

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2018

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9 AJ

Decision (including any steps ordered)

1. The complainant requested information relating to the future Coronation of the Prince of Wales as King. The Ministry of Justice (MoJ) refused to confirm or deny whether information relevant to the request was held. It cited section 37(2) of the FOIA on the basis that, if any information was held, it would relate to communications with the Sovereign or with the heir to the Throne as per sections 37(1)(a) and 37(1)(aa) of the FOIA respectively.
2. The Commissioner has investigated the MoJ's application of exemptions to information within the scope of parts (2) and (3) of the request. The Commissioner's decision is that the MoJ was entitled to neither confirm nor deny whether relevant information was held under section 37(2). She also found that the MoJ breached section 10(1) (time for compliance) and section 17(1) (refusal of request) of the FOIA as it did not issue its refusal notice to the complainant within 20 working days following receipt of the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 18 October 2016, the complainant wrote to the MoJ and requested information in the following terms:

"My FOI request has been inspired by several recent press reports which relate to the future Coronation of the Prince of Wales as King.

According to these press reports the preparations for the Coronation are formulated by a committee headed by the Duke of Norfolk...

Please note that I am only interested in information which relates to the period 18 October 2014 to the present day.

1. Is the Ministry of Justice involved in any way with preparations for the Coronation of the Prince of Wales as King. These preparations will include but will not be limited to the form the Coronation will take and the future constitutional role of the Duchess of Cornwall. If the answer is yes can you please provide a basic description of the Cabinet Office's [sic] role. Can you please specify which members of the ministerial team and or which employees are currently involved in the preparations.

2. Does the Ministry of Justice hold copies of documentation which relates to the work of the aforementioned committee headed by the Duke of Norfolk. If the answer is yes can you please provide the following details. Can you please identify the current members of the committee. Can you please list occasions on which the committee has met. In the case of each meeting can you state the time, date and venue. In the case of each meeting can you also provide a full list of those present including non committee members. In the case of each meeting can you please provide copies of any agendas and minutes of meetings drawn up by the committee.

3. During the aforementioned period has the Duke of Norfolk and or the committee and or any of its members and or its secretariat exchanged correspondence and or communications including emails with the Secretary of State and or any member of the ministerial team at the MoJ who is involved in preparations for the Prince's future Coronation. Please note that I am only interested in correspondence and communications which in any way relate to the Coronation of the Prince of Wales as King and or the future constitutional position of the Duchess of Cornwall. Please note that the reference to the Prime Minister and or members of the ministerial team should include those individuals and or their private offices and or anyone acting specifically on their behalf. If the answer is yes can you please provide copies of this correspondence and communications including emails. Please note that I am interested in receiving both sides of the correspondence and communication".

5. The MoJ responded on 7 March 2017. It denied holding the information requested in part (1) of the request. It refused to confirm or deny whether it held the information requested in parts (2) and (3) of the

request, variously citing sections 37(1)(a), 37(1)(aa) and 37(2) of the FOIA (Communications with Her Majesty and the awarding of honours) as its basis for doing so.

6. The complainant requested an internal review of the MoJ's handling of the request, specifically the timeliness of the response and the "*MoJ's failure to confirm and disclose various documents*".
7. Following an internal review, the MoJ wrote to the complainant on 19 April 2017. It acknowledged that its response was non-compliant in that it failed to comply with the statutory deadline for responding. It maintained its original position with regard to parts (2) and (3) of the request.

Scope of the case

8. The complainant contacted the Commissioner on 26 April 2017 to complain about the way his request for information had been handled. In particular he was dissatisfied that the MoJ failed to answer the request on time. He was also unhappy with the MoJ's failure to confirm and/or disclose information. While he accepted that non environmental information that relates to senior members of the Royal Family and their communications must be protected he disputed that much of the information in the scope of his request would fall into that category.
9. The Commissioner wrote to the MoJ on 8 August 2017 advising the MoJ to revisit its handling of the request and setting out the information she required from it in order to commence her investigation.
10. In the absence of a substantive response, on 16 October 2017, the Commissioner issued the MoJ with an Information Notice (IN) in accordance with her powers under section 51 of the FOIA. By way of that Notice the Commissioner required the MoJ to furnish her with further information about its handling of the request for information in this case.
11. In its substantive response, the MoJ revised its position with respect to the information in the scope of part (1) of the request advising that it confirmed in error that that information was not held. Instead, the MoJ refused to confirm or deny whether it held information relevant to that part of the request. The MoJ confirmed its application of section 37(2) of the FOIA to the information requested at parts (2) and (3) of the request.
12. The MoJ wrote to the complainant confirming its revised position. It told him that, having reconsidered his request, it had concluded:

"...that we should also have neither confirmed nor denied holding the information in part (1) of the request under sections 37(1)(a), 37(1)(aa) and 37(2) of the FOIA".

13. In the absence of any observations from the complainant regarding the MoJ's revised position in respect of part (1) of the request, the Commissioner has not investigated the MoJ's handling of that part of the request. The analysis below considers whether the MoJ was entitled to rely on section 37(2) of the FOIA to neither confirm nor deny holding the information requested at parts (2) and (3) of the request.
14. The Commissioner has also considered the timeliness with which the MoJ handled the request.

Reasons for decision

Section 37 Communications with Her Majesty and the awarding of honours

15. Section 37 of the FOIA is broad in its definition, encompassing information relating to:
 - communications with Her Majesty, other members of the Royal Family or the Royal Household; and
 - the awarding of honours and dignities by the Crown.
16. Of relevance in this case, section 37(1)(a) provides an exemption for information relating to communications with the Sovereign while section 37(1)(aa) exempts information relating to communications with the heir and second in line to the Throne.
17. Sections 37(1)(a) and 37(1)(aa) are class-based, absolute exemptions. This means that if the information were held and it would fall within the class of information described in the exemptions in question, it is exempt from disclosure. There is no requirement to demonstrate prejudice or conduct a public interest test.
18. Section 37(2) provides an exclusion from the duty to confirm or deny where the information is exempt under section 37(1).
19. The Commissioner considers that the term '*relates to*' should be interpreted broadly. In practice this means that the scope of the exemption will cover more than just the actual communications themselves: it will also apply to information that refers to, or is derived from those communications.
20. The definition of '*communications*' is likewise seen as wide-ranging by the Commissioner. The exemption also goes beyond being only from the

Sovereign, heir or second in line to the throne themselves, it includes officials and staff that are communicating on their behalf.

21. In correspondence with the Commissioner, the MoJ told her:

"Sections 37(1)(a) and 37(1)(aa) were relied on in response to parts 2 and 3 of [the complainant's] request as it would be reasonable to expect that if information was held by the MoJ it would include correspondence with the Palace, including with the Sovereign or with the heir to, or the person who is for the time being second in line of succession to, the Throne. The duty to confirm or deny whether the information is held does not apply under Section 37(2) as it is exempt under 37(1)".

22. The Commissioner is mindful of the complainant's view about the extent to which information within the scope of his request would relate to senior members of the Royal family and their communications.

23. She has also considered her guidance on the section 37 exemption¹. That guidance discusses the scope of the exemption and gives examples of the types of information that may be covered, such as:

- communications between the Sovereign and government ministers;
- correspondence with members of the Royal Family in respect of royal visits or other public engagements;
- records of audiences (private meetings) with members of the Royal Family;
- material that has been shown, or will be shown, to the sovereign for approval;
- copies of speeches given by members of the Royal Family; or
- copies of messages exchanged between members of the Royal Family.

24. Also with respect to the scope of the section 37 exemption, the guidance states:

"Furthermore, the exemptions will also cover communications made or received by a person (or organisation) who was acting on behalf

¹ https://ico.org.uk/media/for-organisations/documents/1194/communications_with_her_majesty_and_the_awarding_of_honours.pdf

of the sovereign, heir, second in line to the throne and other members of the Royal Family”.

25. The issue for the Commissioner to decide in respect of parts (2) and (3) of the request is whether the information sought to be disclosed fell within the type of information covered by the exemption.
26. Having considered the matter, in the Commissioner's view all of the recorded information caught by those parts of the complainant's request would – if held – be communications as per sections 37(1)(a) and 37(1)(aa).
27. Part (2) of the request asks for details contained within documentation that may be held by the MoJ relating to the work of the committee headed by the Duke of Norfolk.
28. The Commissioner considers that the response to those parts of the request seeking, for example, membership of the committee, the occasions on which the committee has met, and copies of any agendas and minutes of meetings, is dependent on the response to the first element of part (2) of the request.
29. The Commissioner is satisfied that information within the scope of that part of the request – whether the MoJ holds copies of documentation which relates to the work of the committee - would come within the scope of the exemptions at section 37(1)(a) and 37(1)(aa). She is satisfied that the information, if held, 'relates to' communications given that meetings and other such discussions are seen as communications.
30. It follows that she is satisfied that the remaining aspects of part (2) of the request, if held, also fall within the exemptions.
31. Part (3) of the request asks for copies of correspondence and communications and so it is obviously within the class of information.
32. As stated above, sections 37(1)(a) and (aa) are absolute exemptions, so there is no requirement to consider the balance of the public interest. If a public authority is satisfied that an absolute exemption is engaged, it is entitled to issue a NCND response without further qualification. The Commissioner's decision is that the class of information asked for relates to communications with the Sovereign, the heir and second in line to the throne, so would be caught by sections 37(1)(a) and (aa). As these sections would apply to the information, if held, section 37(2) is engaged and the MoJ is not required to confirm or deny whether it holds any information within the scope of parts (2) or (3) of the request.

Section 10 time for compliance

33. Section 10 of the FOIA provides that a public authority's response to a request must be provided promptly and, in any event, not later than the twentieth working day following the date of receipt.
34. The Commissioner's decision is that, by failing to respond to the request within 20 working days, the MoJ breached section 10(1) of the FOIA.

Section 17 refusal of request

35. Section 17(1) of the FOIA states:

"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".

36. The effect of section 17(1) is that if a public authority wishes to refuse a request then it must inform the requester of this within 20 working days.
37. Although the complainant wrote to the MoJ requesting information on 18 October 2016, it was not until 7 March 2017 that the MoJ issued its refusal notice.
38. The MoJ explained to the Commissioner that the delay in issuing the refusal notice:

"... was the result of an administrative oversight which meant that the case was not allocated to a member of staff to answer'.
39. The Commissioner finds the MoJ breached section 17(1) by failing to issue its refusal notice within 20 working days of receipt of the request.
40. The Commissioner acknowledges that the MoJ has advised that training was organised and is ongoing *"to minimise the possibility of a similar situation arising in the future"*.

Right of appeal

41. 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

42. 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.
43. 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

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF