

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 April 2018

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

#### Decision (including any steps ordered)

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1. The complainant submitted a request to the Cabinet Office seeking information about the decision to award Kevin Spacey any honours. The Cabinet Office confirmed it held information falling within the scope of the request but it withheld this on the basis of the exemptions contained at section 37(1)(b) (the conferring by the Crown of any honour or dignity) and section 40(2) (personal data) of FOIA. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 37(1)(b) of FOIA and that in all the circumstances of the case the public interest favours maintaining the exemption.

#### Request and response

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2. The complainant submitted the following request to the Cabinet Office on 1 November 2017:

*'My request concerns actual and or proposed honours and titles for Kevin Spacey, the double Oscar winning actor and former Artistic Director of The Old Vic. Mr Spacey was awarded an honorary knighthood in 2015.*

*I believe that there are strong public interest grounds for disclosure given the most serious nature of the allegations currently surrounding Mr Spacey and the growing evidence that his behaviour was kept secret by those in positions of power.*

*I think continued secrecy surrounding honours and awards for Mr Spacey will only bring the honours process into disrepute.*

*Please note the reference to the Cabinet Office/Downing Street should be taken to include the Cabinet Office and or Downing Street (including the Prime Minister's Office) and or the honours committee.*

- 1. Can you please supply copies of all correspondence and communications (including emails) exchanged between the Cabinet Office/Downing Street and Mr Spacey which in any way relates to the issue of honours and titles. The correspondence could relate to an honour(s) and title(s) which was actually awarded or it could relate to honours and titles which were either refused or not awarded. Please note I would like both sides of the correspondence and communications.*
  - 2. Can you please supply copies of all correspondence and communications (including emails) exchanged between the Cabinet Office/Downing Street and any of Mr Spacey's representatives and or employees which relates to the issues of honours and titles for him. The correspondence could relate to an honour(s) and title(s) which was actually awarded to Mr Spacey or it could relate to honours and titles which were either refused and or subsequently not awarded. Please note I would like both sides of the correspondence and communications.*
  - 3. Can you please supply copies of all correspondence and communications including emails sent by and or on behalf of a Prime Minister or Cabinet Minister and or government department and or member of The Royal Family which in any way relates to the subject of honours and or titles for Mr Spacey. This documentation will include but will not be limited to correspondence with the honours committee as well as correspondence with civil servants. I am interested in receiving both sides of the correspondence and communication.*
  - 4. Can you please supply copies of any Cabinet Office and or Downing Street documentation which outlines the case for an honour for Mr Spacey. This will include but will not be limited to advice given by individual civil servants to the Prime Minister of the day.*
  - 5. Can you please provide details of any relevant documents which may have been destroyed. In the case of each document could you please provide an outline of its contents. In the case of each document can you please provide the date which it was destroyed. In the case of the destroyed documents can you please provide copies of any documents held which in any way relate to the decision to destroy documents. If the destroyed documents are held in another form can you please provide copies of the destroyed documents.'*
3. The Cabinet Office responded on 22 November 2017 and confirmed that it held information falling within the scope of the request but it

considered this to be exempt from disclosure on the basis of sections 37(1)(b) (the conferring by the Crown of an honour or dignity) and 40(2) (personal data) of FOIA.

4. The complainant contacted the Cabinet Office on 27 November 2017 and asked it to conduct an internal review into its decision to withhold the requested information.
5. The Cabinet Office informed him of the outcome of the review on 5 January 2018. The review upheld the application of the exemptions cited in the refusal notice.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 9 January 2018 to complain about the way his request for information had been handled.

### **Reasons for decision**

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#### **Section 37(1)(b) – the conferring by the Crown of any honour or dignity**

7. Section 37(1)(b) of FOIA states that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
8. Given that the request specifically seeks information about the awarding of honours to Kevin Spacey, the Commissioner is satisfied that the withheld information clearly falls within the scope of the exemption at section 37(1)(b). The information is therefore exempt on the basis of section 37(1)(b).
9. However, section 37(1)(b) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

### **Public interest arguments in favour of disclosing the withheld information**

10. In his submissions to the Commissioner the complainant noted that Mr Spacey was facing serious allegations of inappropriate behaviour and sexual misconduct. In light of this the complainant argued that the public has a right to know who recommended Mr Spacey for an honorary knighthood and whether that individual was in a position to know about the allegations at the time the honour was being considered, recommended and/or awarded. Furthermore, the complainant argued that the public has a right to know if staff and officials involved in the honours process knew about these allegations at the time the honour was being considered, recommended and/or awarded. In light of this the complainant argued that this was an instance where disclosure of the requested information, rather than secrecy, would best serve the honours process.

