

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2022

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

Decision (including any steps ordered)

1. The complainant has requested TNA to disclose file HO 144/21191, which concerns police protection to members of the Royal Family, Cabinet members and others. TNA refused to disclose the information citing section 31(1)(a) to (c) and 40(2) of FOIA.
2. The Commissioner's decision is that TNA is entitled to refuse to disclose the withheld information in accordance with section 31(1)(a) to (c) of FOIA. No further action is required.

Request and response

3. On 22 September 2020, the complainant wrote to TNA and requested information in the following terms:

"HO 144/21191: This file was originally catalogued under more than one subject heading. These headings and details of this file, are as follows:
DISTURBANCES: Police protection to members of the Royal Family, members of the Cabinet and others;

POLICE: Police perception to members of the Royal Family, Cabinet Ministers and others within and without the United Kingdom"

4. TNA responded on 20 October 2020. It informed the complainant that it required an extra 10 working days to process the request, as permitted by section 10 of FOIA.
5. TNA issued a further response on 3 November 2020. It refused to disclose the requested information, citing section 31(a) to (c) and 40(2) of FOIA. It advised that a public interest test was now required in order to determine whether or not section 31(a) to (c) was applicable.
6. TNA issued its final response on 24 November 2020. It notified the complainant that it was satisfied that section 31(1)(a) to (c) and 40(2) applied.
7. TNA carried out an internal review and notified the complainant of its findings on 4 March 2021. It upheld its previous application of section 31(1)(a) to (c) and 40(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 5 March 2021 to complain about the way his request for information had been handled. Regarding section 31(1)(a) to (c) he considers it "verges on the risible" that what the Metropolitan Police Service (MPS) were doing in 1929-1939 in providing security to the royals could have much, if any relevance, in 2021. He doubts the exemption passes the balance of the public interest test. With regards to section 40(2) the complainant said that TNA now admits this can only apply to one letter from a person who might have been only 16 years of age in 1939 and might be alive at 98. The complainant states that he finds it difficult to believe that a 16 year old was writing to MPS about royal security.
9. The Commissioner considers the scope of his investigation to be to determine whether or not TNA is correct to withhold the requested information in accordance with section 31(1)(a) to (c) of FOIA. He will only go on to consider section 40(2) if it is found that section 31(1)(a) to (c) does not apply to the one letter TNA referenced.

Reasons for decision

Section 31 – law enforcement

10. Section 31 states that information which is not exempt information by virtue of section 30 is exempt information if its disclosure would, or would be likely to, prejudice –

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice.

Subsections (d) to (i) have not been cited and are therefore of no relevance here.

11. It is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one or more of the purposes listed, but, before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.

12. The prejudice test involves a number of steps:

- One of the law enforcement interests protected by section 31 must be harmed by the disclosure.
- The prejudice claimed must be real, actual or of substance. Therefore, if the harm was only trivial, the exemption would not be engaged.
- The public authority must be able to demonstrate a causal link between disclosure and the harm claimed.
- The public authority must then decide what the likelihood of the harm actually occurring is, ie would it occur, or would it be likely to occur.

13. The more certain the prejudice, the greater weight it will carry when considering the public interest test. In this context, the term “would prejudice” means that it has to be more probable than not the prejudice would occur. “Would be likely to prejudice” is a lower test; there must be a real and significant risk, even if risk of prejudice occurring is less than 50 per cent.

