

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

### **Decision notice**

**Date:** 7 October 2024

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall

London

SW1A 2AS

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

---

1. The complainant has requested information concerning the names of all those individuals who refused an honour between 1999 and 2010, and who have since died.
2. The Cabinet Office initially refused the request under section 12 (costs limit) but revised their position at internal review, stating that they did not hold the information requested. The Cabinet Office maintained this position during the Commissioner's subsequent investigation.
3. The Commissioner has found, on the balance of probabilities, that the Cabinet Office do hold information requested. The Commissioner therefore requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
  - Disclose the information held to the complainant (ie the information regarding the five individuals considered in this Decision Notice) or issue a valid refusal notice.
4. The Cabinet Office must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

---

5. On 7 August 2023 the complainant wrote to the Cabinet Office and requested the following information:

'In 2012, the Cabinet Office released a list of 287 names who had turned down honours between 1951 and 1999, following an Information Commissioner's ruling.

Eleven years on from that ruling, can you please give me the list of all those who have rejected an honour between 1999 and 2010?

This preserves the 13-year gap between the rejection of an honour and the publication of their name which the ICO judged to be the correct balance between privacy and the public interest'.

6. The Cabinet Office responded to the request on 28 November 2023, and confirmed that they held the information requested, but that it was being withheld under section 37(1)(b)(conferring of an honour or dignity) and section 41 (information provided by a third party in confidence).

7. On the same date, the complainant did not request an internal review of that decision but rather made the following refined information request:

'Thank you so much for this response. Under Section 16 the Cabinet Office has a duty to advise. Therefore, if I clarify this request to all those deceased who rejected an honour between 1999 and 2010, will this be sufficient for release?'

8. The Cabinet Office responded to the request on 28 December 2023. They advised that, 'a search of our records show that the Cabinet Office holds the information that you request in relation to the Prime Minister's List, which is the main honours list of civilians giving service in the UK'.

9. However, the Cabinet Office advised that the information, 'is being withheld because we consider it is exempt under section 12 of the Freedom of Information Act'. By way of explanation the Cabinet Office advised that the reason the refined request exceeded the cost limit was that, 'the relevant information is contained in a large number of paper and electronic files. We are therefore confident that searching and extracting the information requested would exceed the appropriate limit laid down in the regulations'.

10. The Cabinet Office suggested that the complainant might wish to refine his request further, 'so that the cost of determining whether the Cabinet Office holds relevant information, locating, retrieving and extracting it would not exceed the appropriate limit'. The Cabinet Office suggested

that the complainant might wish to narrow the timeframe of the request. The Cabinet Office noted that if they did hold any information subject to any such refined request, it may be subject to one or more FOIA exemptions.

11. The complainant requested an internal review on the same date. He advised the Cabinet Office that the Commissioner had issued a decision notice in December 2011, 'which made it clear that this information ought to be provided' and provided the Cabinet Office with a link to that notice (FS50370643)<sup>1</sup>.
12. The complainant also noted that his request was confined to an 11 year period, and he accepted that in some cases it might be excessively time consuming to establish whether the individual was deceased. In those cases he was happy for the Cabinet Office to act on the assumption that the individual was still alive. However, the complainant contended that in other cases it would 'be immediately apparent or established relatively quickly' that the person involved was dead. In line with the Commissioner's decision in FS50266931<sup>2</sup> (October 2010), the complainant asked the Cabinet Office to supply the requested data for such individuals, 'notwithstanding the fact that for other individuals it may be very difficult to determine whether they are still alive'.
13. The complainant noted that in the 2011 case, the Cabinet Office had been able to provide the type of information requested for a 48-year long time period between 1951 and 1999<sup>3</sup>. 'Yet it now claims to be unable to do so for an 11-year time period between 1999 and 2010. Please explain why this is no longer possible on cost grounds, when it was a decade ago?'
14. The Cabinet Office provided the internal review on 1 February 2024. They stated that they agreed that the information requested 'is not exempt' but stated that, 'there is a question of whether the time involved in determining if the requested information is held would exceed the appropriate limit set out in section 12 of the Act'. They advised the complainant that his comparison with the Commissioner's decision in FS50370643 in 2011, 'does not take into account the different circumstances and information that may have been available at the time of the previous request. This may have affected the amount of work involved in compiling this list. It is possible that for older records,

---

<sup>1</sup> [Freedom of Information Act 2000 \(Section 50\) \(ico.org.uk\)](https://ico.org.uk)

<sup>2</sup> [Freedom of Information Act 2000 \(Section 50\) \(ico.org.uk\)](https://ico.org.uk)

<sup>3</sup> It should be noted that the Cabinet Office had originally withheld this information under sections 21, 37(1)(b) and 41(1), with the Commissioner ordering disclosure in his decision notice.

lists with more detail about the recipient, including their age, may have been kept'.

15. As regards their response to the present request, the Cabinet Office advised that they were correcting their previous statement that all the files from the relevant time period (1999 to 2010) were paper records, as the transition to electronic records began in 2002. On inspecting those files, the Cabinet Office confirmed that they held records 'of all the individuals that refused an honour during that period'. However, they advised that they did not have any straightforward way of obtaining age-related data, such as their date of birth (DOB). The Cabinet Office stated that they had not retained the full applications of all those individuals who refused honours, in line with their data retention policy.
16. The Cabinet Office advised that the information which they held did not identify whether those individuals that refused an honour were still alive.
17. The Cabinet Office advised the complainant that they did not hold the relevant information that would enable them to determine whether the individuals were alive or dead. Consequently, they informed the complainant that, 'our decision should have been that the Cabinet Office does not hold the requested information'.

## Scope of the case

---

18. The complainant contacted the Commissioner on 2 February 2024 to complain about the way his request for information had been handled. He advised the Commissioner that he believed that the Cabinet Office's grounds for refusing his request were 'spurious'.
19. In submissions to the Commissioner the Cabinet Office apologised for not having clearly stated in their internal review that the original section 12 decision was not being relied upon and that the review was overturning that decision with one that the requested information is not held. This was because the complainant had asked for the number of '**all** those deceased who rejected an honour' and the Cabinet Office do not hold a record of those who were offered an honour, **and** have since died.
20. The Commissioner considers that the scope of his investigation is to determine whether the Cabinet Office were correct to state that they do not hold the information requested by the complainant.

## Reasons for decision

---

### Section 1: General right of access to information

21. Section 1(1) of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request and, if so, to have that information communicated to them. This is subject to any procedural sections or exemptions that may apply. A public authority is not obliged under FOIA to create new information in order to answer a request.
22. Where there is a dispute between the information located by a public authority and the information a complainant believes should be held, the Commissioner, following the lead of a number of First-Tier Tribunal decisions, applies the civil standard of proof – ie on the balance of probabilities.
23. In the specific circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, the Cabinet Office holds recorded information that falls within the scope of the complainant's request.

*The Cabinet Office's position*

24. In their original submissions to the Commissioner, the Cabinet Office confirmed that their position was that the information sought by the complainant is only partially held. They explained that:

'This is because we hold incomplete and very limited information on whether those who refused an honour between 1999 and 2010 are still living. While we hold 'date of birth' (DOB) data for some of the individuals who refused an honour, it is difficult to rely on the accuracy of the data that is held. In cases where an individual has refused an honour, they are unlikely to offer their date of birth in response to being offered an honour. We may hold a date provided by a nominator as a date of birth, but unless the nominee is a public figure, we are usually unable to verify the accuracy of any DOB provided by a third party'.
25. The Cabinet Office advised that the incomplete data available is recorded electronically in the electronic database for honours nominations, for the Birthday Day 2008 honours (BD08) list onwards.
26. For refusals pre-BD08 (ie the electronic record), the Cabinet Office highlighted the Commissioner's previous finding in FS50370643 that the Cabinet Office, 'only needs to decide whether it is immediately apparent as a matter of fact that a relevant individual is dead'. In the present case, the Cabinet Office advised that it is not immediately apparent that a relevant individual is deceased, and that to establish this would require a search of the paper records, then to cross reference to confirm firstly if a DOB record was held and if so, whether that date was before 1924 (the significance of this date being explained below). The Cabinet

Office therefore maintained their position that the information requested was not held.

27. In February 2004 the Advisory Council on National Records and Archives considered and accepted a proposal for the use of a standard closure period, and that a lifetime of 100 years should be assumed. Therefore, for it to be safe to assume an individual is dead it is standard practice for The National Archives and other public authorities to apply a life expectancy of 100 years<sup>4</sup>. Although this is a cautious approach the Commissioner accepts it is a reasonable and responsible framework for the circumstances to which this has been applied.
28. The Cabinet Office explained how the present case differed from that of FS50370643 in 2011, where similar information was requested. In that previous request, the Cabinet Office advised that they had held information on the relevant individuals' date of birth, and they had disclosed data for those individuals whose birthdays were more than a hundred years ago, in line with the Cabinet Office's internal policy on data held relating to the refusal of honours. They stated that this policy was itself formulated in response to the Commissioner's previous findings on this type of information.
29. The Cabinet Office explained that the information disclosed in 2012 (FS50370643) was a subset of data where the records did include the individual's date of birth, and so they were able to determine their age and whether they could reasonably be assumed to be deceased. The Cabinet Office advised the Commissioner that they could not say what other information was available at that time, though the Honours and Appointments Secretariat used to employ a member of staff who was solely responsible for records management, 'which may have meant this information was already formatted in a way that did not require the creation of new data'.
30. In respect of the complainant's request, the Cabinet Office advised that they do not hold a complete set of the age-related information about the individuals in question (i.e. they do not hold all the DOB for all of them, nor their age at the time of the nomination). The Cabinet Office confirmed that this is information which they now routinely request from recipients, but which is not always received, and it is not clear how systematically such information was requested from recipients in the past. The Cabinet Office explained that, 'therefore we have incomplete data on which to determine each individual's current age, which would

---

<sup>4</sup> <https://cdn.nationalarchives.gov.uk/documents/information-management/closure-periods.pdf>

mean we would not be able to make an accurate judgement as to the likelihood that an individual is deceased'.

31. The Cabinet Office advised the Commissioner that they hoped that the above information made clear why they do not hold the majority of the requested information – i.e. the request was for the names of **all** those individuals, who were deceased at the time of the request, who refused an honour between 1999 and 2010. The Cabinet Office confirmed that they do hold the names of the individuals who refused an honour during that period, but they do not hold sufficient age-related data to provide an accurate or complete response for the entirety of the requested information.
32. In terms of certain details, the Cabinet Office further confirmed that their position was that to use their 'tacit knowledge and/or authoritative external sources' 'to attempt to ascertain (i) if an individual is a public figure, (ii) if they had since died following their refusal of an honour, and (iii) to then create a new dataset using newly-acquired information, are not activities which FOIA requires them to carry out and would not be reasonable assistance under section 16 of FOIA.
33. The Cabinet Office advised that their view was that to engage in such voluntary research activity would likely result in the creation of new information which, incidentally, would not have been held at the time of the request and would therefore be out of scope. In support of their position, the Cabinet Office cited the Commissioner's guidance on when information is considered to be held, specifically, 'You do not have to create new information in response to a request. FOIA only applies to any recorded information which you already held at the time of a request'.
34. From the information provided by the Cabinet Office in the above submissions, it appeared to the Commissioner that the Cabinet Office previously had a policy of holding information regarding the DOB of those individuals who refused an honour, but for some reason(s) at some point between 2011 and the date of the complainant's request, the Cabinet Office had changed or discontinued the policy so that they no longer hold this DOB information. The Commissioner made specific enquires of the Cabinet Office on this point.
35. In supplemental submissions to the Commissioner, the Cabinet Office confirmed that their policy of collecting DOB for nominees for honours has not changed; this has always been part of the process. They advised that the information which they hold is partial in spite of this policy position and they explained why:

'Firstly, it is important to make a distinction between nominees for honours and recipients of honours. For nominees, the Cabinet Office is



dependent on information provided by public nominators, sponsoring departments and other organisations, and occasionally publicly available information. This information is necessarily patchy because nominators and departments often do not have access to date of birth information or any confidential way of obtaining it (even since the introduction of the provisions of DPA 2018 which provides a space for such information to be legally shared without the subject's advance consent). By contrast, the Cabinet Office asks every single honours recipient at the point of offering an honour to provide basic personal data including a date of birth. Most people who accept an award will provide this information. But they do not always do so, leaving gaps in the record even for more recent recipients.

However, people who refuse an honour will typically only tell the Cabinet Office that they are refusing. They will not provide personal data in that response. Consequently, the Cabinet Office may only hold personal and/or partial personal data for those individuals who refuse. Therefore, we hold less information about people who refuse than we do about people who accept'.

36. Secondly, the Cabinet Office advised that in some paper files a DOB may not have been recorded at all, or there may be an 'approximate' age for the individual. The Cabinet Office advised that in those files, and in older electronic records prior to 2019, a default DOB of 1 January 1960 was often applied when the real date was not known. This placeholder date was, of course, almost always incorrect and sometimes by some way. The Cabinet Office's understanding was that it was thought at the time that having a rough age for a nominee was more helpful than no suggestion at all.

37. Thirdly, the Cabinet Office explained as follows:

'For the time period in question of 1999 and 2010, some records are fully electronic and some a combination of paper and electronic. For those records which are electronic, a report can be run on those individuals who refused and who have a verified date of birth from before 1924. **This produces five people definitely in scope of the request for whom we hold dates of birth** [Commissioner's emboldening] (albeit unverified, so it may not be accurate) and 75 people potentially in scope of the request but whose date of birth is not recorded. We consider there to be a low level of confidence in the reliability of the data, given that in the case of refusals individuals are unlikely to verify the information provided by the nominator'.

38. In summary, the Cabinet Office advised the Commissioner that their position is that they hold some data in scope of the request. Some of that data can be easily obtained if it is held within the electronic system, but is extremely limited. However, data held in older paper files would



require a fairly significant exercise to identify extant records for candidates who refused; identifying whether any DOB information is held, and then verifying whether the Cabinet Office had confidence in the veracity of that information. The Cabinet Office advised that this exercise alone would bring them close to engaging section 12 by exceeding the cost limit. Overall, the data is patchy and the Cabinet Office advised that their confidence in the majority of data which *is* held is low.

39. In addition, and contrary to their statement in the internal review that the information request was not exempt from disclosure (if held), the Cabinet Office advised that they continued to assert that sections 37(1)(b) and 41(2) 'remain engaged even when an individual has died'. The Commissioner has commented on this position in the Other Matters section of this notice.

#### *Commissioner's assessment*

40. The Commissioner does not agree that the Cabinet Office holds no information within scope of the request. The complainant's request was for 'all those deceased who rejected an honour between 1999 and 2010'. In their submissions to the Commissioner, the Cabinet Office have made clear their concerns/doubts about the accuracy of information held, particularly DOB information. However, FOIA is not concerned with the accuracy of information held, but only whether any information (regardless of its accuracy or completeness) is held by a public authority within the scope of a request. If any such information is held, then it must be disclosed, unless it is validly exempt under one or more of the exemptions contained in FOIA.
41. In this case the Cabinet Office have confirmed that a search of their records has identified five individuals who refused an honour and who have recorded dates of birth from before 1924 (i.e. that they are presumed to be deceased given that was 100 years ago). The Commissioner has carefully considered the Cabinet Office various representations and has reached the view that – on the balance of probabilities - this is therefore the likely extent and totality of the information held by the Cabinet Office within the scope of the request – **all** those individuals who refused an honour during the relevant period and who are presumed to have subsequently died.
42. The Commissioner recognises that it is possible that some of the other 75 individuals *potentially* in scope of the request (i.e. who refused an honour during the relevant period) were also deceased at the time of the request. However, since they do not have recorded dates of birth from before 1924, they are not recorded or regarded by the Cabinet Office as being deceased. The key issue here is not the accuracy of the Cabinet Office's information, or how much confidence that they have in

the same, but rather how many relevant individuals are recorded (either explicitly or by virtue of the 100 year rule) by the Cabinet Office as being deceased, in accordance with their own policy concerning such information. That number is five individuals.

43. Therefore, the Commissioner is satisfied, on the balance of probabilities, that the Cabinet Office do hold the information requested by the complainant, this information being the specific five individuals with recorded DOBs (accurate or otherwise) before 1924.
44. Having found that the Cabinet Office do hold the requested information, the Commissioner requires the Cabinet Office to disclose the information to the complainant or issue a valid refusal notice.

### **Other matters**

---

45. As noted above, in their submissions to the Commissioner, the Cabinet Office stated that they continued to assert that sections 37(1)(b) and 41(2) 'remain engaged even when an individual has died'.
46. However, the Cabinet Office did not apply sections 37(1)(b) and 41(2) to the complainant's request and therefore the Commissioner has made no formal finding in respect of either exemption.

## **Right of appeal**

---

47. 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)

48. 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.
49. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**