

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2013

Public Authority: The National Archives
Address: Kew
Richmond
Surrey
TW9 4DU

Decision (including any steps ordered)

1. The complainant requested extracts withheld from a file containing information relating to communications between the then Prime Minister and Jimmy Savile concerning tax deductions for charitable donations following his fund raising for Stoke Mandeville Hospital. The National Archives (TNA) withheld this information under the exemption provided by section 40(2) (personal information of third parties) of the FOIA.
2. The Commissioner's decision is that section 40(2) was cited correctly and so TNA was not required to disclose this information.

Background

3. The TNA website describes the file PREM 19/878 as:

*"Records of the Prime Ministers Office: Correspondence and Papers, 1979-1997. PRIME MINISTER. Communications with Jimmy Savile concerning tax deductions for charitable donations following his fund raising for Stoke Mandeville hospital."*¹

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http://discovery.nationalarchives.gov.uk/SearchUI/s/res?_q=PREM+19%2F878

4. The information requested by the complainant is closed extracts from this file.

Request and response

5. On 22 February 2013, the complainant wrote to TNA and requested information in the following terms:

"I request the full disclosure of the following documents:

*PREM 19/878/1
PREM 19/878/2".*

6. TNA responded to the request on 10 April 2013, which was within the 30 working days that it is permitted to take. The request was refused, with TNA stating that these closed extracts were exempt by virtue of the exemption provided by section 40(2) (personal information of a third party) of the FOIA. TNA also stated that some of this information was subject to the exemption provided by section 41(1) of the FOIA (information provided in confidence).
7. The complainant responded on 10 April 2013 and requested an internal review. The complainant argued at this stage that TNA should consider anonymising the information and disclosing it in that form. In relation to the citing of section 41(1), the complainant argued that the public interest in this information meant that disclosure would not be an actionable breach of confidence.
8. TNA responded with the outcome of the internal review on 3 May 2013. It stated that some of the information withheld from PREM 19/878/2 would now be disclosed by means of reuniting this with the open "*parent file*" PREM 19/878. In relation to the remainder of the withheld information, TNA reaffirmed that sections 40(2) and 41(1) were believed to apply.
9. When requesting an internal review, the complainant had raised the point that his request had not been responded to within 20 working days. In response to this point TNA advised the complainant that regulations issued under section 10(4) of the FOIA² meant that TNA is

² The Freedom of Information (Time for Compliance with Request) Regulations 2004
(<http://www.legislation.gov.uk/ukxi/2004/3364/regulation/4/made>)

permitted 30 working days within which to respond to a request and that these regulations were a recognition of the requirement in many cases for it to consult the body from which information passed to TNA originated.

Scope of the case

10. The complainant contacted the Commissioner on 3 May 2013 to complain about the part refusal of his information request. The complainant advanced his view at this stage about the public interest in disclosure of information about dealings between Jimmy Savile and those in positions of authority. He also referred to the approach of the ICO being that information that relates to an individual in their professional or official capacity will be more likely to be disclosable than information relating to an individual's private life.
11. During the investigation of this case TNA amended its stance and disclosed the single sentence previously withheld from the file PREM 19/878/2 and informed the complainant of this. Following this disclosure, the whole of PREM 19/878/2, which contained a minute to the Prime Minister dated 6 March 1980 on the subject of fund raising for Stoke Mandeville Hospital, was available. The analysis below therefore concerns only the information withheld from file PREM 19/878/1.

Reasons for decision

Section 40

12. As noted above, section 40(2) has been cited in relation to the entirety of the information withheld, so this exemption has been considered first. This section provides an exemption for information that is the personal data of an individual aside from the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
13. Covering first whether this information is the personal data of a third party, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

"personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”.*

14. The information in question here consists of redacted content from two documents, and two documents in their entirety. All of this documentation is correspondence on the issue of Jimmy Savile’s fundraising for Stoke Mandeville Hospital. The withheld information concerns communications between a third party and Jimmy Savile in which that third party individual expressed their support for this fund raising effort.
15. The withheld information clearly both relates to and identifies the third party individual. In line with section 1(1) of the DPA, this information is, therefore, the personal data of that individual.
16. The complainant had argued that it should be possible for TNA to anonymise the information, thus rendering it disclosable. In response to this point, the Commissioner would note first that the two documents disclosed in redacted form already have been effectively anonymised. In relation to the two documents withheld in their entirety, the Commissioner accepts that it would not be practical to anonymise these documents; the remainder of the documents would be so denuded as to render them meaningless.
17. The next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle and, in particular, whether disclosure would be, in general, fair to the data subject. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of this information.
18. On the issue of the expectation of the data subject, it is significant here that there no evidence of the data subject being aware that their communication with Jimmy Savile had been disclosed to the Prime Minister. The data subject is unlikely, therefore, to be aware of the existence of this information and so clearly would have no expectation that it could be disclosed.
19. Furthermore, the view of the Commissioner is that the data subject would not expect this information to be disclosed even if they were aware of its existence. As covered in more detail below, this individual was acting in a private capacity and was in correspondence with Jimmy Savile, rather than lobbying the then Government. In general an

individual would not expect that details of their personal correspondence would be disclosed into the public domain.

20. As to the consequences of disclosure, the view of the Commissioner is that disclosure in contravention of the expectation referred to above would be distressing to the data subject, as in any circumstance would be the disclosure of personal correspondence into the public domain. In particular, given what is now known about the conduct of Jimmy Savile, his reputation is now such that even disclosure of correspondence revealing an involvement in his charitable endeavours would be likely to result in distress to the data subject.
21. The passage of time since this information was recorded – more than 30 years – is a point to be addressed here. The argument could be advanced that the sensitivity of this information will have been reduced by this passage of time, as would any distress caused to the data subject as a result of disclosure.
22. The Commissioner's view on this point is that the sensitivity of the information in question has not been reduced by the passage of time. On the contrary, what has recently become known about Jimmy Savile means that, in the Commissioner's view, this information is more sensitive than it was at the time it was recorded. Also, whilst the data subject was acting in a private capacity when corresponding with Jimmy Savile, they occupied a high profile position at the time of that correspondence and continue to do so today. The Commissioner does not, therefore, believe that the likelihood of distress to the data subject is reduced due to the passage of time.
23. Turning to the issue of whether there is legitimate public interest in the disclosure of this information, the complainant argued that there was, on the basis that it is important to reveal dealings between those in authority and Jimmy Savile. The Commissioner agrees that this is a valid public interest argument, but would also note the following about the situation here.
24. First, TNA has withheld only a minority of information from the file PREM 19/878. The information that has been disclosed reveals lobbying by Jimmy Savile of the then Prime Minister and the Commissioner agrees that it was in the public interest for this to be disclosed. That this information has been disclosed means that the public interest identified by the complainant has been, at least in part, satisfied already.
25. Secondly, the data subject was corresponding with Jimmy Savile, not with the Prime Minister or the Government, and was doing so as a private individual, rather than in any official capacity. Had it been the case that this information recorded lobbying of the Government and that

this may have had an impact upon the expenditure of public money, there would be a stronger public interest in its disclosure. In the event, however, the information records that the views of the data subject were passed on to the Prime Minister by Jimmy Savile; the withheld information does not record any direct contact between the then Government and the data subject.

26. Thirdly, in response to the point made by the complainant about the public interest in information recording communication between those in positions of authority and Jimmy Savile, the Commissioner notes, having viewed the content of the information, that the data subject was corresponding with Jimmy Savile as a private individual. The content of this information records only the expression of that individual's personal opinion; it includes nothing about any attempt by that individual to use their position in support of any cause espoused by Savile.
27. For these reasons, the Commissioner does not consider that there is a compelling legitimate public interest in the disclosure of this particular information, even given what is identified as a broader public interest in the conduct of Jimmy Savile. Having found above that the data subject would hold an expectation that this information would not be disclosed and that disclosure in contravention of that expectation would be likely to cause distress to the data subject, the conclusion of the Commissioner is that disclosure would be unfair and in breach of the first data protection principle.
28. This means that the overall conclusion of the Commissioner is that the exemption provided by section 40(2) is engaged and TNA is not required to disclose this information. Having reached this conclusion on section 40(2), it has not been necessary to go on to also consider section 41(1).

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: GRC@hmcts.gsi.gov.uk

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

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
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
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SK9 5AF