# Freedom of Information Act 2000 (FOIA)

# Decision notice

**Date:** 25 April 2016

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

## Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office for correspondence or communications exchanged with representatives of either Lambeth Palace or Westminster Abbey concerning the funeral of Her Majesty The Queen or the Coronation of the next Monarch. The Cabinet Office confirmed that it held information falling within the scope of the request but considered it to be exempt from disclosure on the basis of the following sections of FOIA: 31(1)(a) (prevention or detection of crime); 35(1)(a) (government policy); 37(1)(a) (communications with the Sovereign); 38(1)(b) (endangering the safety of an individual); 40(2) (personal data) and 41(1) (information provided in confidence). The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 35(1)(a) and that the public interest favours maintaining the exemption.

## Request and response

2. The complainant submitted the following request to the Cabinet Office on 26 May 2015:

> *'Please note that I am only interested in information which applies to the period 26 May 2014 to the present day.*
>
> *I note that the Constitutional Reform and Governance Act has made it more difficult to access information relating to some members of the Royal Family including The Queen, the Prince of Wales and Prince William.*

*But I note that the Act has not introduced a blanket ban on information relating to those members of the Royal Family.*

*Rather it has introduced additional measures designed to protect their own communications.*

1. *Are Cabinet Office staff currently involved in preparations for either of the two events listed below. Can you please identify the staff involved in the preparations for these events.*

   *The Funeral of Her Majesty the Queen.*
   *The Coronation of the next Monarch.*

2. *During the aforementioned period have the aforementioned staff exchanged correspondence and or communications (including emails) with officials and or representatives from either Lambeth Palace and or Westminster Abbey. Please note that I am only interested in correspondence and or communications which relate to the preparations for the funeral and or the Coronation.*

3. *If the answer to question two is yes can you please provide copies of the correspondence and communications including emails.*

4. *During the aforementioned period have the relevant Cabinet Office staff met with any employees and or representatives of Lambeth Palace and or Westminster Abbey specifically to discuss arrangements for the Queen's funeral and or the Coronation of the next Monarch. If the answer is yes can you please provide details of the meeting (s). In the case of each meeting can you please provide a date and a venue. In the case of each meeting can you please provide a full list of those present?'*

3. The Cabinet Office responded on 1 July 2015 and confirmed that it held information falling within the scope of the requests. However, it explained that it was seeking to withhold this information on the basis of the exemptions contained at sections 40(2), 35(1)(a) and 37(1)(a) of FOIA.

4. The complainant contacted the Cabinet Office on 14 July 2015 in order to ask for an internal review of this refusal. He questioned whether all of the requested information would fall within the scope of the exemption contained at section 37(1)(a). He also argued that the requested information did not relate to the formulation and development of government policy and thus could not fall within the scope of the exemption provided by section 35(1)(a).

5. The Cabinet Office informed him of the outcome of the internal review on 23 October 2015. The review concluded that the withheld information was exempt from disclosure on the basis of sections 40(2), 37(1)(ad) and 35(1)(a). Additionally the review concluded that the information also attracted the exemptions contained at sections 31, 38 and 41 of FOIA. The review did not refer to the Cabinet Office's earlier reliance on section 37(1)(a).[1]

## Scope of the case

6. The complainant initially contacted the Commissioner on 8 October 2015 in order to complain about the Cabinet Office's handling of this request. He explained that he was dissatisfied with the Cabinet Office's failure to provide him with the information he requested and its failure to complete the internal review in a timely fashion.

## Reasons for decision

### Section 35(1)(a) – formulation and development of government policy

7. The Cabinet Office argued that all of the withheld information was exempt from disclosure on the basis of section 35(1)(a) of FOIA. This exemption states that:

> *'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-*
>
> *(a) the formulation or development of government policy'*

8. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.

[1] In later correspondence the Cabinet Office confirmed to the Commissioner that it was in fact intending to rely on section 37(1)(a) and was not seeking to rely on section 37(1)(ad) of FOIA; the reference to this latter exemption in the internal review was in error.

9. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a Minister or decision makers. 'Development' may go beyond this stage to the processes involved in improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.

10. Whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the precise context and timing of the information in question.

11. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:

- the final decision will be made either by the Cabinet or the relevant Minister;
- the government intends to achieve a particular outcome or change in the real world; and
- the consequences of the decision will be wide-ranging.

12. The Cabinet Office argued that the government policy to which the information relates is the policy on the Demise of the Crown more generally, and in particular, on the planning for HM Government's approach to Her Majesty The Queen's Funeral and the Coronation of the future King. The Cabinet Office explained that at the time of the request, it considered the formulation and development of this policy to be ongoing, and indeed that it still considered that to be the case.[2]

13. The complainant argued that whilst he accepted that the definition of government policy is a wide one he did not accept that it would cover the planning and preparation for two very specific events.

[2] The Cabinet Office provided the Commissioner with further submissions to support its view that section 35(1)(a) was engaged and indeed that the public interest favoured maintaining this exemption. However, it explained that it considered these submissions to be exempt from disclosure under FOIA. Therefore, whilst the Commissioner has taken these submissions into account, he has not referred to them in this decision notice.

14. The Commissioner can understand the complainant's rationale for questioning whether the withheld information falls within the scope of section 35(1)(a); as a general approach the Commissioner would be unlikely to accept that planning of a particular event could necessarily be considered to constitute the formulation and development of government policy.

15. However, as the Commissioner's guidance on this exemption explains, a variety of different processes can encompasses government policy making. More specifically, the guidance notes that, depending on the facts of a case, processes involving policy making can include unusually sensitive or high-profile operational decisions.[3] In the particular circumstances of this case the Commissioner is persuaded that the government's approach to The Queen's funeral and the Coronation of the future King is an example of such policy making. Without doubt both events are unusually sensitive ones and inevitably involve a number of high profile operational decisions. Moreover, the Commissioner is satisfied that the decisions made in respect of the planning for such events are intended to achieve a specific outcome in the real world. The Commissioner also accepts that the consequences of the decisions taken in respect of the two events will be wide ranging in the sense that they will be major events with international significance.

16. The Commissioner is therefore satisfied that the information is exempt from disclosure on the basis of section 35(1)(a) of FOIA.

**Public interest test**

17. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the withheld information

18. The Cabinet Office acknowledged that there was a public interest in knowing that plans exist for the Demise of the Crown in order to assure the public that the government, the Royal Family, and others are able to respond, especially in the event of sudden or unexpected death. However, it noted that it was public knowledge that a plan exists for the funeral of The Queen.

[3] https://ico.org.uk/media/for-organisations/documents/1200/government-policy-foi-section-35-guidance.pdf

Public interest arguments in favour of maintaining the exemption

19. The Cabinet Office noted that in general terms there is a public interest in policy making – and the decisions that flow from it – being of the highest quality and informed by a full consideration of all the options. It argued that in the circumstances of this case representatives across government and other interested parties must be able to discuss policy options freely and frankly, exchange views on all available options and understand their possible implications. This would ensure that the Cabinet Office, as the co-ordinating department, is in possession of full information about the planning of various government departments and agencies, including gaps and risks, to ensure that any issues of concern can be addressed to ensure that separate elements are joined up and mutually supportive.

20. The Cabinet Office argued that the candour of all involved would be affected if they believed the contents of such discussions are disclosed. The Cabinet Office emphasised that these discussions involved a number of sensitive considerations concerning policy and practical matters. More specifically, it argued that if these discussions were made public there is a risk that attendees at future meetings may feel inhibited from being frank within one another. Consequently, in the Cabinet Office's opinion disclosure of the withheld information would result in the quality of the debate underlying important decisions declining which would lead to less well informed and poorer decision making.

21. As noted above at footnote 2, the Cabinet Office also provided the Commissioner with additional public interest arguments which are not included in this notice.

Balance of the public interest test

22. In considering the balance of the public interest arguments outlined above, the Commissioner has taken into account the comments made in a key Information Tribunal decision involving the application of the section 35(1)(a). In that case the Tribunal confirmed that there were two key principles that had to be taken into account when considering the balance of the public interest test: firstly the timing of the request and secondly the content of the requested information itself.[4]

[4] *DFES v Information Commissioner and Evening Standard* (EA/2006/0006)

23. The Commissioner has initially considered the weight that should be attributed to the public interest arguments in favour of maintaining the exemption.

24. With regard to the chilling effect arguments, the Commissioner recognises the sensitive nature of the discussions and decisions that need to be made in respect of both The Queen's funeral and subsequent Coronation of the future King. In the Commissioner's opinion it is reasonable to conclude that disclosure of information associated with such a sensitive topic is very likely to result in a chilling effect in respect of future discussions. Furthermore, the Commissioner agrees with the Cabinet Office that the formulation and development of the policy making in question remains live and ongoing. This also adds further weight to the chilling effect arguments. That said, with the exception of some of the withheld information, in the Commissioner's opinion the withheld information does not include any particularly detailed and/or candid discussions or details of the policy making surrounding these events. As a result, in the Commissioner's opinion this reduces, to some extent, the weight that should be attributed to the chilling effect arguments, albeit it does not in any way negate it. This is because regardless as to the arguably top level nature of the content of the remaining parts of the withheld information, the Commissioner still accepts that it disclosure could result in some element of a chilling effect given the overarching sensitivities of the policy making itself.

25. Furthermore, in the Commissioner's view it is clear that disclosure of the withheld information, even the less detailed aspects of it, would be very likely to encroach upon the safe space needed by the Cabinet Office, and indeed the government more generally, to formulate and develop the policy in question. This is because it seems highly plausible to suggest that disclosure of information concerning such significant and high profile events such as The Queen's funeral and the Coronation of the King would result in the Cabinet Office having to field questions about the nature of plans based upon the information that was disclosed. In the Commissioner's opinion, such distractions and potential interference would significantly undermine the effectiveness of the ongoing policy making process. Again, the Commissioner considers this to be the case despite the lack of significant detail in the majority of the withheld information. The subject of the information itself is, in the Commissioner's opinion, sufficient to suggest that an encroachment on the safe space is likely.

26. In contrast, in the Commissioner's opinion there is a limited amount of public interest in disclosing the withheld information. As the Cabinet Office noted, it is already public knowledge that plans are in place in respect of the funeral of The Queen. The Commissioner does not consider there to be any particular compelling public interest in

revealing the content or extent of those plans beyond contributing towards general transparency in respect of the planning of these events. Moreover, even if there were to be some genuine public interest in disclosure of information concerning the planning, as noted above the withheld information is largely top level in nature and thus the extent to which disclosure of the withheld information would genuinely serve any potential interest is arguably limited anyway.

27. Therefore, in light of the cumulative weight that he believes should be attributed to the chilling effect and safe space arguments, and the limited public interest in disclosure, the Commissioner has concluded that the public interest favours maintaining the exemption.

28. In light of his finding in respect of section 35(1)(a), the Commissioner has not considered the other exemptions cited by the Cabinet Office.

## Other matters

29. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that they should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in complex cases to be completed within 40 working days.

30. In the circumstances of this case the complainant requested an internal review on 14 July 2015. The Cabinet Office informed him of the outcome of the internal review on 23 October 2015. It therefore took the Cabinet Office 72 working days to complete its internal review. The Commissioner considers this to be unsatisfactory. In the future he expects the Cabinet Office to ensure that internal reviews are completed within the timeframes set out within his guidance.

## Right of appeal

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

32. 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.

33. 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 ……**

**Alexander Ganotis**
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