14. TNA has said that it is relying on the higher threshold - that disclosure of the withheld information "would prejudice" the law enforcement interests outlined in section 31(1)(a) to (c) of FOIA.
15. It stated that all the information in HO 144/21191 is exempt from disclosure because it concerns the protection of members of the Royal Household, Foreign dignitaries and British Cabinet Ministers. It identifies both individuals who are protected and the individuals that carried out the protection. It details the scope of operational procedures for the protection of these individuals and the levels and types of protection given to certain positions within government and the Royal Household. It argued that the withheld information also identifies the types of threats that would warrant protection or increased protection.
16. TNA said that it has consulted with MPS and the Home Office (HO) and following the advice received from both it has concluded that disclosure would prejudice the detection of crime, the prosecution of offenders and may assist in the commission of terrorist offences.
17. In its submissions to the Commissioner TNA addressed the age of the withheld information and its relevance to today. It said that although the file is dated from 1929 to 1939 the information detailing the type and level of protection given to the persons holding the positions identified within the files changes very little over time. It explained that the Metropolitan Police Royalty and Specialist Protection (RaSP) Unit confirmed that disclosure would compromise the ability of the police to provide the protection to principals, as the methodology remains relevant today.
18. TNA advised that the withheld information could be used by those hostile to the interests of the UK. It would provide them with valuable information in planning and conducting activity that would undermine law enforcement activities such as security policies and procedures which act in the prevention and detection of crime, the apprehension of offenders and, in turn, the administration of justice. It stated that despite the passage of time these procedures remain very similar today. It would provide information on who is provided with protection and at what level in different scenarios.
19. TNA provided the Commissioner with a copy of the withheld information and referred to several examples throughout it of the type of detail it describes and how that is relevant and could be used today.
20. The Commissioner is unable to discuss these specific examples in the body of this notice. To do so, would reveal elements of the withheld information itself and defeat the purpose of this exercise. He is however satisfied to conclude that the withheld information in its entirety would

prejudice the law enforcement interests outlined in section 31(a) to (c). He is satisfied that the prejudice claimed is more probable than not and that TNA has, by giving the specific examples that it has, demonstrated a causal link between the withheld information and the prejudice it claims.

21. For the above reasons, the Commissioner is satisfied that section 31(1)(a) to (c) is engaged.
22. The Commissioner will now go on to consider the public interest test.

Public interest test

23. TNA stated that there is a general public interest in transparency and openness in government. It argued that such openness would lead to a deeper public understanding and awareness in matters relating to law enforcement. It would provide evidence of how the police provides protection to members of the Royal Household, foreign dignitaries and British Cabinet Ministers and would provide transparency about how security threats are assessed and safeguarded against. It explained that in turn such information would open the police services up to public scrutiny and provide an insight into operational procedures.
24. It said that disclosure could also engender trust between the public and law enforcement agencies and provide reassurance that their role is carried out adequately and proportionally.
25. It however considers the public interest rests in maintaining the exemption. It argued that it is not in the public interest to compromise operational integrity and reveal police tactics, as this would be prejudicial to the prevention and detection of crime, apprehension of offenders and administration of justice.
26. TNA advised that disclosure would reveal how protection is provided. This information would be valuable to those who wish to circumvent those measures and give them further insight into how to do so, thereby undermining their effectiveness and endangering the individuals concerned and those in the surrounding area. Despite the passage of time, the information remains relevant because it would enable those who wish to cause harm to deduce which individuals are likely to be receiving protection, and the scope and limitations of that protection. TNA stated that the public interest is not served by releasing information which could enable that to happen.
27. The Commissioner recognises the public interest in openness and transparency and in members of the public understanding more clearly how and under what circumstances protection is provided to members of the Royal Household, foreign dignitaries and British Cabinet Ministers.

Disclosure would give members of the public an idea how security threats are assessed and safeguarded against. He acknowledges that it would open up the services provided and operational procedures to public scrutiny.

28. However, in this case the Commissioner considers there are more compelling public interest arguments in favour of maintaining the exemption. He has agreed with TNA that disclosure would prejudice the law enforcement interests outlined in 31(1)(a) to (c). Therefore, there is a real and significant risk that the withheld information could be used by those wishing to cause harm or commit terrorist attacks. It is not in the public interest to disclose information which would enable this to happen or assist those in wishing to cause harm. As TNA has outlined the operational procedures, methodologies and targeting of protection remains very much relevant today despite the passage of time and it is not in the public interest to disclose such operational information to the world at large. It would weaken the police's ability to assess and deploy the relevant protection as those situations arise, putting those requiring protection and the wider public at risk. This is not in the public interest.
29. For the above reasons, the Commissioner has decided that the public interest in favour of disclosure outweighs the public interest in favour of maintaining the exemption.
30. As the Commissioner is satisfied that the withheld information is exempt from disclosure in accordance with section 31(a) – (c), there is no requirement to consider TNA's application of section 40(2).

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Samantha Coward
Senior Case Officer
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Wycliffe House
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