### **Public interest arguments in favour of maintaining the exemption**

11. The Cabinet Office argued that there is no public interest to be served in releasing the name of those who nominated Mr Spacey. It acknowledged that there is a need for transparency in the honours process, but it disputed the need for details of the content of all individual cases to be disclosed. The Cabinet Office suggested that although people might be interested in knowing who nominated a celebrity for an honour, it considered there to be a significant difference between that general interest and the public interest. The Cabinet Office emphasised that the people who were involved in the process took part on the understanding that their contribution was confidential and would be treated as such.
12. Indeed, the Cabinet Office emphasised the importance of confidentiality in relation to individuals honours cases, which it argued was integral to the process and without which the honours system would not function. The Cabinet Office argued that non-disclosure of information relating to individual honours cases ensures that those involved can take part on the understanding that their confidence will be honoured and that decisions about honours are taken on the basis of full and frank information. It explained that it understood that section 37(1)(b) is not an absolute exemption and it did not rely on this exemption without considering the merits of each case. However, in this case and for the reasons above, the Cabinet Office considered the public interest continued to favour withholding the information. The Cabinet Office argued that the confidentiality of this information is ongoing – it noted that the exemption relating to honours information does not expire until sixty years after the date of its creation – and it considered that disclosure may affect the future behaviour of those nominating, those nominated and those whose opinions are sought as part of the process.

## **Balance of the public interest arguments**

13. With regard to the weight that should be attributed to maintaining the section 37(1)(b) exemption, as a general principle the Commissioner accepts the Cabinet Office's fundamental argument that for the honours system to operate efficiently and effectively there needs to be a level of confidentiality which allows those involved in the system to freely and frankly discuss nominations. Furthermore, the Commissioner accepts that if views and opinions, provided in confidence, were subsequently disclosed then it is likely that those asked to make similar contributions in the future may be reluctant to do so or would make a less candid contribution. Moreover, the Commissioner also accepts that disclosure of information that would erode this confidentiality, and thus damage the effectiveness of the system, would not be in the public interest.
14. Given that the withheld information relates to a nomination for a specific individual, Mr Spacey, the Commissioner is satisfied that disclosure of the information would significantly undermine the confidentiality of the honours system. Disclosure of the withheld information would reveal which individual, or individuals, had nominated Mr Spacey and would also provide a full account of the reasons for his nomination. Furthermore, the Commissioner believes that this argument attracts considerable additional weight given that the majority of this information is relatively recent; Mr Spacey was awarded his honorary knighthood in 2015. (He was also awarded a CBE in 2010).
15. With regard to the public interest put forward by the complainant, it is clearly not for the Commissioner to comment on the validity or otherwise of these allegations made against Mr Spacey. However, given that these allegations surfaced only two years after Mr Spacey was awarded a knighthood, she believes that the complainant raises valid points with regard to whether the allegations concerning Mr Spacey's conduct were referenced or considered as part of the process of awarding him a knighthood. In such circumstances the Commissioner disagrees with the Cabinet Office's characterisation of there only being a general interest from the public in knowing who nominated Mr Spacey; rather the Commissioner considers there to be a genuine and legitimate public interest in knowing who nominated him. For similar reasons she also considers there to be a significant and genuine public interest in the disclosure of information about the basis of the nominations and the reasoning behind awarding Mr Spacey with these honours. Disclosure of the withheld information would address all of these points.
16. Nevertheless, having carefully considered the content of the withheld information, and by a narrow margin, the Commissioner has concluded that the public interest favours maintaining the exemption contained at section 37(1)(b). The Commissioner has reached this conclusion given the recent provenance of the information and the significance of

confidentiality in the honours process which she accepts is necessary in order to ensure the effective operation of the system.

17. In light of this finding the Commissioner has not considered the Cabinet Office's reliance on section 40(2) of FOIA.

## Right of appeal

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18. 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: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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**