

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 November 2022

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

#### **Decision (including any steps ordered)**

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1. The complainant submitted a two part request to the House of Commons ('HoC') asking for information relating to an investigation into complaints about the behaviour of attendees of an event at the Palace of Westminster in October 2021.
2. The HoC relied on section 34(1) (Parliamentary privilege) of FOIA to refuse to respond to the first part of the request and also stated it did not hold information falling within the scope of the second part of the request.
3. The Commissioner is satisfied that, on the balance of probabilities, the HoC does not hold information in the second part of the request as it is not held in recorded form and that the HoC can rely on section 34(1) of FOIA to refuse to provide any information falling within the scope of the first part.
4. No steps are required.

#### **Request and response**

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5. The complainant submitted the following request to the HoC on 28 March 2022:

"1. The information we require is a copy of the notes from your investigation into the alleged incidents on 29th October 2021, together

with details of the complaint(s) (obviously with the names of the complainants(s) redacted) and any photographic or other evidence which led you to your decision to ban the [name redacted] from holding future events within the Palace of Westminster Estate.

2. Also, I wish to know why I have been personally castigated and victimized as a result of this matter?"

6. The HoC responded to the request on 25 April 2022. The HoC explained in relation to question 1 that the information was exempt from disclosure in accordance with section 34(2) of FOIA. In relation to question 2, it explained that it did not hold any recorded information in relation to this part of the request.
7. The complainant contacted the HoC on 12 May 2022 and asked it to undertake an internal review of this response.
8. The HoC's internal review response on 31 May 2022 upheld its original position but clarified that the information in question 1 was being withheld in accordance with section 34(1) of FOIA. The HoC explained that:

"It may help you to know that the issues with the behaviour of your group during this event were considered by the Administration Committee of the House of Commons. Their work forms part of the proceedings of the House, and parliamentary privilege provides us with the exclusive right to decide when and how to disclose information relating to proceedings. I can confirm that the exemption was applied to any investigation notes they may have considered, to prevent prejudice to our parliamentary privilege."

## **Reasons for decision**

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### **Section 34 - Parliamentary privilege**

9. Section 1 of FOIA says that a public authority is required to confirm or deny that it holds the requested information, and disclose relevant information that it holds, unless an exemption or exclusion applies.
10. Section 34 of FOIA provides an exemption for information if its disclosure would infringe parliamentary privilege of either House of Parliament.
11. It is a class based exemption. This means that if information falls within the description of the exemption then such information is exempt. The exemption is not subject to the public interest test.
12. The Commissioner has issued guidance on section 34 of FOIA<sup>1</sup>. This guidance explains that whilst there is no definitive guide as to what constitutes parliamentary privilege this will include the:

'right of each House to manage its own affairs and to exercise sole jurisdiction over its own proceedings. This right is known as "exclusive cognizance," which means "exclusive jurisdiction." For the purposes of the FOIA, the key point is that, as part of its privilege, the relevant House has the right to control publication of its proceedings.' (para 10)
13. As set out in the Commissioner's guidance at paragraph 11, it is generally accepted that the term 'proceedings in parliament' include but are not limited to: proceedings within committees formally appointed by the House (and their subcommittees), including oral and written evidence and deliberations.
14. Further, the Commissioner's guidance goes on to explain that:

'As each House has the right to control its own affairs, including the right to control publication of its proceedings, any unpublished information relating to proceedings in Parliament may be covered by the exemption.' (para 12).
15. Examples of the range of documents which could trigger the exemption are set out in the Commissioner's guidance (see para 13) and include the following: committee reports and drafts not otherwise published, memos (or draft memos) submitted to committees, internal papers prepared by the officials of either House directly relating to House or committee proceedings, e.g. briefing papers or notes of committee meetings, correspondence between members, House officials, ministers

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1161/section\\_34\\_parliamentary\\_privilege.pdf](https://ico.org.uk/media/for-organisations/documents/1161/section_34_parliamentary_privilege.pdf)

and government officials where the correspondence directly and specifically relates to House or committee proceedings.

16. As can be seen from the above, the scope of the exemption set out in section 34 of FOIA is broad and is likely to capture a significant amount of information held by the HoC.
17. With regard to the information sought by this request, in the Commissioner's view, an investigation (and any notes) by the Administration Committee of the House of Commons into the alleged incidents on 29th October 2021 is information that relates to the proceedings of the HoC itself. This is because the definition of proceedings is a broad one and because the Commissioner accepts the HoC's position, as set out in its internal review, that the Administration Committee's work forms part of the 'proceedings' of the House of Commons.
18. This is supported by the information found on the HoC website about the role of the Administration Committee. This states that it is one of the House's inward-facing domestic Committees.<sup>2</sup> The aim of the Committee is to help ensure that the services provided to Members, their staff, and visitors to Parliament meet the various needs of each group. The Committee is also empowered to make rules (such as on the booking of rooms) and give directions to Officials of the House in relation to specific areas within the Committee's remit.
19. Therefore, in line with the principles of parliamentary privilege set out above, the Administrative Committee of the HoC has the right to determine whether to publish its investigations. The investigation and any notes would therefore be exempt from disclosure on the basis of section 34(1) of FOIA. The exemption is not subject to the public interest test.

## **Section 1 - Information not held**

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<sup>2</sup> <https://committees.parliament.uk/committee/2/administration-committee/role/>

20. Section 1 of FOIA says that a public authority is required to confirm or deny that it holds the requested information, and disclose relevant information that it holds, unless an exemption applies.
21. Section 84 of FOIA defines "information" as: "information recorded in any form".
22. FOIA therefore only applies to information that a public authority already holds in recorded form at the time of a request. If the HoC do not hold a particular piece of information that a requester has asked for, they do not have to create it. FOIA does not require a public authority to answer general questions, provide opinions or explanations. In addition, information contained in someone's mind is not recorded information. This is supported in the Commissioner's guidance<sup>3</sup> and in these decision notices<sup>4</sup>.
23. In relation to question 2 of the request ("I wish to know why I have been personally castigated and victimized as a result of this matter"), HoC explained that it did not hold any recorded information in relation to this request. The Commissioner sees no reason to doubt the HoC's explanation and the complainant has not provided any evidence or reasoning that would indicate that the HoC does hold this information. The Commissioner also notes that this question is framed as a general question rather than a request for specific piece of recorded information.
24. If a public authority does not hold recorded information to answer a request, the Commissioner cannot require the authority to take any further action. The Commissioner is therefore unable to identify any further action that the HoC could reasonably be expected to take as part of its statutory obligations under FOIA in order to identify the requested information. If information is not held in recorded form then it cannot be disclosed in response to a request.
25. The Commissioner, therefore, finds on the balance of probabilities, the HoC does not hold any recorded information falling within the scope of question 2 of the request. As such, the Commissioner has decided that the HoC has complied with section 1(1) of FOIA.

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<sup>3</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

<sup>4</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2006/380268/FS50068004\\_DN.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2006/380268/FS50068004_DN.pdf); <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021456/ic-170091-11y5.pdf>

Reference: IC-178623-R4N0

## Right of appeal

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26. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**