

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 9 January 2014

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to actual or proposed honours or titles for a number of individuals (now deceased) who worked in the entertainment industry. It cited the exemptions at section 37(Conferring of honours), section 40(2) (unfair disclosure of personal data) and section 41 (information obtained in confidence) and upheld this position at internal review.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 37(1)(b) in relation to the information described in the request.
3. No steps are required.

#### **Request and response**

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4. On 18 April 2013, the complainant requested information of the following description:

"I would like to request the following information under the Freedom of Information Act..

My request concerns actual and or proposed honours and titles for the following individuals –

Ronnie Barker, comedian and entertainer who died in 2005.

Enid Blyton, children's writer who died in 1968

Albert R Broccoli, also known as 'Cubby' Broccoli, film producer best known for the James Bond movie franchise. Died 1996.

John Buchan, author who died in 1940  
Alfred Hitchcock, film director, who died in 1980.  
Sir David Lean, film director who died in 1991.  
Margaret Lockwood, who died in 1990.  
Eric Morecambe, entertainer and comedian who died in 1985.  
Sir Terence Rattigan, playwright who died in 1977.  
Sir Michael Redgrave, actor who died in 1985.  
Ken Russell television and film director who died in 2011.

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

I believe there are strong public interest grounds for disclosing information which is historic in nature and which relates only to individuals who are deceased.

[He then stressed the requirement for copies of actual documents]

1. As far as each of the individuals are concerned. Can you please supply copies of all correspondence between the Cabinet Office/Downing Street and each of the individuals which in any way relates to the issue of honours or titles. The correspondence could relate to honour(s) or title(s) which was actually awarded or it could relate to honours or titles which were either refused or not awarded.
2. As far as each of the individuals are concerned. Can you please supply copies of all correspondence between the Cabinet Office/Downing Street and any of their representatives or employees which relates to the issues of honours or titles. This correspondence could relate to honour(s) or title(s) which was actually awarded or it could relate to honours or titles which were either refused or not awarded.
3. As far as each of the individuals are concerned. Can you please supply copies of all correspondence sent by or on behalf of a Prime Minister or Cabinet Minister which in any way relates to the subject of honours and or titles. This documentation will include but will not be limited to correspondence with the honours committees as well as correspondence with civil servants.
4. As far as each of the individuals are concerned can you please supply copies of any Cabinet Office and or Downing Street documentation which outlines the case for an honour or award.

5. As far as each of the individuals are concerned can you please supply copies of any Cabinet Office and or Downing Street documentation which details their response to the idea of an honour or title.
6. As far as each of the individuals are concerned can you please supply copies of any recommendations and or advice – relating to honours – supplied by any individual Government department(s)".
5. On 17 May 2013, the Cabinet Office wrote to the complainant to explain that it need further time to consider the balance of public interest as regards the application of section 37(1)(b) and undertook to respond in full by 17 June 2013.
6. On 11 June 2013, the Cabinet Office provided its response. It denied holding information relating to Enid Blyton, Albert Broccoli and John Buchan. It confirmed that it held information relating to Ronnie Barker, Alfred Hitchcock, Sir David Lean, Margaret Lockwood, Eric Morecambe, Sir Terence Rattigan, Sir Michael Redgrave and Ken Russell. It provided some information but argued that the remainder was exempt and there was no obligation to provide it under the FOIA. It cited the following exemptions as its basis for reaching that conclusion:
  - section 37(1)(b) - information related to the conferring by the Crown of any honour or dignity).
  - section 40(2) - unfair disclosure of personal data
  - section 41 – breach of confidence
7. Following an internal review, the Cabinet Office wrote to the complainant on 25 July 2013. It upheld its original position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 26 July 2013 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the Cabinet Office is entitled to rely on the exemptions it has cited in respect of the information that it holds within the scope of the request of 18 April 2013.
10. The Cabinet Office voluntarily withdrew reliance on any of the exemptions in respect of information in one document in the bundle of withheld information that it supplied to the Commissioner during his investigation. It supplied this information to the complainant on 19 November 2013. The Commissioner has therefore excluded this information from further consideration in this Notice.

## Reasons for decision

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### **Section 37(1)(b) – information relating to the conferring of an honour dignity**

11. The Commissioner has initially considered the Cabinet Office's application of section 37(1)(b) which provides a specific exemption for information which relates to the conferring by the Crown of any honour or dignity.
12. Given the nature of the information requested by the complainant, i.e. information relating to the conferring of honours to various named individuals, the Commissioner is satisfied that the withheld information falls squarely within the scope of this exemption.
13. However, section 37(1)(b) is a qualified exemption and therefore the Commissioner must consider the public interest test at section 2 of the FOIA and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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

14. In its submissions to the Commissioner the Cabinet Office emphasised that it had looked carefully at the information falling within the scope of this request and it had in fact disclosed some information, taking into account that the persons named in the request were now deceased. However, for the reasons set out below it had concluded that the public interest did not favour disclosure of the withheld information.
15. The Cabinet Office explained that it had always been the case that those involved in the honours system require the freedom to be able to discuss individual honours cases with frankness. It considered this issue of confidentiality to be as relevant today as when the various documented discussions took place. The Cabinet Office argued that it was firmly of the opinion that the views expressed by individuals about potential honours candidates should remain confidential and should not be revealed to the public. If such information was disclosed the Cabinet Office believed that those participating in the system would be reluctant to do so if they thought that their views, given in confidence, were likely to be subsequently published.
16. The Cabinet Office explained that it was fundamental to the current operation of the honours system, as it was when these nominations were considered, that those involved in the process can offer truthful and honest observations in confidence and which remain confidential. Therefore it would not serve the public interest if it became apparent

that the content of any correspondence or related material concerning individual honours cases might be made public. The Cabinet Office noted that Parliament had also recognised the particular sensitivity of releasing information about honours nominations – even when relatively old – by expressly providing that the exemption contained at section 37(1)(b) does not expire after 30 years but instead remains applicable for 60 years after a document's creation.

17. Furthermore, the Cabinet Office explained that it could not assume that the individuals commenting on the case are now deceased. However, it simply did not know whether all of the other individuals expressing the comments are now deceased, and therefore it believed that it was its responsibility to respect the confidentiality that the individuals would have expected at the time.

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

18. The complainant did not advance any specific public interest arguments supporting the disclosure of withheld information. The Cabinet Office explained that it had approached the request by considering would it could disclose without giving rise to the prejudicial outcome recognised in section 37. As noted above, during the course of the Commissioner's investigation, it identified information that, on reflection, it was now prepared to disclose.
19. The Commissioner notes that in similar cases in the past, it has been acknowledged that the honours and appointments process is of interest to the public and therefore there was a public interest in knowing that the honours process is transparent and that the process of awarding honours and dignities is clear.

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

20. 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 the premise of the Cabinet Office's argument 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 a disclosure of information that would erode this confidentiality, and thus damage the effectiveness of the system, would not be in the public interest.

21. However, the Commissioner would add a note of caution to the Cabinet Office's position that the views expressed by individuals about potential honours candidates should remain confidential and should not be revealed to the public. Taken to its logical conclusion, the Cabinet Office's position would presumably be that comments about the merits of an individual's nomination would *never* be disclosed. However, section 37(1)(b) is a qualified exemption and thus there could be circumstances where the public interest favoured disclosure of information of this nature.
22. With regard to attributing weight to the public interest in maintaining the exemption in the particular circumstances of this case, the Commissioner believes that three issues need to be considered: Firstly, the age of some of the information; secondly, and not entirely unrelated to this, the fact that some of the individuals who have commented on the nominees are potentially deceased; and thirdly, as with all cases, the content of the withheld information itself.
23. In relation to the first point, some of the comments about the nominees were made several decades ago. To a degree, the Commissioner believes that the age of some of the information in the scope of this request must limit the weight given to the public interest in maintaining the exemption. This is because, in the Commissioner's view, it is difficult to realistically argue that the likelihood of a chilling effect arising from the disclosure of information about a nomination made many years ago is as great as it would be in respect of information about a recent nomination.
24. In relation to the second point, the Commissioner also believes that it is unsustainable to argue that an individual who is currently involved in offering opinions on potential honours nominees would not draw a distinction between their opinions being disclosed when they were alive, and their opinions being disclosed after they had died. In the Commissioner's view a valid distinction can therefore be drawn between the chilling effect which may occur if contributions from an individual who has for some time been deceased were disclosed and the nature and strength of the chilling effect if contributions from an individual who is still alive were disclosed.
25. The Commissioner recognises that there are some practical difficulties in determining whether certain individuals are still alive. However, he

notes that in a previous case on a similar topic, the Cabinet Office was able to do so.<sup>1</sup>

26. Finally, in relation to the third point, the Commissioner accepts that withheld information which comprises comments about the various nominees represent honest, candid and personal views of the various individuals who had been asked to comment. Therefore, if one solely considers the content of the withheld information itself – and sets aside the age of the information and whether or not the contributors themselves are still alive – the Commissioner accepts that disclosure of the information would clearly begin to undermine the general confidentiality and integrity of the honours system.
27. With regard to the public interest in disclosing the withheld information, the Commissioner believes that disclosure of the information would certainly inform the public as to the reasons why each of the individuals named in the request had been offered a particular honour. Disclosure would therefore increase transparency in relation to these nominations. However, the Commissioner is not convinced that there are any other pressing public interest arguments which would support disclosure of this information. Moreover, he is also not convinced that the arguments surrounding transparency themselves attract significant weight in the circumstances of this case; instead whilst the Commissioner does not dispute that the public may well be interested in the withheld information, this does not equate to there being a weighty public interest in its disclosure.
28. Having considered all the circumstances of this case, the Commissioner has concluded that the balance of the public interest favours maintaining the exemption. In his view, although the age of some of the information and the fact that the some of the contributors are no longer alive arguably lessens the impact of any chilling effect on future contributions to the honours nominations, disclosure of the withheld information would nevertheless clearly impinge on the confidential nature of these particular nominations and on the general confidentiality and integrity of the honours system. The Commissioner is therefore satisfied that that the public interest favours maintaining the exemption.
29. In light of his findings in respect of section 37(1)(b) the Commissioner has not gone on to consider the Cabinet Office's reliance on sections 40(2) and 41 of FOIA.

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<sup>1</sup> <http://www.ico.org.uk/~media/documents/decisionnotices/2012/FS50454447.ashx> (see paragraph 14)

## Right of appeal

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30. 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: 0116 249 4253

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)

31. 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.
32. 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 .....**

**Graham Smith**  
**Deputy Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**