

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2019

Public Authority: The Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) seeking information regarding the awarding of a knighthood to Arthur C Clarke. The FCO 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. However, she has concluded that the FCO breached section 17(3) by failing to complete its public interest considerations within a reasonable timeframe.

Request and response

2. The complainant submitted the following request to the FCO on 16 December 2017:

'I am looking for documents relating to the knighthood of the British science fiction author, Sir Arthur C. Clarke, who resided in Sri Lanka

during the period of 1997-2000. He was the subject of charges of paedophilia during the period of 1997-98 and requested his award be postponed until 2000 when he was finally awarded by the then British Ambassador to Sri Lanka, Linda Duffield'.¹

3. The FCO responded on 18 December 2017 and explained that as drafted the request would exceed the cost limit and suggested to the complainant that he submitted a refined request.
4. The complainant did so on 12 February 2018 by explaining that '1997-98 would be the period I'm most interested in.'
5. The FCO contacted him on 15 March 2018 and confirmed that it held information falling within the scope of his request but it considered this to be exempt from disclosure on the basis of section 37 of FOIA and it needed additional time to consider the balance of the public interest test.
6. The FCO sent similar public interest extension letters at monthly intervals until it provided the complainant with a substantive response on 7 August 2018. The response explained that the information falling within the scope of the request was considered to be exempt from disclosure on the basis of sections 37(1)(b) (conferring by the Crown of any honour or dignity), 40(2) (personal data) and 41(1) (information provided in confidence).
7. The complainant contacted the FCO on 9 November 2018 and asked it to conduct an internal review of this refusal.
8. The FCO informed him of the outcome of the internal review on 30 January 2019. The review upheld the application of the various exemptions set out in the refusal notice.

Scope of the case

9. The complainant contacted the Commissioner on 31 January 2019 to complain about the FCO's decision to withhold the information falling within the scope of his request. He was also unhappy with the length of time it took the FCO to complete its public interest considerations.
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¹ Arthur C Clarke was awarded a knighthood in the 1998 New Years' Honours list. As the complainant's request notes, he was not invested until 2000.

10. During the course of the Commissioner's investigation, the FCO explained that it was no longer seeking to rely on section 41(1) of FOIA.

Reasons for decision

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

11. 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.
12. Given that the request specifically seeks information about the awarding of a knighthood to Arthur C Clarke, the Commissioner is satisfied that the withheld information clearly falls within the scope of the exemption at section 37(1)(b).
13. 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

14. The complainant noted that in 1998 when Sir Arthur C Clarke's knighthood was announced, The Mirror published a story alleging that he was a paedophile. The complainant noted that Sir Arthur C Clarke refuted these stories and asked that the award be delayed so as not to embarrass the Royal Family. The complainant suggested that since his death in 2008, new stories have emerged claiming that more stories of his alleged paedophilia were held back by the media.² More recently, the complainant explained that a disturbing first hand eye witness account has emerged concerning a reported encounter between an individual and a third party who the complainant explained was Sir Arthur C Clarke; the complainant suggested that he considered this account to be credible.³

² <https://www.independent.co.uk/news/media/press/notw-editor-spiked-paedophilia-scoop-on-arthur-c-clarke-for-fear-of-murdoch-7920816.html>

³ https://www.vice.com/en_ca/article/bjxp5m/we-asked-people-what-childhood-moment-shaped-them-the-most

15. The complainant explained that it would be in the public interest to know what internal discussions took place within the FCO regarding these allegations concerning Sir Arthur C Clarke and whether it carried out its own investigations.
16. Furthermore, the complainant argued that given the scandals surrounding celebrities such as Jimmy Savile who was also awarded an honour despite warnings about his private life, the public interest would be greatly served by releasing the requested documents to determine what impact these allegations had within the department.

