

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

### **Decision notice**

**Date:** 25 January 2024

**Public Authority:** The English Heritage Trust  
**Address:** The Engine House  
Fire Fly Avenue  
Swindon  
SN2 2EH

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

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1. The complainant asked for information about recent nominations for 'blue plaques' received by English Heritage. English Heritage disclosed some information, but it refused to disclose the list of nominations received, citing sections 36(2)(b)(ii) and 36(2)(c) (Prejudice to effective conduct of public affairs) of FOIA. It said that the withheld information would be published at a future date, when a final decision on each blue plaque nomination had been made.
2. The Commissioner's decision is that English Heritage was entitled to rely on sections 36(2)(b)(ii) and 36(2)(c) of FOIA to refuse to disclose the information. However, it breached sections 1 (General right of access) and 10 (Time for compliance) of FOIA, by failing to respond to the request within the statutory time for compliance.
3. The Commissioner does not require any steps as a result of this decision.

#### **Request and response**

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4. On 29 May 2023, the complainant made the following request for information under FOIA:  
  
"Please note that on this occasion I am interested in information generated between 1 September 2022 to the present day."

...I would now like to request the following.

1...During the aforementioned period has [name redacted] – the Blue Plaques Manager and or members of her team and any other EH [English Heritage] employee involved with the Blue Plaques scheme received any new recommendations for Blue Plaques. These proposed plaques could have been suggested / recommended by English Heritage itself and individual English Heritage employees and or members of its Blue Plaques panel and or members of the public and or individuals with a connection to those individuals to be commemorated with a plaque and or other third parties.

2...If the answer is yes can you please provide a full list of those recommendations. Please do identify the individual(s) to be commemorated by the proposed blue plaque.

3...In the case of each individual on this list has English Heritage made a final decision on whether to proceed or not to proceed with the recommendation. If the answer is yes, can you, please provide a full list of those who have been shortlisted for recommendation and a full list of those which for whatever reason the organisation has decided not to proceed with the recommendation. In those instances when English Heritage has decided not to proceed with the recommendation, can you explain why.”

5. English Heritage responded on 13 July 2023, as follows:

- Point (1): it confirmed that it had received new nominations.
- Point (2): it said the information was exempt from disclosure under sections 36(2)(b)(ii) and 36(2)(c) of FOIA.
- Point (3): it said that final decisions had not yet been made.

6. On 13 July 2023, the complainant requested an internal review on the following grounds:

- The delay in responding to the request, and English Heritage’s failure to let him know that there would be a delay.
- He disagreed with the application of section 36 to point (2) of the request. He questioned whether a qualified person’s opinion had been obtained within the time for compliance and whether the public interest test had been conducted properly.

7. English Heritage provided the outcome of the internal review on 27 July 2023. It apologised for its late response to the request, which it said was due to its complexity. It confirmed that the qualified person’s opinion was not obtained within the 20 working day time for compliance. It said a proper public interest test had been conducted. It maintained

that section 36 was engaged and it summarised the public interest arguments it had considered when applying the exemption.

## Scope of the case

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8. The complainant contacted the Commissioner on 21 September 2023 to complain about the way his request for information had been handled. He remained unhappy with English Heritage's application of section 36 and its delay in responding to the request.
9. The analysis below considers whether English Heritage was entitled to rely on sections 36(2)(b)(ii) and 36(2)(c) of FOIA to refuse part (2) of the request.
10. The timeliness of English Heritage's response has been considered under sections 1 and 10 of FOIA.

## Reasons for decision

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### Section 36 – Prejudice to the effective conduct of public affairs

11. According to its website, English Heritage oversees the London blue plaques scheme, which "...celebrates the links between notable figures of the past and the buildings in which they lived and worked"<sup>1</sup>.
12. English Heritage is relying on sections 36(2)(b)(ii) and 36(2)(c) of FOIA to withhold a list of blue plaque nominations ('the list'), received between 1 September 2022 and 29 May 2023.
13. Information will be exempt if its disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation (section 36(2)(b)(ii)), or would otherwise prejudice, or be likely otherwise to prejudice, the effective conduct of public affairs (section 36(2)(c)).
14. The Commissioner's guidance on section 36<sup>2</sup> explains that information may be exempt under section 36(2)(b)(ii) if its disclosure could inhibit

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<sup>1</sup> <https://www.english-heritage.org.uk/visit/blue-plaques/about-blue-plaques/>

<sup>2</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-36-prejudice-to-the-effective-conduct-of-public-affairs/>

the ability of public authority staff, and others, to express themselves openly, honestly and completely, or to explore extreme options when giving their views as part of the process of deliberation.

