

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 11 November 2019

Public Authority: The Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference FS50823104, for a decision whether a request for information made by the complainant to The Cabinet Office on 3 September 2018, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 3 September 2018, the complainant wrote to the Cabinet Office and requested information in the following terms:

"My request has been inspired by revelations by The Times newspaper that the HMRC is routinely consulted when individuals are nominated/recommended for an Honour.

HMRC operates a traffic light system and information relating to the tax affairs of a particular nominee are passed onto the Honours committee(s) and the Prime Minister.

Please note that I do not want to receive the name of any nominees or the name of anyone or recommended them.

Please note that I am only interested in information which related to the proposed and actual Birthday and New Year Honours Lists of 2014, 2015, 2016, 2017, 2018

1... How many individuals being considered for inclusion in any of the proposed or actual lists had a red light flagged up by their name. Can you please provide a figure for each of the aforementioned years. For each individual year and in the case of each individual assigned a red light warning can you specify what Honour they were being considered for and the relevant list. Please do not identify the individual but please specify whether they are male or female.

2... Did the individual who was subject to a red light still get an Honour during that year or on a later occasion. Did they get the Honour they were recommended for? Alternatively did they get a lower ranking Honour as a result of the red light? Alternatively did they not gain an Honour at all after the red light was flagged up. In the case of each individual can you specify what happened to their recommendation as a result of the red light warning.

3... In the case of each individual and each red light warning can you please specify why the red light warning was applied. Please do provide the names and details of any relevant tax avoidance or evasion schemes if you can do so without identifying the relevant individual. Please do specify if the red light was the result of concerns about avoidance or whether it was the result of concerns about evasion.

4... In the case of each individual and each individual red light warning can you specify which particular Honours committee was informed of the red light warning.

5... In the case of each individual were they or their representatives notified of the red light warning and informed of the implication of that

warning for their particular Honours recommendation?”

3. On 29 October 2018, the Cabinet Office responded and confirmed that it held some of the requested information. With regards to question 1, it confirmed that HMRC publishes information on the number of risk ratings and therefore considered that this information was exempt under section 21. The Cabinet Office stated that it considered this information was also exempt under section 44(1)(a) of the Act on the basis of section 23(1) of the Commissioners for Customs and Revenue Act. The Cabinet Office provided a link to the Memorandum of Understanding.
4. With regards to question 2, the Cabinet Office confirmed that it held incomplete information. The Cabinet Office explained that for the information that was held, it was exempt under section 44(1)(a).
5. With regards to question 3, the Cabinet Office confirmed that it did not hold the requested information as HMRC provides a rating of high, medium or low and not details of the nominee’s tax behaviour.
6. With regards to questions 4 and 5, the Cabinet Office explained that section 37(1)(b) was engaged. It set out its public interest considerations and concluded that the public interest is better served by maintaining the exemption.
7. The Cabinet Office explained that, although individual’s names were not requested, the number of Honours nominees affected by high risk ratings is so small as to risk identification. The Cabinet Office confirmed that it was also relying on section 40, section 41(1)(b) and section 44(1)(a) to withhold the information.
8. The complainant requested an internal review on 31 October 2018 and disputed that disclosure would risk identification of the individuals. The complainant also provided public interest arguments in favour of disclosure.
9. The Cabinet Office provided the outcome of its internal review on 12 February 2019. It withdrew its reliance on section 44(1)(a) but confirmed that section 37(1)(b) and 41 were properly applied. The Cabinet Office asserted that the balance of the public interest had been fully considered with the reasons set out in its refusal notice. The Cabinet Office explained that instead of section 44(1)(a), it considered sections 36(2)(b)(i) and 36(2)(c) are engaged. The Cabinet Office confirmed that it had consulted the qualified person and it was their opinion that release of the information would be likely to cause prejudice for the purposes of section 36(2)(b)(i) as HMRC could be unwilling to share information with the Cabinet Office in the future and that it would also be likely to cause prejudice by creating a detriment to the effective

working of the Honours System, engaging the exemption at section 36(2)(c). The Cabinet Office provided its public interest arguments and concluded that the balance of the public interest lay in maintaining the exemption.

10. On 19 February 2019, the complainant wrote to the Commissioner to complain about the handling of his request for information. Specifically, he disputed that the Cabinet Office is entitled to rely on the cited exemptions to withhold the information.
11. The Commissioner wrote to the Cabinet Office on 25 July 2019 to request its submissions and the withheld information.
12. On 9 September 2019, the Commissioner wrote to the Cabinet Office as she had not received its submissions or any acknowledgement of her letter.
13. On 9 September 2019, the Cabinet Office responded to the Commissioner's chaser email and provided its reason for the late response. The Cabinet Office stated that it would *"see if we can expedite the Cabinet Office response to you."*
14. On 23 September 2019, the Commissioner contacted the Cabinet Office again in the absence of its submissions.
15. On 23 September 2019, the Cabinet Office explained the steps it was taking to provide a response and confirmed that it hoped to provide the submission to the Commissioner "shortly".
16. On 14 October 2019, the Commissioner contacted the Cabinet Office for a third time and reminded it of her powers to issue an information notice under section 51 of the Act. She advised that if a response was not provided by the close of business on 28 October 2019, an information notice would be issued.
17. To date, no response to the Commissioner's letter of 25 July 2019 has been received.

Information required

18. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the Cabinet Office shall, within 30 days of the date of this notice, furnish the Commissioner with a copy of the following information:

- a. Its full and final response to her letter dated 25 July 2019
- b. The withheld information

Failure to comply

19. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

20. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can 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@Justice.gov.uk

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

21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Elizabeth Hogan
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF