exempt information under section 34 (2) of the Freedom of Information Act 2000. Section 34 exempts information from disclosure so far as it is required to avoid any infringement of the privileges of the House. Those privileges include the right of any committee of the House to decide whether, when and how to publish information relating to its proceedings. Any documents notifying the House of the arrest of a Member as part of the House's historic claim to freedom from arrest and to the House's 'right to be kept informed by agents of the Crown of actions taken against Members which may impair their ability to attend the House' (May para 14.3, fn 4) are exempt information under Section 34 of the Act. I am afraid I must therefore refuse that part of your request. This is an absolute exemption and the public interest test does not apply.'

6. The complainant contacted the HoC on 3 September 2020 and asked it to undertake a review of this response.
7. The HoC informed him of the outcome of the internal review on 11 September 2020. The HoC explained that:

'I have reviewed our response and uphold the original decision to exempt any information held in accordance with section 34 (1) FOIA, because it is required to prevent prejudice to the privileges of the House. In addition, section 34 (2) FOIA removes our duty to confirm or deny whether any information relevant to your request is held.'

Scope of the case

8. The complainant contacted the Commissioner on 14 September 2020 to complain about the HoC's handling of his request. He argued that the HoC did hold the information he requested and that it was blocking it from public view.

Reasons for decision

Section 34 - Parliamentary privilege

9. Section 1(1) of FOIA provides a general right of access to information held by public authorities and states that:

'Any person making a request for information to a public authority is entitled—

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.'*

10. Section 34 of FOIA states that:

'(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. It is a class based exemption. This means that if information falls within the description of the exemption then such information is exempt. Furthermore, the exemption is not subject to the public interest test.
12. The Commissioner has issued guidance on section 34 of FOIA¹. This guidance explains that whilst there is no definitive guide as to what constitutes parliamentary privilege this 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.' (para 10)

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

13. The Commissioner's guidance goes on to explain 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.' (para 12).

14. As can be seen from the above, the scope of the exemption set out in section 34 of FOIA is broad and is likely to capture a significant amount of information held by the HoC.
15. With regard to the information sought by this request, in the Commissioner's view a letter received by the Speaker or Clerk of the HoC about the arrest of a member of the HoC is information that relates to the proceedings of the HoC itself. This is because the definition of proceedings is a broad one and because the Commissioner accepts the HoC's position, as set out in its refusal notice, that Erskine May requires the HoC to be informed if MPs are unable to attend the House. Therefore, in line with the principles of parliamentary privilege set out above, the HoC has the right to determine whether to publish such a letter (if indeed such a letter were held). The letter, if held, would therefore be exempt from disclosure on the basis of section 34(1) of FOIA.
16. Furthermore, the Commissioner is satisfied that if the HoC complied with section 1(1)(a) of FOIA in relation to this request, and confirmed whether or not it held the requested letter, this would also infringe the HoC's rights to determine how details of its proceedings are published. In reaching this conclusion the Commissioner understands that although there is a procedure in place for the Speaker to be informed about the arrest of an MP, it is her understanding that in terms of the information sought by this request there has been no public confirmation (or denial) as to whether any such letter exists. Consequently, the Commissioner is satisfied that if the HoC complied with section 1(1)(a) of FOIA this would result in an infringement of the privileges of the HoC. The Commissioner is therefore satisfied that the HoC can rely on section 34(2) of FOIA to refuse to confirm or deny whether it holds any information falling within the scope of the request.

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.

Signed

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF