

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 June 2013

Public Authority: Department for Communities and Local Government

Address: Eland House
Bressenden Place
London
SW1E 5DU

Decision (including any steps ordered)

1. The complainant has requested communications between the government and the Prince of Wales relating to the exemptions appertaining to the Duchy of Cornwall and the Leasehold Reform Acts 1967 and 2002. The Department for Communities and Local Government applied the exemption for communications with the Heir to the Throne at section 37(1)(aa) and for information provided in confidence at section 41.
2. The Commissioner's decision is that the Department for Communities and Local Government has correctly applied the exemption at section 37(1)(aa) of the FOIA. He has not therefore considered the application of the exemption at section 41 of the FOIA.
3. The Commissioner has also decided that DCLG breached section 10(1) of the FOIA by failing to respond within the statutory time limit of 20 working days but does not require any steps to be taken.

Background

4. The Duchy of Cornwall is a private estate which funds the public, charitable and private activities of The Prince of Wales and his family. The Duchy consists of around 53,408 hectares of land in 23 counties, mostly in the South West of England.

5. The Duchy estate was created in 1337 by Edward III for his son and heir, Prince Edward, and its primary function was to provide him and future Princes of Wales with an income from its assets. For many centuries it was traditional for families with landed estates to settle the land and other assets in trust, so that each generation could live off the income but were unable to dispose of the assets. This was done to ensure that the estate, and the income which it provided, survived from generation to generation. The same principle was applied to the Duchy of Cornwall.
6. Under the 1337 charter, and as confirmed by subsequent legislation, The Prince of Wales is not entitled to the proceeds or profit on the sale of assets, and only receives the annual income which they generate, which is voluntarily subject to income tax. Because of the importance of the beneficiary, the Duchy's 'trust provisions' have, over the years, been set out in legislation, with the financial security of the Duchy overseen by HM Treasury.¹ The consent of the Prince of Wales is required if a Bill would affect the interest of the Duchy.

Request and response

7. On 9 April 2012, the complainant wrote to the Department for Communities and Local Government ('DCLG') and requested information in the following terms:

“...it is requested that in the public interest, full disclosure of **all** information and communications between the Government and their advisors and the Prince of Wales and his advisors be made in his role as a land owner on the exemptions appertaining to the Duchy of Cornwall and the Leasehold Reform Acts from 1967 to 2002.”
8. DCLG acknowledged the request on 12 April 2012 and wrote to the complainant on 9 May 2012 explaining that there are a number of formal steps that are required before replying and a full response will be provided as soon as possible. A number of emails then passed between the complainant and DCLG before a complaint was made to the Commissioner on 17 July 2012 regarding the lack of response.

¹ This background information has been taken from the Duchy of Cornwall website: <http://www.duchyofcornwall.org/abouttheduchy.htm>

9. DCLG then responded on 7 August 2012 confirming that it held some information within the terms of the request but does not hold any information relating to the Leasehold Reform Act 1967. It provided one letter, applied the exemption at section 21 of the FOIA to information which had previously been disclosed to the 'Justice for Duchy of Cornwall leaseholders', and applied the exemptions at sections 37(1)(aa) and 41(1) of the FOIA to the remaining information.
10. The complainant requested an internal review on 9 August 2012 primarily on the basis that the requested information does not constitute communications with the Heir to the Throne, but is communications with the Duchy which is a private estate rather than a Crown Body.
11. The complainant contacted the Commissioner on 6 September 2012 informing him that DCLG had advised that a delay will occur and a response could be expected by 5 October 2012. The Commissioner then wrote to DCLG on 13 September 2013 recommending that an internal review decision be issued within 20 working days.
12. DCLG provided a review response on 2 November 2012. It maintained reliance on the exemption for confidential information at section 41(1) of the FOIA and stated that, for some documents, section 37(1)(aa) was applied correctly but, for other documents, it was difficult to determine whether section 37(1)(aa) applied. It also stated that two documents fell outside the scope of the request.

Scope of the case

13. The complainant initially contacted the Commissioner on 17 July 2012 to complain about the way his request for information had been handled.
14. The Commissioner has considered first whether DCLG has correctly applied the exemption at section 37(1)(aa) to all of the withheld information.
15. As the Commissioner has decided that section 37(1)(aa) applies in this case, he has not considered the application of section 41.
16. During the course of the investigation, DCLG released some information (six letters) falling within the scope of the request to the complainant. This decision notice only considers whether the information which continues to be withheld falls within the claimed exemption.
17. The Commissioner is satisfied that the two documents referred to in paragraph 12 are outside the scope of the request (one is not a communication to or from any part of government and the other does

not relate to the Duchy of Cornwall). These documents are therefore not within the scope of this decision notice.

Reasons for decision

Section 37(1)(aa)

18. Section 37(1)(a) was amended with effect from 19 January 2011, via Schedule 7 of the Constitutional Reform and Governance act 2010, to include Section 37(1)(aa)². Section 37(1)(aa) of the FOIA provides that information is exempt information if it relates to communications with the heir to, or the person who is for the time being second in line of succession to, the Throne. This section applies to requests made on or after 19 January 2011. The revised exemption under section 37(1)(aa) is not subject to the public interest test.
19. The complainant maintains that the Duchy of Cornwall is a private estate and separate legal entity to the position of The Prince of Wales and that therefore correspondence with The Prince of Wales in his capacity as Duke of Cornwall, the owner of a private estate, should be seen as falling outside the scope of the exemption.
20. DCLG believe this to be an artificial distinction which cannot be maintained in practice. It has said that The Prince of Wales is the Duke of Cornwall and as such the roles are entwined within one individual. The Commissioner notes that the function of the Duchy estate is to provide an income for the heir to the Throne and accepts that correspondence with the Duke of Cornwall is, in effect, correspondence with the heir to the Throne.
21. The Commissioner has reviewed the withheld information which comprises letters between Secretaries of the Duchy of Cornwall and the Solicitor to the Duchy of Cornwall to the then Department of Environment.
22. The Commissioner notes that the section 37(1)(aa) exemption extends to cover not only correspondence with the heir to the Throne but also to information that relates to such correspondence. The exemption is broad in its definition and includes correspondence made and received by persons acting on behalf of the heir to the Throne.

² <http://www.legislation.gov.uk/ukpga/2010/25/schedule/7>

23. It is clear to the Commissioner that the withheld information in this case relates to communications with the heir to the Throne. He agrees that the Prince of Wales as Duke of Cornwall and heir to the Throne is one and the same. The roles are, at the current time and for the present purposes, indistinguishable. Therefore, section 37(1)(aa) is engaged in this case.
24. As section 37(1)(aa) is an absolute exemption there is no requirement to consider the public interest test.

Section 10 – Time for compliance

25. Section 10(1) states:

“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.”

26. The request was submitted on the 9 April 2012 but DCLG did not respond until 7 August 2012, almost four months later. The Commissioner therefore finds that DCLG did not respond to the request within the statutory time limit and consequently finds a breach of section 10(1) of FOIA.

Other matters

27. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that complainant first requested an internal review on 9 August 2012 but DCLG did not provide an internal review response until 2 November 2012, almost three months later. DCLG should ensure that internal reviews are carried out promptly in future.

Right of appeal

28. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF**