

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 January 2016

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested honours information relating to Sir Leon Brittan from the Cabinet Office. It disclosed information and asserted that it did not hold anything further within the scope of the request.
2. The Commissioner's decision is that the Cabinet Office holds no further information within the scope of the complainant's request.
3. No steps are required.

Request and response

4. On 9 March 2015, the complainant requested information of the following description:

"My request concerns honours awarded to and or presented to the late Leon Brittan (also known as Baron Brittan of Spennithorne). Leon Brittan was born on 24 September 1939 and died on 21 January 2015

I am interested in material which relates to the period 1965 to the present day.

Some of this material will inevitably have been generated after Mr Brittan's death.

Please note that the reference to the Cabinet Office below should be taken to mean the Cabinet Office or Downing Street and or the appropriate honours committees.

Please note that the Information Commission [sic] has advised that the Freedom of Information Act does guarantee access to copies of actual documentation and not just the information contained within.

1... Can you please supply copies of all correspondence between the Cabinet Office and the late Leon Brittan which in any way relates to the issue of honours or titles. The correspondence could relate to an honour(s) or title(s) which was actually awarded or it could relate to honours or titles which were either refused or not awarded. Please do include all correspondence and communications including emails.

2... Can you please supply copies of all correspondence between the Cabinet Office/Downing Street and any of Leon Brittan's representatives and or employees which relates to the issues of honours and titles. This correspondence could relate to an honour(s) or title(s) which was actually awarded to the individuals [sic] or it could relate to honours or titles which were either refused or not awarded. Please do include all correspondence and communications including emails.

3... Can you please supply copies of all correspondence sent by and or on behalf of a Prime Minister or Cabinet Minister which in any way relates to the subject of honours or titles for Leon Brittan. This documentation will include but not be limited to correspondence with the honours committee as well as correspondence with civil servants.

4... Can you please provide a list of individuals and or government departments and public bodies which have recommended Leon Brittan for an honour. I am interested in receiving information even if the honour was refused or not awarded. In the case of each department, each public body and each recommendation, can you please supply copies of all correspondence with the Cabinet Office. I am interested in receiving both sides of the correspondence. In the case of recommendations by an individual(s) please feel free to redact the name of any member of the public. But please do not redact the name of any politician and or peer or civil servant.

5... Did the Cabinet Office carry out a research of any kind and or seek the advice of any third party about the suitability of Leon Brittan for an honour. If so, can you provide copies of this correspondence and associated documentation held by the Cabinet Office.

6... Can you please supply copies of any complaints received and or held by the Cabinet Office which relates to a decision to award an honour to Leon Brittan. Please feel free to redact the name of any complainant if that complainant is a member of the public. But please do not redact the

name of any politician, peer or civil servant. Please do include those complaints received after Leon Brittan's death and or in the light of recent allegations. The complaints could relate to honours that were actually awarded or to honours that were turned down or refused.

Thank you for dealing with my request and I look forward to hearing from you."

5. On 8 April 2015, the Cabinet Office responded and said it needed further time to consider the public interest test in respect of section 37(1)(b) (honours exemption).
6. On 8 May 2015, the Cabinet Office sent him a response. It said that it did not hold the information described in requests 1-3, 5 and 6. It said that it held information within the scope of request 4 but considered this information exempt from disclosure under section 37(1)(b). Given the passage of time, it argued that it was prepared to disclose the information and provided it to him.
7. The complainant requested an internal review on 11 May 2015 and queried whether only a one page document was held. The Cabinet Office sent him the outcome of its internal review on 27 July 2015. It disclosed two further documents to him within the scope of request 4.

Scope of the case

8. The complainant initially contacted the Commissioner on 21 July 2015 to complain about the way his request for information had been handled. Specifically, he disputed the extent of the disclosure to him. He was also unhappy that an internal review had not been conducted in good time. The internal review was completed shortly after this date (see Other Matters).
9. The Commissioner has considered whether the Cabinet Office has provided the complainant with all the information it holds within the scope of the request.

Reasons for decision

10. Section 1(1) of FOIA creates a two-part obligation upon public authorities. First, it must confirm or deny whether it holds information requested under FOIA and, second, it must disclose it. Both obligations are subject to exemptions, most of which are, in turn, subject to a balance of public interest test.

11. In this case, the Cabinet Office confirmed it held information within the scope of the complainant's request and, although it considered that this information was exempt information by virtue of section 37 (honours information), the balance of public interest favoured disclosure. It disclosed that information to the complainant. However, the complainant has disputed the extent of the information held.
12. When considering the question of whether information described in a request is held, the Commissioner considers the matter to the civil standard, that is, on the balance of probabilities.
13. The Commissioner asked the Cabinet Office a number of detailed questions based on his experience of numerous cases and on a number of judgements issued by the First-tier Tribunal (Information Rights). His series of questions sought to determine, for example, what the Cabinet Office's policy was in relation to document retention for information of the type requested; what search terms it had used; where it had searched and why it had searched there; when the information, if previously held, had been destroyed and whether this accorded with standard policy; and what statutory requirements may be in place regarding the retention of such information.
14. The Cabinet Office responded to all the Commissioner's questions. It explained which electronic and paper databases it had searched and why these were most likely to hold relevant information. It also explained the search terms it had used. In addition, it provided the Commissioner with a copy of a record it held which showed the date that relevant information (from 1987) was destroyed – 30 June 2011.
15. It also explained its retention policy for honours information:

“Standard letters indicating acceptance of an honour are kept for approximately 6 months, while the honours round is completed. Paper Nomination/Case files were normally destroyed after 5 years. Records of the existence of a nomination are kept for 30 plus years. Correspondence files relating to individuals are normally kept for 30 years.”

It added that:

“Political Honours Scrutiny Committee (PHSC) files are reviewed periodically by the Knowledge and Information Management Team on a case by case basis”.
16. It did not explain why it had retained some information which it had disclosed to the complainant.

Section 1 – Conclusion

17. The Commissioner is satisfied, based on the Cabinet Office's explanation, that it holds no further information within the scope of the complainant's request beyond what it has already disclosed to the complainant. The fact that it did hold some information within the scope of the complainant's requests that was not destroyed in accordance with its standard policy does not, in the Commissioner's view, and on the balance of probabilities, mean that it holds more information within the scope of the requests..

Other matters

18. The Commissioner notes that there was a significant delay in responding to the complainant's request for an internal review in respect of his request.
19. Part VI of the section 45 Code of Practice makes it desirable practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information and that the procedure should encourage a prompt determination of the complaint.
20. As the Commissioner has made clear, these internal reviews should be completed as promptly as possible.¹ While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but it should not take more than 40 working days.
21. In this case, the request for an internal review was made on 11 May 2015 and the response was issued on 27 July 2015. The Commissioner notes that in this case, the time taken to respond was 55 working days.
22. The Commissioner finds that this delay is unreasonable and asks the Cabinet Office to ensure that future requests for internal reviews are handled more promptly.

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

Right of appeal

23. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

24. 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.
25. 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

Alexander Ganotis
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