

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2020

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the closed extract listed as "PREM 19/81/1" held by The National Archives (TNA). The withheld information consists of six sentences redacted from the open parent file "PREM 19/81". TNA withheld two sentences under section 27 (international relations) and withheld the remaining four sentences under section 40(2) (third party personal data) and section 41(1) (information provided in confidence) of the FOIA.
2. The Commissioner's decision is that TNA –
 - is entitled to rely on section 27(1)(a), (c) and (d) of the FOIA to withhold two sentences of the withheld information and in all the circumstances of the case the public interest favours maintaining this exemption.
 - is entitled to withhold the remaining four sentences under section 40(2) of the FOIA. The Commissioner has not gone on to consider the application of section 41(1) of the FOIA in relation to those four sentences.
 - However, the Commissioner has recorded a procedural breach of section 10 of the FOIA, as TNA failed to respond to the complainant's request within the statutory time limits.
3. The Commissioner does not require any further steps to be taken as a result of this decision notice.

Background

4. The Commissioner understands that the file "PREM 19/81" was opened by TNA on 1 November 2010. The open file consists of approximately 180 pages of correspondence relating to the situation in Northern Ireland in 1979. "PREM 19/81/1" is a closed extract containing the information that has been redacted from the file PREM 19/81. The closed extract consists of six sentences from three pages of the open file PREM 19/81. The request for information is for PREM 19/81/1 (i.e. the information redacted from PREM 19/81).

Request and response

5. On 30 May 2019, the complainant wrote to TNA and requested the following:

"Document reference: PREM 19/81/1

With the 40th anniversary of Mountbatten's death in August and therefore public interest, I believe there is an argument to release the closed material a few months early."

6. TNA acknowledged receipt of the request on 31 May 2019.
7. TNA wrote to the complainant on 25 September 2019, advising that it had not yet decided if the extract could be opened. It stated that it would respond to the complainant by 9 October 2019. TNA explained to the complainant that it had to consult with other government agencies in relation to his request. It also explained that it required an extension of 10 working days to respond to the request in line with regulation 4(2) of the Freedom of Information (Time for Compliance) Regulations 2004.
8. TNA wrote to the complainant on 9 October 2020 advising that it was required to conduct a public interest test in relation to the request because information within the extract was covered by section 27(1)(a),(c) and (d) of the FOIA. It also stated that information within the extract was also covered by the exemptions under section 40(2) and 41 of the FOIA. It advised the complainant that it would let him know the result of the public interest test by 6 November 2019.
9. TNA responded on 23 October 2019 and refused to provide the requested information, citing section 27(1)(a), (c) and (d), section 40(2) and section 41(1) of the FOIA as its basis for doing so.

10. On 23 October 2019, the complainant requested an internal review of TNA's decision.
11. TNA provided the outcome of its internal review on 29 November 2019, maintaining its original position.

Scope of the case

12. The complainant contacted the Commissioner on 23 December 2019 to complain about the way his request for information had been handled.
13. During the course of the Commissioner's investigation, TNA advised that there was an error in the internal review response to the complainant on 29 November 2019 in which it stated at the beginning of the letter that some of the withheld information was considered exempt under section 27(1)(a), (c) and (d). However, later in the letter it stated that it considered all of the withheld information to be covered by this exemption. Furthermore, TNA has stated that there was also an error in the number of sentences it advised the complainant that it was withholding.
14. TNA has confirmed that the withheld information is a very small extract file containing six sentences, which have been redacted from three pages of the open parent file PREM 19/81. TNA stated that the first two sentences are considered exempt under section 27(1)(a), (c) and (d) and the remaining four sentences are considered exempt under section 40(2) and section 41(1) of the FOIA.
15. The Commissioner considers the scope of her investigation to be to determine whether two sentences of the withheld information were correctly withheld under the section 27 exemption. She will also look at whether TNA is entitled to rely on section 40(2) and/or 41(1) of the FOIA as a basis for refusing to provide the four sentences in the remaining withheld information.

Reasons for decision

16. The Commissioner has viewed the withheld information. Due to its nature, she will not provide any further details about the withheld information in this decision notice as doing so could inadvertently reveal the information itself.

Section 27 – international relations

17. Section 27(1) of the FOIA provides an exemption against disclosure if doing so would, or would be likely to, prejudice:

- a) relations between the United Kingdom and any other State,
- b) relations between the United Kingdom and any international organisation or international court,
- c) the interests of the United Kingdom abroad, or
- d) the promotion or protection by the United Kingdom of its interests abroad.

18. In this case, the relevant paragraphs are a), c) and d).

TNA's position

19. TNA has stated that in applying this exemption, it consulted with the transferring department, The Cabinet Office, which confirmed that if the two sentences within the closed extract were released it would be likely to prejudice relations within the Republic of Ireland.

20. There appear to be two strands to TNA's application of the exemption. Firstly, TNA has stated that the two sentences withheld from disclosure under section 27 relate to "*...to frank and candid remarks and opinions made by UK government officials. Such employees within their official capacity require an open environment where contentious, confidential and delicate matters can be discussed. Within this environment there needs to be a level of certainty that ideas, comments, suggestions or remarks will not be made public. If there is fear that frank, candid remarks could potentially be released in the future then there is the possibility that officials would be less likely to make them. The erosion of this safe environment is therefore likely to impede frank exchanges which in turn could prejudice relations with another state (a), the United Kingdom's interest abroad (c) or the promotion/protection of the United Kingdom's interests abroad (d).*"

21. The Commissioner notes that TNA used similar arguments to rely on the section 27 exemption for a previous case, reference FS50678959. In that case, the Commissioner did not take these arguments into account, stating –

"To engage an exemption a public authority must show that the prejudice it is envisaging affects the particular interest that the exemption is designed to protect. Arguments about prejudice to any other interests will not engage the exemption. In the Commissioner's

opinion TNA's argument would more properly be considered under the section 36(2)(b)(i) and (ii) exemptions which specifically provide for an exemption where disclosure would be likely to inhibit the free and frank provision of advice or the free and frank exchange of views...."¹

22. For the same reason as our decision in FS50678959, the Commissioner does not consider that these arguments are relevant to the application of section 27 in this case.
23. In relation to the second strand of its argument, TNA stated that the disclosure of the two sentences, *"even many years after [they were] recorded, this would be likely prejudice to UK relations with the Republic of Ireland (a), UK interests there (c) and impact on the promotion/protection of the United Kingdom's interests in the Republic of Ireland (d), especially in the context of the recent and ongoing EU exit discussions and negotiations and the renewed focus on cross border concerns."*
24. TNA confirmed that it was relying on the lower threshold of prejudice, i.e. that disclosure 'would be likely' to result in the prejudice claimed.
25. TNA has stated that it is difficult to supply definitive evidence demonstrating this link. However, it has stated that because the two sentences that are withheld contain comments and opinions that could cause offence to a named specific country, the likelihood that this information would prejudice the United Kingdom's (UK) international relations and interests abroad is substantial, especially in light of the current political discussions about cross border concerns.
26. TNA have therefore argued that there is a causal link between the release of the two withheld sentences and possible prejudice to the UK's relations with the Republic of Ireland (RoI). TNA argued that it would clearly not be in the UK's interest to prejudice these relations and that it would be of detriment to the operation of the Government's international relations more widely. TNA stated that maintaining the strength and trust of the relationship with the RoI, and other states, is vital to the UK's national interest.
27. TNA has stated that it has noted the historical dates of the withheld information. However, it does not see the passage of time as a factor in favour of releasing the information. It stated that releasing the information now could be as damaging to the UK's relations with another

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2172845/fs50678959.pdf> (paragraph 16)

state, in this case the RoI, for the reasons above, and especially in light of the recent negotiations of the UK's exit from the European Union (EU), as if the request was made at the time the information was recorded.

The complainant's position

28. The complainant has argued that *"it is difficult to see how forty years on 'release of this information would prejudice our international reputation for handling discussions with or about foreign powers' and 'harm UK relations with the country or countries concerned'..."*. The complainant also questioned *"What could be so sensitive about something briefly communicated on the day of Mountbatten's assassination?"*

The Commissioner's position

29. In order for a prejudice based exemption such as section 27(1) to be engaged the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice, which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

30. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that, in the context of section 27(1), prejudice can be real and of substance *'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'*.

31. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by TNA clearly relates to the interests which the exemptions contained at sections 27(1)(a), (c) and (d) are designed to protect.
32. With regards to the second criterion, the Commissioner is satisfied that there is a causal relationship between the disclosure of the two sentences and harm occurring to the UK's relationship with the RoI.
33. With respect to the third criterion, TNA stated that the disclosure in this case of the two sentences 'would be likely' to prejudice future relations between the UK and the RoI.
34. In relation to the lower threshold that prejudice 'would be likely' to occur, the Commissioner considers that there must be more than a hypothetical or remote possibility of prejudice occurring; the risk of prejudice must be a real and significant, even though the probability of prejudice occurring is less than 50%.
35. In view of the submissions provided, and taking into account the content of the two sentences withheld and the timing of the request, the Commissioner is satisfied that there is a real and significant risk of prejudice occurring to the interests which section 27(1) (a), (c) and (d) are designed to protect. In reaching this conclusion, the Commissioner considers it logical and reasonable for TNA to argue that the disclosure of the two sentences withheld would be likely to lead to an impact on the relationship between the UK and the RoI and the UK's exit from the EU negotiations.
36. In reaching this conclusion, the Commissioner has taken into account the complainant's arguments about the passage of time and the sensitivity of the information. However, the complainant's submissions on this point do not alter her decision. Based on the submissions provided to her by TNA, including an assessment of the two sentences withheld itself, the Commissioner considers that, although historic, the sensitivity of the information would be likely to have an impact on the UK's relationship with the RoI and the UK's exit from the EU.
37. The Commissioner has therefore concluded that sections 27(1)(a), (c) and (d) of the FOIA are therefore engaged.

Public interest test

38. Section 27(1) is a qualified exemption. Therefore, the Commissioner must consider the public interest test contained 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 favour of disclosing the information.

39. TNA has explained that once the section 27 exemption was engaged, it carried out the public interest test in consultation with the transferring department, the Cabinet Office. It stated that all exemptions requiring a public interest test are sent to the Advisory Council on National Records and Archives for their opinion in relation to the public interest in releasing the information.

Public interest arguments in favour of disclosing the information

40. TNA stated that it had taken into account the following factors in favour of disclosure:
- *“There is a general duty in favour of transparency.*
 - *There a specific duty in respect of informing the public regarding the relations between the UK and Ireland during the late 1970s and on the UK government’s policy regarding Northern Ireland issues at the time.”*

Public interest arguments in favour of maintaining the exemption

41. TNA stated that the following arguments favoured maintaining the exemption and withholding the information:
- *“At the time of the request, relations with the Republic of Ireland were sensitive and remain so, particularly in the context of EU exit negotiations. The free and frank views expressed within this extract would be unlikely to be received well in Dublin. Given that the majority of the information has been released, the public interest is not well served by release of these minor parts of the information when weighed against the prejudice likely to result.*
 - *There is a public interest in the UK being able successfully to pursue our national interests abroad. It follows from this that there is also a public interest in ensuring that we retain the trust of international partners so that we can continue to work with them. If we forfeit this trust, this could jeopardise and make more difficult future cooperation.*
 - *The burden of remedial measures required to offset the prejudice caused by disclosure would be significant. This significantly increases the weight to be given to the public interest in maintaining the exemptions. Disclosing the information would do significant and, in some contexts, lasting damage to the presumption that HM Government conducts its business with other States in line with the norms of international diplomacy.*

