

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 May 2023

Public Authority: House of Lords
Address: London
SW1A 0PW

Decision (including any steps ordered)

1. The complainant has requested information about then Prince of Wales' membership of the House of Lords ("the HoL"). The HoL withheld the information under section 37(1)(aa) of FOIA, which concerns communications with the heir to, or the person who is for the time being second in line of succession to, the Throne.
2. The Commissioner's decision is that the HoL is entitled to withhold the information, none of which is environmental information, under section 37(1)(aa) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 25 May 2022, the complainant wrote to the HoL and requested information in the following terms:

"Please note that the reference to the Prince of Wales in the questions below should include the Prince himself (irrespective of which of his titles he used), his Principal Private Secretary (ies), his Assistant Private Secretary (ies), any other private secretary (ies), his Press Secretary and any other members of staff in his private office able to correspond and communicate on his behalf. Please note that I am only interested in the correspondence and communication of these other individuals if it's clear that these individuals are corresponding and communicating on behalf of the Prince and or they are officially representing his views.

Please note that in each case I am interested in receiving actual copies of any written correspondence and communications and not just extracts. So, in the case of a letter, for instance, this should include any letter heads, dates, and signatures. If you are minded redacting any information, can you redact the information where it appears in the document provided. This way I should be able to ascertain the location and extent of the redactions.

Please note that reference to the Prince's membership of the House of Lords in the questions below should include any and or all of the following: The Prince's decision to take up membership of the House of Lords; the arrangements for the Prince's admission to the House of Lords; any discussions involving members of the government and or the Royal Household about the implications of and or the challenges posed by the Prince's membership of the House of Lords; the Prince's political allegiance as a member of the House of Lords; the Prince's actual admission into the House of Lords on 11 February 1970; the Prince's own intentions with regard to his membership of the House of Lords; the Prince's attendance in the House of Lords; the Prince's work in the House of Lords including the delivery of speeches and the tabling of question.

1...Does the House of Lords hold any documentation which relates to the Prince's admission to the House of Lords and or his membership of the House of Lords?

2...If there is a pre-existing file [or similar] which relates to the Prince's membership of the House of Lords can you provide a copy of its contents.

3...Irrespective of whether a file [of similar] is held did any officer and or employee and or official representative of the House of Lords write to

any of the individuals listed below about the Prince's membership of the House of Lords. Please note that I am only interested in correspondence and communication generated between 30 September 1969 and 30 September 1971. I am interested in all correspondence and communication which either mentions and or in any relates to the Prince's membership of the House of Lords. If the answer is yes, can you, please provide copies of this correspondence and communication.

(i)...His Royal Highness the Prince of Wales.

(ii)..the Rt Hon Harold Wilson, Prime Minister

(iii)...Lord Shackleton the then Leader of the House of Lords.

(iv)...Michael Adeane, the Queen's Private Secretary.

4...Between 30 September 1969 and 30 September 1971 did any and or all of the individuals listed in question three write to and or communicate with any employee and or officer and or representative of the House of Lords about the Prince's membership of the House of Lords. I am only interested in that correspondence and communication which either mentions or in any way relates to the Prince's membership of the House of Lords. If the answer is yes can you please provide a copy of this correspondence and communication.

5...Does the House of Lords hold any letter and or memo and or internal communication written by Lord Shackleton which mentions or in any way relates to the Prince's membership of the House of Lords. I am interested in all correspondence and communication held irrespective of the date written and the identity of the recipients. If the answer is yes, can you, please provide a copy of this correspondence and communication.

6...Can you provide a list of occasions when the Prince attended the House of Lords in his capacity as a member of the House of Lords and or took part in the active proceedings of the House as a member of the House of Lords.

7...Can you provide copies of any written and or oral questions tabled by the Prince. Can you also provide copies of any written answers provided by the government in response. I note the online resource does not include any details

- <https://members.parliament.uk/member/1811/writtenquestions>

8...Can you provide a list of occasions when the Prince spoke in the House of Lords. I note that the aforementioned parliament.uk online resource does not include any speeches. In the case of each speech can

you provide the date it was delivered. In the case of each speech can you provide a copy of that speech if held.”

5. The HoL responded partially on 6 July 2022 and fully on 9 July 2022. It disclosed information, with some redactions applied under section 37(1)(aa).
6. Following an internal review, the HoL wrote to the complainant on 21 October 2022. It disclosed some further information but maintained the application of section 37(1)(aa).

Scope of the case

7. The complainant contacted the Commissioner on 7 March 2020 to complain about the way their request for information had been handled, including whether any of the withheld information should have been considered under the Environmental Information Regulations 2004.
8. The Commissioner has considered first whether the HoL handled this request under the correct access regime, and second, whether section 37(1)(aa) of FOIA was correctly engaged.

Reasons for decision

Is the withheld information environmental?

9. Regulation 2(1) defines environmental information as follows:

““environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and

activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

- (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);"
10. The HoL has provided the Commissioner with a copy of the withheld information.
11. Having viewed the withheld information, the Commissioner is satisfied that it does not fall under the definition of environmental information as set out in regulation 2(1)(a)-(f) of the EIR.

Section 37(1)(aa) – Communications with the heir to the Throne

12. Section 37(1)(aa) of FOIA exempts information relating to communications with the heir to, or the person who is for the time being second in line of succession to, the Throne.
13. All of the provisions of section 37 were qualified prior to 19 January 2011. This meant that all the provisions were previously subject to the public interest test. However, the Constitutional Reform and Governance Act 2010 amended section 37 to make the following categories of information subject to an absolute exemption:
- information relating to communications with the Sovereign [section 37(1)(a)]; and
 - information relating to communications with the heir to, or the person who is for the time being second in line of succession to, the Throne [section 37(1)(aa)].
14. This means that where the exemption is engaged there is no public interest test to be considered. The withheld information simply has to fit the exemption.

15. The Commissioner's guidance¹ states that the term 'relates to' should be interpreted broadly. In practice this means that the scope of the exemption will cover more than just the actual communications themselves; it will also apply to information that refers to, or is derived from those communications.

Does the withheld information fall under the exemption?

16. The Commissioner has had sight of the withheld information, being correspondence and notes regarding the then Prince of Wales' membership of the House of Lords. The Commissioner is satisfied that the withheld information represents communications for the purposes of section 37.
17. At the time of the request in May 2022, and prior to the death of Queen Elizabeth II, the Prince of Wales was the heir to the Throne. As such, the Commissioner recognises that section 37(1)(aa) is the appropriate exemption to consider.
18. The complainant has argued that section 37(1)(aa) cannot apply to the withheld information, on the basis that the information does not pertain to the then Prince of Wales' constitutional position as heir. Instead, the information pertains to the then Prince's separate title of Duke of Cornwall, for which there is no relevant exemption provided by FOIA.
19. The Commissioner notes that the legislation, and his guidance on the exemption, is clear in its specification of "heir to the throne". It is not limited by what capacity or title the heir was acting in, such as whether public or private. Therefore, whilst the information in this case is about a separate title held by the then Prince of Wales, it still directly pertains to the heir.
20. The complainant has further argued that section 37(1)(aa) cannot apply on the basis that the information is historic.
21. Section 63 of FOIA specifies that section 37(1)(a) through to (ad) cannot apply to historic records. Section 63 details that a record becomes historic when the later of the following time periods has passed:

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/communications-with-his-majesty-and-the-awarding-of-honours-section-37/#FOIA>

- Five years from the date of the “relevant death” (being the death of the individual the communication relates to); or,
 - 20 years from the creation of the record containing the information.
22. The Commissioner notes that the individual to which the communication relates to in this case was the then Prince of Wales, now King Charles III. Therefore, the later of the two time periods has not been reached, and the information is not a historic record.
23. Based on the above reasoning, the Commissioner therefore accepts that section 37(1)(aa) is engaged. As the exemption is absolute, there is no further consideration to be made and no public interest to consider.

Right of appeal

24. 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

25. 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.
26. 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

Daniel Perry
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