

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2012

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

Decision (including any steps ordered)

1. The complainant requested information from the House of Commons (the House) relating to the coat of arms of Mr John Bercow, the Speaker of the House. The House withheld the requested information on the basis of the following two exemptions: section 37(1)(b) (conferring of an honour or dignity) and 40(2) (personal data). The Commissioner has concluded that all of the requested information is exempt from disclosure on the basis of section 37(1)(b). However, the Commissioner has concluded that the House breached section 17(3) of the Freedom of Information Act by failing to inform the complainant of its decision to rely on these exemptions within a reasonable time period.

Request and response

2. On 30 November 2011 the complainant submitted six requests to the House of Commons (the House). The two requests which are the focus of this complaint are those numbered 5 and 6 which read:

'5...Could the House please provide copies of all correspondence between the relevant officials of the House and the College of Arms which in any way relate to the Speaker's personal coat of arms which are featured in the frame of the painting [i.e. the portrait of John Bercow, Speaker of the House of Commons by Brendan Kelly]. This correspondence could have pre-dated the beginning of work on the Coat of Arms design or it could have occurred subsequently. This correspondence may detail symbols and ideas not included in the final design.

6...Could the House please provide copies of all internal

communications, external communications and internal documents which are held by the Speaker's office and which in any way relate to the Speaker's personal coat of arms which are featured in the frame of the painting. This documentation could pre-date the beginning of the work on the actual design or it could have been generated subsequently. This documentation may also touch upon symbols and ideas not included in the final design'.

3. The House contacted the complainant on 22 December 2011 and informed him that it held information falling within the scope of his requests but it needed further time to consider the applicability of exemptions, including the public interest test, given the complexity of issues involved.
4. The House provided the complainant with a substantive response on 6 February 2012. With regards to requests 5 and 6 the House explained that the information it held was exempt from disclosure of the basis of sections 37(1)(b) and 40(2) of FOIA.
5. The complainant contacted the House on 14 February 2012 and asked it to conduct an internal review of this decision.
6. Following an internal review the House contacted the complainant again 14 March 2012; the review upheld the application of the two exemptions cited in the refusal notice.

Scope of the case

7. The complainant contacted the Commissioner to complain about the application of these two exemptions to withhold the information falling within the scope of requests 5 and 6. He also complained about the House's delay in providing him with a response to these requests.

Reasons for decision

Section 37(1)(b) – conferring of an honour or dignity

8. The House argued that all of the withheld information was exempt from disclosure on the basis of section 37(1)(b) of FOIA. This states that *'Information is exempt information if it relates to...the conferring by the Crown of any honour or dignity'*.
9. To support its position that the requested information fell within the scope of this exemption, the House explained that in the case of

Manchester Corporation v Manchester Palace of Varieties Ltd [1955] 1 All ER 387 it was decided that the granting of arms amounts to a dignity. (The 'granting of arms' confers on a person and his or her descendants the right to bear a particular coat of arms). The case was heard by the High Court of Chivalry, which had not sat since 1737 and indeed has not sat since hearing the case cited by the House.

10. The Commissioner notes that whilst the judge hearing this case, Lord Goddard expressed the view that a coat of arms was likely to be a dignity, his comments were 'obiter dictum' and did not, therefore, form part of the formal findings of the Court. (Obiter dictum in an opinion voiced by a judge that has only an incidental bearing on the case in question and is therefore not binding). Nevertheless, in the absence of any contradictory evidence, the Commissioner is prepared to accept Lord Goddard's reasoning and agrees that the granting of arms amounts to conferring a dignity. Therefore the Commissioner accepts that information about the granting of a coat of arms can fall the scope of section 37(1)(b).
11. Furthermore, the Commissioner notes that the section 37(1)(b) provides an exemption for information which 'relates to' the conferring of an honour or dignity. The Commissioner interprets this phrase broadly and therefore in this context information relating to the conferring of a dignity will include, for example, information which focuses on the design process, the artists, the registering of the coat of arms, etc. In light of this broad reading of the exemption the Commissioner is satisfied that all of the information withheld by the House falls within the scope of section 37(1)(b).
12. However, section 37(1)(b) is a qualified exemption. Therefore, the Commissioner must consider the public interest test set out at section 2(2)(b) of FOIA and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

13. The House acknowledged that there was a public interest in transparency concerning the granting of arms, the process by which this takes place and its cost to public funds.
14. The complainant also emphasised the fact that the process of designing and producing the coat of arms for Mr Bercow had cost the taxpayer money. He also argued that disclosure of the withheld information would have no impact on the personal / private life of the Speaker given that

the coat of arms is publically displayed and moreover the fact that the Speaker is a public figure.

Public interest arguments in favour of maintaining the exemption

15. Firstly the House explained that the designing of a coat of arms is a private matter; in this case it is not a coat of arms for the office of the Speaker, but for Mr Bercow himself. Discussions during the design process focus on aspects of the individual's personal background, issues of particular interest and also artistic ideas about how they may wish the finished coat of arms to look. The House explained that the participants understood these discussions to be confidential and such confidentiality is necessary in order that the discussions themselves are open and collaborative. The House suggested that these matters did not raise issues of public concern, as opposed to mere curiosity.
16. Secondly, the House explained that the withheld information includes discussions with the agent commissioned to provide advice and design the cost of arms. The House argued that the agent's designs and creative input would be subject to intellectual property rights. The House also explained that these discussions were informal in nature but that disclosure of the information which records these discussions could lead to future arrangements being made on a more formal basis, with negotiations over issues such as copyright, which is not the intended nature of a relatively simple and straightforward process such as this. Again the House argued that the suggestions or design ideas provided by the agent did not raise issues of public concern, as opposed to mere curiosity.
17. Finally, the House emphasised that the coat of the arms has been made public, as had its cost, which in its view met the public interest in disclosure of information on this subject.

Balance of the public interest arguments

18. The Commissioner notes that the subject matter of the information which is the focus of this request, i.e. the granting of arms and the design of a coat of arms is somewhat different to the focus of the previous cases involving the application of section 37(1)(b) which he has considered. Such cases have considered the conferring of the more usual honours and dignities and the public interest in maintaining the exemption in these cases has focused on the need to protect the integrity of the deliberation process surrounding the conferring of an award. In this case the Commissioner believes that the public interest in maintaining the exemption focuses less on the integrity of the process leading up to the conferment of the dignity, but rather the design of the coat of arms itself.

19. With regard to the House's first argument, the Commissioner is prepared to accept that if details of discussions which the participants understood to be confidential were disclosed then participants in future similar discussions may be more reticent in their contributions. That is to say, if the withheld information were disclosed then recipients of arms in the future may be less open and forthcoming about ideas they have for their coat of arms. The Commissioner therefore accepts that some weight should be given to the idea that undermining the confidentiality of such discussions, by disclosing the withheld information, would result in some sort of chilling effect upon future discussions with recipient of coats of arms.
20. Furthermore, in the circumstances of this case the Commissioner accepts the rationale behind the second aspect of the House's first argument, namely that the discussions in this case relate to a private matter rather than a public one, and thus the exemption should be interpreted as providing the recipient, Mr Bercow, with some level of protection regarding the discussions about his private life. This is because, in the Commissioner's opinion, the design of a coat of arms is inherently a matter which is personal to whoever's coat of arms it is. It is therefore appropriate for this exemption to be interpreted as providing some protection to the privacy of the recipient. Whilst the Commissioner does not dispute the complainant's line of argument that the coat of arms was awarded to Mr Bercow because he held the position of Speaker, it remains the case that the coat of arms belongs to Mr Bercow himself. The Commissioner is satisfied that disclosure of the withheld information would impact, to some extent, on Mr Bercow's privacy and this adds further weight to maintaining the exemption. However, the Commissioner believes that the weight that should be given to these arguments is limited. This is because of the fact that a coat of arms, once completed will be made public. In the case of Mr Bercow's coat of arms it was unveiled alongside his official portrait with the different aspects of the coat of arms being widely discussed in the media. Therefore aspects of such discussions are, in effect, already in the public domain and in the Commissioner's opinion this means that the extent to which disclosure of the withheld information would result in a chilling effect on future discussions, and on Mr Bercow's privacy, is limited.
21. With regard to the House's second argument, the Commissioner is of the view that this is somewhat speculative and the House has not provided any firm evidence to support its position that disclosure of the withheld information would be likely lead to individuals, such as the agent in this case, to alter the manner in which they enter into negotiations with the House, it has merely asserted that this could happen. Moreover, the Commissioner is not convinced that the fact that the House's relations with such individuals would have to be conducted on a more formal basis in the future would in fact be that detrimental to the design

process. Whilst such a development may result in some additional time and expense, for example if contracts are drawn up, the introduction of such procedures could arguably be said to increase the integrity of the process rather than undermine it.

22. With regard to the arguments in the favour of disclosure, the Commissioner agrees with the suggestion that there is a clear public interest in disclosure of information in this case in order to ensure that the House is transparent about the processes around the granting of arms and in particular the costs involved. However, having examined the withheld information itself, the Commissioner is also sympathetic to the House's position that disclosure of the withheld information would not add greatly to the public's understanding of the process by which this award was granted. He also notes that the decision to award of the coat of arms is obviously public information, as is the final design, with supporting explanatory information. The cost of the process has also been disclosed. In the Commissioner's view there is always some value in 'full disclosure' in order to allow the public to understand all aspects of public authorities' decision making. However, in this case the Commissioner is of the view that at best the information that has been withheld is more likely to be of interest to the public, rather than its disclosure being in the public interest. Therefore whilst certainly not completing dismissing the public interest arguments in favour of disclosure he does not believe that they attract any particular weight in all the circumstances of this case.
23. Consequently, given the overarching public interest in maintaining a private space for open and private discussions about the design of and preparation for unveiling a newly commissioned coat of arms, the Commissioner has concluded that the public interest favours maintaining the exemption, albeit by a narrow margin.
24. In light of his findings in relation to section 37(1)(b) the Commissioner has not gone on to consider the House's reliance on section 40(2) of FOIA.

Section 17(3) – refusal notices

25. The complainant also asked the Commissioner to consider the House's alleged delays in handling his request.
26. Section 10(1) of FOIA requires public authorities to comply with requests for information within 20 working days following receipt of the request. In cases where a public authority is considering the application of an exemption that is subject to a public interest test (known as a qualified exemption), section 17(3) FOIA requires the authority to reach its decision 'within such time as is reasonable in the circumstances.'

27. The legislation does not define the word 'reasonable'. However, in the Commissioner's view public authorities should aim to respond to fully to all requests within 20 working days. In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but in no case should the total time taken exceed 40 working days.
28. In the circumstances of this case the complainant submitted his request on 30 November 2011 and the House informed him of the outcome of its public interest test considerations on 6 February 2012, some 46 working days after the request was submitted. Therefore the Commissioner has concluded that the House breached section 17(3) by failing to reach its decision on the balance of the public interest within a reasonable time frame.

Right of appeal

29. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.
31. 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

Graham Smith
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