Freedom of Information Act 2000

Decision notice

Date: **17 August 2015**

Public Authority: **Cabinet Office**
Address: **70 Whitehall**
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information relating to the public duty cost allowance afforded to former Prime Ministers of the UK. The Cabinet Office refused the request under sections 21(1), 22(1) and 40(2) of the Freedom of Information Act 2000 (the Act). During the course of the investigation the Cabinet Office sought to rely on sections section 12(1) and 41(1) of the Act.

2. The complainant has not sought to appeal against the Cabinet Office's use of sections 12(1), 21(1) and 22(1) so the Commissioner has not included this in his decision.

3. The Commissioner's decision is that the Cabinet Office is entitled to refuse the request under section 41(1) of the Act. He also finds that the Cabinet Office breached section 17(1) with its late citation of section 41(1). However, as a valid refusal notice has been issued no steps are required.

Request and response

4. On 29 June 2014, the complainant wrote to the Cabinet Office and requested information in the following terms (numbers added by the Commissioner for reference):

"According to a PQ answered by Lord Wallace of Saltaire, former Prime Ministers can claim an allowance if they provide receipts or other supporting documentation.

1. *Please could you release the amount claimed by each former Prime Minister in each calendar year 2005-2013 inclusive, and also provide a copy of all receipts or other supporting documentation submitted in respect of this allowance since January 2012.*

2. *If the cost threshold obstructs this then please provide ONLY copies of receipts and supporting documentation since June 2013."*

5. The Cabinet Office issued its refusal notice on 21 July 2014. It refused item 1 of the request under section 21(1)[1] – information accessible by other means – and 22(1) – information intended for future publication. It refused item 2 of the request under section 40(2) of the Act – third party personal data.

6. The complainant requested an internal review of item 2 of his request on 26 July 2014, stating that former Prime Ministers do not have "any reasonable expectation of privacy". The Cabinet Office issued its internal review 13 August 2014. The review upheld the section 40(2) decision taken in the refusal notice.

7. During the course of the Commissioner's investigation the Cabinet Office sought to apply section 12(1) – compliance exceeds the appropriate limit – to any information within the scope of item 1 of the request for the years 2005 and 2006. It also applied section 41(1) – information provided in confidence – to the information within the scope of item 2 the complainant's request. The Cabinet Office applied these exemptions in addition to the section 40(2) refusal that was already in place. It provided the complainant with an additional refusal notice on 27 July 2015 to inform him as such.

Scope of the case

8. The complainant contacted the Commissioner on 30 October 2014 to complain about the way his request for information had been handled. In his appeal he made it explicitly clear that he wished to focus on item 2 of the request and the Cabinet Office's use of section 40(2).

9. The complainant also contacted the Commissioner after the Cabinet Office issued its additional refusal notice on 27 July 2015. He confirmed

[1] For example see:
http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120716/text/120716w0003.htm#12071634000035

that he wished to appeal against the Cabinet Office's use of section 41(1).

10. The Commissioner considers the scope of the case to be whether the Cabinet Office is entitled to refuse information in the scope of item 2 of the request (hereafter referred to as "the request") under sections 40(2) and 41(1).

Reasons for decision

Section 41(1) – information provided in confidence

11. Section 41(1) states:

41(1) Information is exempt information if –

(a) it was obtained by the public authority from any other person (including another public authority), and,

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

12. To reach a decision on whether section 41(1) applies the Commissioner will first determine whether the information was obtained by the Cabinet Office from a third party. If so, he will go onto to consider whether disclosure of the information to the public would constitute a breach of confidence.

13. Section 41(1) is an absolute exemption so the Commissioner does not have to consider the balance of the public interest to determine whether the information can be disclosed. However, the common law duty of confidence contains an inherent public interest test. The Commissioner has therefore also considered this in order to decide if the exemption applies.

Was the information obtained from a third party?

14. The documents provided to claim for the allowance have all been submitted to the Cabinet Office by the offices of former Prime Ministers. From the format of the documents and the information contained within it is clear that there is not a pre-determined format required by the Cabinet Office, and each respective office has its own way of providing justification for the allowance it claims.

15. The information was created externally and only obtained by the Cabinet Office when the offices of former Prime Ministers submitted the claims

for the allowance. The Commissioner is satisfied that the withheld information was obtained from a third party.

Would disclosure of the information constitute a breach of confidence?

16. The test of confidence was established in the High Court case of *Coco v A N Clark (Engineers) Limited [1968] FSR 415*. For the Commissioner to find that disclosure of the information would constitute a breach of confidence it must be shown that:

    - the information has the necessary quality of confidence,
    - the information was imparted in circumstances importing an obligation of confidence, and
    - unauthorised use of the information would be of detriment to the confider.

Information has the necessary quality of confidence

17. Information will have the quality of confidence if it is more than trivial and not otherwise accessible. The information does not have to be particularly sensitive, but it must be more than trivial.

18. The withheld information contains strictly private information relating to the former Prime Ministers and members of their staff. This information relates to salaries and contains a number of financial details, including bank details. The Cabinet Office put forward the argument that this is not trivial information and would be of great importance to the individuals concerned. The Commissioner agrees with this view and considers that the information cannot be considered trivial.