15. The exemption is concerned with the processes that may be inhibited, rather than with what is in the withheld information. The issue is whether disclosure would, in future, inhibit the processes of exchanging views.
16. As regards section 36(2)(c), prejudice to the effective conduct of public affairs can refer to the impact on a public authority's ability to offer an effective public service or to the disruptive effects of disclosure (for example, the diversion of resources in managing the effect of disclosure).
17. In this case, English Heritage is concerned about the impact that disclosure of the list would be likely to have on its management of the blue plaques process. It says it needs a 'safe space' for the consideration of nominations, free from the influence of, and disruption or distraction caused by, external parties.
18. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a 'qualified person'. The complainant has questioned whether the qualified person's opinion was properly obtained in this case.
19. Having been provided with the submissions made to the qualified person, the Commissioner is satisfied that English Heritage's Chief Executive gave the opinion that the exemptions were engaged, and that she was authorised to do so as the 'qualified person' under section 36(5) of FOIA. The opinion was given on 30 June 2023, and then English Heritage issued its response, citing the opinion, on 13 July 2023.
20. The Commissioner has gone on to consider whether the qualified person's opinion that the exemptions were engaged, was 'reasonable'. He does not need to agree with the opinion, in order for the exemption to be engaged. He need only satisfy himself that the qualified person's opinion is an opinion that a reasonable person could hold, in the circumstances.
21. The submission put to the qualified person summarised the reasons for applying sections 36(2)(b)(ii) and 36(2)(c) as follows:

“Premature release of the list of nominees into the public domain may prejudice any future decisions about whether or not to take forward a nomination at the time of consideration by the Panel, and therefore harm English Heritage's ability to commemorate the individuals concerned.

This is particularly vital in cases where family members or associates are still in residence at a property associated with the nominee.

If it is intended that an approach is to be made to the owners of a particular address, it should come from us and not via a newspaper or another third party.

It is important that the Blue Plaques Panel feels able to discuss these matters freely and frankly and that no-one feels inhibited in any way or has any concerns over the possible premature disclosure of information...It is important that all options are voiced without outside influence or lobbying. If this were not the case the quality of the overall discussion and so any agreement that may be reached would be much reduced.

...

Whilst there is an undoubted public interest in the transparency of the workings of the Blue Plaques Panel it is important that Panel members and English Heritage staff can discuss matters freely and frankly. It is also important that the panel can discuss from an early stage any potential new plaques without undue pressure from outside scrutiny at this time.

It should be noted here that once the Panel have discussed the nominations and the minutes of the meeting have been signed off, those minutes will be made public on the EH website and the requestor will then have access to the list of names that were put forward to the Panel, and whether or not they were successful to move forward to the next stage of the process."

22. Having reviewed the submissions put to the qualified person, the Commissioner is satisfied that they included a clear overview of the request, the information sought and relevant arguments for, and against, the application of each exemption.
23. The Commissioner finds that it was reasonable for the qualified person to reach the view from the submissions that, at the time of the request, disclosure of the list would be likely to inhibit the free and frank exchange of views for the purposes of deliberation. Public knowledge of who is currently being considered for a blue plaque could have a chilling effect on discussions about that nomination (thereby inhibiting the processes of deliberation).
24. He is also satisfied that the opinion that disclosure would be likely otherwise to prejudice the effective conduct of public affairs, is a reasonable one. This is due to the level, and nature of, external engagement that disclosure of the list would be likely to prompt.

25. The Commissioner is therefore satisfied that both sections 36(2)(b)(ii) and 36(2)(c) of FOIA are engaged in this case.