Public interest arguments in favour of maintaining the exemption

17. The FCO argued that non-disclosure of information relating to individual honours cases ensures that those involved in the honours system 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 honest information about the individual concerned. The FCO argued that the integrity and effectiveness of the system would be undermined if the details of individual nominations were disclosed. The FCO also noted that the exemption relating to honours information does not expire until sixty years after the date of its creation. More specifically, if the withheld information was disclosed the FCO envisaged that:
 - Nominees will be dissuaded from accepting honours, given the risk that discussions about their character or private life may be released years later;
 - Those submitting nominations may feel less likely to do so. In the FCO's view those making nominations should feel comfortable that this will not prompt discussions about their nominee's character and conduct that are then disclosed to the public; and
 - Those who participate as Honours Committee members or individuals consulted as part of the consideration process and raise or discuss concerns or allegations of misconduct against a nominee will be dissuaded from doing so. The FCO argued that it is in the public interest that they are free to make or discuss these allegations without fear of publicity, attention and intrusions into their privacy. Without this freedom, the FCO argued that this would risk undermining the very credibility of the honours system.
18. The FCO acknowledged that the exemption was a qualified one and it did consider the merits of disclosing the information falling within the scope of the request. However, it remained of the view that the public interest favoured maintaining the exemption contained at section 37(1)(b) of FOIA.

Balance of the public interest arguments

19. 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 FCO'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.
20. Given that the withheld information relates to a nomination for a specific individual, the Commissioner accepts that the disclosure of the requested information would directly impact on the confidentiality of the honours system as disclosure of the information would reveal details not only of Sir Arthur C Clarke's nomination and basis for this, but also details surrounding the postponement of his investiture. Furthermore, given the nature of the information that has been withheld, the Commissioner is satisfied that disclosure of it presents a real risk of a chilling effect on discussions concerning individual honours in the future, particularly in cases where the matters under discussion concern high profile and/or sensitive matters.
21. The Commissioner notes the FCO's reference to the exemption contained at section 37(1)(b) of FOIA applying for 60 years. In the Commissioner's view this does not however mean that the public interest in maintaining the exemption will be as consistently strong at each and every point until the end of those 60 years. Rather, in the Commissioner's view there must be a recognition that the confidentiality of the information is likely to decrease slowly over that 60 year period. In the circumstances of this case the information in question is 20 years old, and to some limited extent this arguably reduces the confidentiality of the withheld information. However, the Commissioner considers any such reduction in confidentiality to be limited given the content of the information itself, which despite the passage of time, the Commissioner accepts remains sensitive.
22. With regard to the public interest arguments put forward by the complainant, it is clearly not for the Commissioner to comment on the validity or otherwise of the allegations made against Sir Arthur C Clarke. However, she accepts the complainant's point that in light of such allegations there is a legitimate public interest in understanding what discussions and actions took place within government departments in

the period covered by the request given that as a direct result of these allegations Sir Arthur C Clarke's investiture was delayed. In the Commissioner's view disclosure of the withheld information would directly serve this public interest. More broadly, disclosure would contribute towards the public's understanding of how the honours system operate. As a result in the Commissioner's opinion there is a notable public interest in the disclosure of the withheld information.

23. However, despite the merits of the case for disclosing the withheld information, the Commissioner has concluded that the public interest favours maintaining the exemption. She has reached this conclusion given her view that disclosure of the withheld information in this particular case would significantly undermine the confidentiality of the honours process and as set out above she considers there to be a significant public interest in protecting the effective operation of the system.

Time taken to consider the public interest test

24. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled:

'(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.'

25. Section 10(1) of FOIA provides that 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. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. The Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken.
27. In the circumstances of this case the FCO took 123 working days to consider the balance of the public interest test. The FCO explained that such delays were due to the number of stakeholders who had to be consulted and the sensitive and complex nature of the information. The Commissioner appreciates that this is not a straightforward case but she does not accept that it can be reasonable, despite such complexities, for the FCO to take 123 working days to complete this process. The Commissioner has therefore decided that the FCO breached section

17(3) by failing to complete its public test considerations in reasonable time.

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: 0870 739 5836

Email: grc@justice.gov.uk

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

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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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