19. The Commissioner is not aware that this detailed information was in the public domain at the time of the request. The Cabinet Office maintains that the total cost claimed through the allowance scheme is announced in the House of Commons on a regular basis and is not disclosed otherwise beforehand. The Commissioner accepts this, and so finds that the detailed withheld information has the necessary quality of confidence.

Information was imparted in circumstances importing an obligation of confidence

20. In outlining its argument the Cabinet Office stated that the information was obtained in strict confidence and on the understanding that it would not be disclosed. It referred the Commissioner to an example invoice within the withheld information which was clearly stated "Private and Confidential". The Cabinet Office concluded that there was an expectation – from both the offices of the former Prime Ministers and

the Cabinet Office itself – that the information had a strong degree of confidentiality attached to it.

21. The Commissioner does not view a document being marked with "Private and Confidential" as conclusive evidence that a document necessarily is confidential. However, he is of the view that, in the circumstances here, the information would have been imparted with an expectation of confidentiality. As has been mentioned, the total allowance for each former Prime Minister is revealed to the House of Commons on a regular basis and is a matter of public record, but the supporting documentation to claim for this allowance is not put into the public domain.

22. The Commissioner concludes that the information was imparted in circumstances importing an obligation of confidence. It is clear that the withheld documents were not intended to be released to the public domain, and that the parties involved in providing and receiving the information would expect the supporting documents for the allowance to be treated in confidence.

Unauthorised use of the information would be of detriment to the confider

23. The Commissioner considers that disclosure of personal and financial details would be of clear detriment to the confiders. The information contains some financial details and there is a potential risk of identity theft or fraud if this information were to be disclosed. Given the prominence of the individuals involved this risk is very much apparent and amounts to a serious detriment to the individuals concerned.

24. The Commissioner is also mindful of the First-Tier Tribunal's decision in the case of *Bluck v ICO & Epsom and St Helier University Hospital NGHS Trust [EA/2006/0090]*[2]. Paragraph 15 states that the loss of privacy can be a detriment in its own right. There is no need therefore for there to be any detriment to the confider in terms of tangible loss in order for information to be protected by the law of confidence because the loss of privacy in its own right is sufficient. This is applicable in this case as the former Prime Ministers and the staff working in their offices would suffer a loss of privacy should this information be placed into the public domain. The Commissioner fundamentally disagrees with the

2 http://www.informationtribunal.gov.uk/DBFiles/Decision/i25/mrspbluckvinformationcommissioner17sept07.pdf#page=8

complainant's assertion that that former Prime Ministers do not have any reasonable expectation of privacy.

25. The Cabinet Office has argued that disclosure of the information would weaken the bond between the government and the offices of the former Prime Ministers. Were the Cabinet Office to disclose the sensitive information contained within the documents there would likely be a greater reluctance to provide this information in the future. The Commissioner considers that this argument is reasonable, and further shows that disclosure of the information would be of detriment to the confider.

26. For the reasons cited the Commissioner is satisfied that unauthorised use of the information would be of detriment to the confiders. He will now go on to consider the inherent public interest test within the common law duty of confidence.

Inherent public interest test

27. The Commissioner acknowledges that there is an argument in the public being able to see how the offices of former Prime Ministers justify the allowances they claim. The allowance is set as £115,000 for each former Prime Minister, which is not a trivial sum. The Commissioner considers that this would shows there is a reasonable argument to be made for greater transparency over the claims and the resultant use of public money.

28. However, the Commissioner's view is that the public interest is met by the total amount claimed being disclosed into the public domain through the House of Commons. It is not considered that knowing the exact minutia of the claims would provide much of significance to the public's understanding about this element of government spending.

29. The Commissioner considers that the public interest in disclosing the information does not outweigh the public interest in maintaining the confidence in which the information was provided. Therefore his decision is that the Cabinet Office would not have a public interest defence for breaching its duty of confidence and that the withheld information is exempt under section 41(1) of the Act. No steps are required.

Section 40(2) – third party personal data

30. As the information is exempt under section 41(1) the Commissioner has not gone on to consider whether the information can be withheld under section 40(2). However, the Commissioner wishes to comment that in his view it would be highly unlikely that disclosing the information relating to those individuals alive at the time of the request would be in accordance with the data protection principles.

31. The legitimate interest in disclosure has largely been met by the publication of the overall figure claimed. The Commissioner considers it unlikely that any further legitimate interest would warrant the intrusion into privacy which would flow from the disclosure of the more detailed information.

Procedural matters

32. Section 1(1) of the Act states:

(1) 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.

33. Section 10 of the Act states:

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

…

(3) If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

34. Section 17(1) of the Act states:

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

35. If the Cabinet Office decides that information should be withheld – as in this case – it has an obligation to provide a requester with a refusal notice within 20 working days of receipt of the request. The Cabinet Office did provide a refusal notice for its citation of sections 21(1), 22(1) and 40(2). However, it did not provide the complainant with a refusal notice for its citation of section 41(1) until well after 20 working days. The Commissioner asks the Cabinet Office to ensure that all exemptions it wishes to rely on are identified within the time afforded within the Act.

Right of appeal

36. 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 123 4504
    Fax: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: http://www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.

38. 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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