### **Public interest test**

26. Section 36 is subject to the public interest test, as set out in section 2 of FOIA. This means that although sections 36(2)(b)(ii) and 36(2)(c) are engaged, the withheld information must be disclosed unless the public interest in maintaining the exemption is stronger than the public interest in disclosure.

### **Public interest arguments in favour of disclosure**

27. English Heritage acknowledged the public interest in it being open and transparent regarding the blue plaques scheme and the commemoration of public figures.
28. The complainant has not offered any arguments to the Commissioner as to why, at the time of his request, the public interest favoured disclosure.

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

29. English Heritage considered there was a public interest in protecting the integrity of the 'live' process, while individual nominations were still under consideration. The quality of discussions, and the decisions flowing from them, would be likely to be adversely affected by the disclosure of the list.
30. English Heritage also argued that there was a public interest in protecting the central task of deciding the outcome of nominations, from external disruption and distraction, and even lobbying attempts. It also felt its ability to broach nominations with interested parties (surviving relatives and/or residents of affected properties) needed to be protected.
31. English Heritage commented that the public interest in openness and transparency regarding the blue plaques scheme would, in due course, be satisfied by the publication of the withheld information on its website<sup>3</sup>, once all final decisions on individual nominations have been made.

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<sup>3</sup> <https://www.english-heritage.org.uk/visit/blue-plaques/propose-a-plaque/the-blue-plaques-panel/blue-plaques-panel-meeting-minutes/>

### **Balancing test**

32. The Commissioner accepts that the integrity of the blue plaques scheme would be likely to be harmed by the premature disclosure of the list, in terms of its effect on the candour and quality of discussions about individual 'live' nominations. Furthermore, as English Heritage is able to make blue plaque nominations itself, concerns about premature disclosure could, in future, inhibit officers from putting forward candidates for consideration. It is clearly not in the public interest for the integrity of the blue plaques scheme to be compromised in these ways.
33. The Commissioner is also satisfied that English Heritage has shown that disclosure while nominations are still 'live', would be likely to cause disruption to, and distraction from, its management of the blue plaques process. While not explicitly raised by English Heritage, he considers that the additional costs incurred by this diversion this could have a knock-on effect for other areas of its work<sup>4</sup>.
34. Regarding English Heritage's relationships with the relatives of nominees and the residents of affected properties (some of whom, at the time of the request, it may not yet have contacted) the Commissioner recognises that their support is pivotal to the success of the blue plaques scheme. If English Heritage is unable to maintain confidentiality around those relationships, this would be likely to result in reputational damage to itself and to the blue plaques scheme. It may also result in particular nominations being unsuccessful, if they do not receive support because relationships have been harmed as a consequence of premature disclosure.
35. English Heritage says it has previously explained to the complainant, that, once all decisions have been made, the nominations list will be published. As noted above, the complainant has not said why he thinks the public interest nevertheless favours disclosing the list while nominations are still being considered.
36. The public interest argument in favour of disclosure concerns the general public interest in openness and transparency regarding the blue plaques process.
37. However, as all the nominations will be revealed once final decisions have been made, the Commissioner does not consider this public

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<sup>4</sup> English Heritage is a charity which relies on income generated from admission fees, membership fees, trading income, donations, fundraising and grants.

interest argument to be sufficiently strong to outweigh the considerable public interest in English Heritage maintaining control over its work and resources and its management of factors likely to affect the integrity and success of the blue plaques scheme.

38. Therefore, in this case, the Commissioner has decided that the public interest in maintaining the exemptions is stronger than the public interest in disclosure. It follows that English Heritage was entitled to rely on sections 36(2)(b)(ii) and 36(2)(c) of FOIA to refuse to disclose the list.

### **Procedural matters**

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39. English Heritage took 32 working days to respond to the request. This is a breach of sections 1 (General right of access) and 10 (Time for compliance) of FOIA, which permit up to 20 working days when responding to a request.
40. The Commissioner has logged this breach for monitoring purposes.



## Right of appeal

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41. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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 .....**

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**