- *The scope of the prejudicial effects of disclosure increases the weight of the public interest in maintaining the exemptions. Damage to our relations with the Republic of Ireland in particular, and other nations in general, would make it more difficult for HM government to promote stability and prosperity. This would make it more difficult for the UK to take full advantage of the economic opportunities. This would prejudice the prosperity and well-being of every UK citizen. Anything which inhibited HM Government's full engagement in promoting stability and social progress would prejudice the security and safety of all our citizens."*

Balance of the public interest arguments

42. TNA has referred the Commissioner to paragraph 22 of the decision notice for FS50678959² discussing the public interest in releasing only a very small amount of information in comparison to the information publicly available:

"The withheld information would add very little to the public record, is of limited use and in the Commissioner's view the case for disclosure amounts to little more than historical curiosity."

43. The Commissioner has considered the public interest arguments and reviewed the withheld information. She would also stress that only a very small amount of information has actually been withheld under section 27(1)(a), (c) and (d). Two sentences have been redacted from the main file which is publicly available from TNA. The main file provides extensive historical information on the Northern Ireland situation and in the Commissioner's view the public interest in the disclosure of the withheld information is very limited. The withheld information would add very little to the public record, is of limited use and in the Commissioner's view the case for disclosure amounts to little more than historical curiosity.
44. On the other hand, the Commissioner considers that there is strong public interest in not harming the UK's relations with another State. The Commissioner has found that there is a real and significant risk of harming the UK's relations with the RoI and that this is undiminished by the passage of time, particularly during the time of the request, as the UK relationship with the RoI was, and remains, sensitive (particularly in view of the current exit negotiations with the EU). In the Commissioner's view, this is the main reason for maintaining the

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2172845/fs50678959.pdf>

exemption. In the absence of any compelling arguments in favour of disclosure, she has decided that the public interest favours maintaining the exemption.

Section 40 personal information

45. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
46. In this case the relevant condition is contained in section 40(3A)(a)³. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
47. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
48. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

49. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

50. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
51. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

³ As amended by Schedule 19 Paragraph 58(3) DPA.

52. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
53. The withheld information consists of four sentences.
54. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to named individuals. She is satisfied that this information both relates to and identifies the individuals concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
55. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
56. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

57. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

58. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
59. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

60. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that *"processing shall be lawful only if and to the extent that at least one of the"* lawful bases for processing listed in the Article applies.
61. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such

*interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"*⁴.

62. When considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test: -
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information.
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question.
 - iii) **Balancing test:** Whether the above interests override the legitimate interests or fundamental rights and freedoms of the data subject.
63. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

64. In considering any legitimate interests in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests

⁴ Article 6(1) goes on to state that: -

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that: -

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

as well as wider societal benefits. These interests can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

65. TNA has stated that it recognises that there is a general public interest in government accountability and transparency, and that the release of the withheld information would add to the historical account.
66. The complainant has stated that there *"is widespread public interest in the murder of Lord Mountbatten"* and that *"it is difficult to see how forty years on... references to living individuals would 'cause them damage or distress'. It is not clear if the living official protected by s.40(2) was a government official simply doing their job or a foreign diplomat. Sections 40 & 41 are not absolute exemptions and, given the criticisms surrounding Mountbatten's security, there could be a strong Public Interest element here."*
67. In the circumstances of the case, the Commissioner accepts that there is a legitimate interest in disclosure of the requested information, especially as the event described has attracted public interest of a significant historical event. Disclosure would promote openness and transparency and provide the public with more insight into this event.

Is disclosure necessary?

68. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
69. In its submission to the Commissioner, TNA has referred to paragraph 10 of the Tribunal case EA/2012/0030:

'A broad concept of protecting, from unfair or unjustified disclosure, the individuals whose personal data has been requested is a thread that runs through the data protection principles, including the determination of what is "necessary" for the purpose of identifying a

*legitimate interest. In order to qualify as being "necessary" there must be a pressing social need for it.'*⁵

70. TNA went on to explain that whilst the disclosure of the withheld information may be desirable or meet public curiosity, it is not convinced that there is a pressing social need to release this information, which would outweigh the public interest in protecting the information, and the rights and freedoms of the individuals, and no necessity to disclose has been established.
71. The Commissioner considers that disclosure would give the public more insight into a significant historical event, and that there is no other way that the same objective could be achieved by other less intrusive means. She therefore considers that disclosure is therefore necessary to meet the legitimate interest identified.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

72. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
73. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause.
 - whether the information is already in the public domain.
 - whether the information is already known to some individuals.
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
74. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information

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http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i831/2012_09_06;%20Ian%20McFerran%20decision.pdf

relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

75. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
76. With regards to the expectations of the individuals to whom the data relates, TNA has stated that it is important to consider the circumstances in which the personal data was obtained and has referred to paragraph 42 of the Commissioner's Decision Notice FS50314844⁶ in support of this point.
77. TNA has explained that the information contained within the closed extract is the private and personal information of the individuals to whom the data relates and has stated that the individuals would have an expectation of confidence. Releasing the withheld information would therefore be inconsistent with how the information was obtained.
78. TNA went on to explain that whilst the individuals to whom the data relates may have been content for their information to be used for the specific purpose that it was processed for, they may not wish for their data to be used for any additional purpose. TNA stated that releasing the information for another purpose, which it says the individuals have not consented to, and would not consent to, would be considered unfair. TNA stated that the manner in which the personal data, was collected and the intended purpose for processing that data, makes it personal in nature and there would therefore be a legitimate expectation from the individuals that their private and confidential information would not be released into the public domain during their lifetime.
79. TNA stated that "*there is a general understanding that information provided in a confidential manner comes with an expectation of confidence*" and there is a duty to protect that information. It went on to explain that releasing personal data of a confidential nature could be considered "*as an unwarranted interference with an individual's privacy and there would be no expectation that such information would be released to the public during their lifetime.*"
80. TNA has explained that "*it is in the legitimate interests of the public to uphold the rights of the living individual to whom 4 sentences in this extract relates.*" TNA stated that it "*has to observe [its] obligations to these living individual and their rights under Data Protection Legislation. The rights and interests of such individuals may be impacted by this*

⁶ https://ico.org.uk/media/action-weve-taken/decision-notices/2011/607040/fs_50314844.pdf

release, to the extent that damage or distress may be caused. It is a legitimate interest in favour of non-disclosure, to protect personal data of someone who is still living, where that release would breach the data protection principles."

81. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
82. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.

The Commissioner's view

83. The Commissioner has therefore decided that TNA was entitled to withhold the remaining four sentences under section 40(2), by way of section 40(3A)(a).
84. The Commissioner has not gone on to consider the application of section 41 of the FOIA to those four sentences.

Other matters

85. The Commissioner understands that the complainant requested access to 13 files in his request for information. She notes that TNA advised the complainant that it would be treating his request for information as a bulk request and it was therefore standard practice to process the request in batches of five. In this case, the request for access to the closed extract PREM 19/81/1 was processed in the third batch.
86. Whilst the Commissioner recognises that TNA responded to this request within 20 working days of the date it started working on it, this was still not in compliance with the FOIA and Freedom of Information (Time for Compliance) Regulations 2004. The time for complying with a request begins on the day the public authority receives the request and the response was not provided in accordance with the required timescales from receipt. Therefore, the Commissioner must find that TNA failed to comply with section 10 of the FOIA.

Right of appeal

87. 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@justice.gov.uk

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

88. 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.

89. 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

Pamela Clements
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