

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 27 September 2018

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

Decision (including any steps ordered)

1. The complainant requested details of who recommended five individuals for honours. The Cabinet Office said that it only held information relating to one individual, and refused to disclose that information under section 37(1)(b) (the conferring by the Crown of an honour or dignity).
2. The Commissioner's decision is that the Cabinet Office does not hold information in respect of four of the five individuals named. The Commissioner also finds that the Cabinet Office was entitled to rely on the exemption at section 37(1)(b) with regard to the withheld information. She does not require any further steps to be taken.

Request and response

3. The complainant wrote to the Cabinet Office on 30 December 2017, asking who recommended five named individuals for honours in the New Year's Honours List 2018.
4. The Cabinet Office responded on 24 January 2018 and confirmed that it only held relevant information relating to one of the five individuals named. The Cabinet Office considered the information it held to be exempt from disclosure on the basis of section 37(1)(b).
5. Following an internal review, the Cabinet Office informed the complainant on 7 March 2018 that it maintained its original response.

Scope of the case

6. The complainant contacted the Commissioner on 12 March 2018 to complain about the Cabinet Office's refusal to provide him with the requested information. The complainant argued that the public interest in disclosure outweighed the public interest in maintaining the exemption at section 37(1)(b). He also wished to challenge the Cabinet Office's explanation that it did not hold some of the requested information.

Reasons for decision

Information not held

7. The Cabinet Office stated that it did not hold information relating to four of the five individuals named by the complainant. In its initial response the Cabinet Office explained to the complainant that there are two routes by which people enter the honours system. Nominations can be made by members of the public direct to the Honours and Appointments Secretariat; or via government departments. A government department may identify candidates within its sphere of interest, or candidates may be identified as a result of nominations sent to that department from public or private sources.
8. The Cabinet Office said that this was why it did not hold details of the nominator in some cases. Although the Cabinet Office did not explicitly state to the complainant that in four of the five cases nominations had been made via government departments, it later confirmed this to the Commissioner.
9. Based on the explanation provided by the Cabinet Office the Commissioner accepts, on the balance of probabilities, that the Cabinet Office does not hold information in respect of the four cases.
10. The Commissioner is of the opinion that the Cabinet Office could have provided the complainant with the names of the departments in response to his request. The complainant could then decide whether to pursue his request with these departments. The Commissioner cannot require the Cabinet Office to do so since it is recommended practice under the section 45 Code of Practice, rather than a requirement of Part I of the FOIA. However the Commissioner notes that the Cabinet Office has agreed to provide the names of the relevant departments to the complainant.

Section 37(1)(b): information relating to honours

11. Section 37(1)(b) of the FOIA states that information is exempt if it relates to the conferring by the Crown of any honour or dignity. The Cabinet Office relied on section 37(1)(b) in respect of the withheld information, ie details of who recommended one of the individuals for an honour.
12. The Cabinet Office was of the view that the requested information would clearly fall within the scope of the exemption since it relates to the conferring of an honour. The Commissioner agrees with this assessment and is satisfied that the information held by the Cabinet Office is therefore exempt on the basis of section 37(1)(b).
13. Section 37(1)(b) provides a qualified exemption and is therefore subject to the public interest test set out in section 2(2)(b) of the 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 in favour of disclosure

14. The Cabinet Office accepted the importance of transparency in government, which it said encourages public interest in and interaction with the work of government. It also recognised that there is a public interest in the workings of the honours system.
15. The complainant argued that there was a strong public interest in letting the public know who had nominated individuals for honours. The complainant said that it was important to disclose such information in order to inform the public about how honours were awarded and to protect against wrongdoing.

Public interest arguments in favour of maintaining the exemption

16. The Cabinet Office said that the exemption at section 37(1)(b) was specifically designed to protect confidentiality within the honours system. It said that the public interest inherent in the exemption was the protection and preservation of the integrity and robustness of the honours system. Maintaining the exemption was essential to protect the integrity of the honours system, without which the system would not be able to function.
17. The Cabinet Office maintained that it had always been the case that those involved in the honours system require the freedom to be able to discuss and deliberate individual cases in a safe space. The Cabinet

Office pointed out that the Commissioner has recognised in previous cases that for the honours system to operate efficiently and effectively it requires a level of confidentiality that allows those involved in the system to hold free and frank discussions.

18. The Cabinet Office also observed that the request related to the recent award of honours. It pointed out that Parliament had recognised the particular sensitivity of releasing information about honours by expressly providing that the exemption would remain applicable for 60 years.
19. Finally the Cabinet Office emphasised that it had considered the merits of the particular case. However it has been unable to identify any public interest that would justify overriding the established expectation of confidentiality in this case.

Balance of the public interest

20. The Commissioner acknowledges that the public has a legitimate interest in being informed about the honours system and the way nominations for honours are considered. She notes that the Cabinet Office and other public authorities publish a range of information on the nomination process,¹ and details of those awarded honours are also proactively published.²
21. However the Commissioner considers that the public interest in maintaining the exemption carries considerable weight. She accepts the argument put forward by the Cabinet Office regarding the need for confidentiality in the honours process. The Commissioner agrees that disclosure of the identities of those nominating someone for an honour would be likely to discourage nominations. This would have a detrimental effect on the honours system, which would not be in the public interest.
22. The Commissioner is mindful that Parliament chose to designate section 37(1)(b) as a qualified exemption. It follows that there will be some cases where the public interest in maintaining the exemption does not in fact outweigh the public interest in disclosure. This underlines the importance of considering the circumstances of each particular case. However, in this case the Commissioner is not persuaded that there is a

¹ <https://www.gov.uk/honours>

² <https://www.gov.uk/government/publications/new-years-honours-list-2018>

strong public interest in disclosure, over and above the general public interest in transparency acknowledged above. In the Commissioner's opinion the public interest in maintaining the exemption is considerably stronger, especially given that the requested information is very recent.

23. For the reasons set out above the Commissioner concludes that the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF