

Communications with Her Majesty and the awarding of honours (section 37)

Freedom of Information Act

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Introduction

1. The Freedom of Information Act 2000 (FOIA) gives rights of public access to information held by public authorities.
2. An overview of the main provisions of FOIA can be found in [The Guide to Freedom of Information](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.
4. This guidance explains to public authorities how the exemptions in Section 37 work to protect communications relating to the Royal Family and the honours system.

Overview

- Section 37 is broad in its definition, encompassing information **relating to:**
 - communications with Her Majesty, other members of the Royal Family or the Royal Household; and
 - the awarding of honours and dignities by the Crown.
- Section 37(a) provides an exemption for information relating to communications with the Sovereign. It's an absolute exemption so there's no requirement to carry out a public interest test.
- Section 37(1)(aa) exempts information relating to communications with the heir and second in line to the Throne.
- Section 37(1)(ab) exempts information relating to communications with an individual who has **subsequently** acceded to be sovereign, heir or second in line to the Throne.
- Sections 37(1)(aa) and (ab) are both absolute exemptions.
- There are also exemptions for information relating to communications with other members of the Royal Family [section 37(ac)] and information relating to communications with the Royal Household [section 37(ad)]. However these

exemptions are qualified and therefore subject to a public interest test.

- Section 37(1)(b) exempts information relating to the awarding of honours and dignities by the Crown and is a qualified exemption.
- An authority may not apply sections 37(1)(a) – (d) if the later of the following dates has passed;
 - five years from the date of the ‘relevant death’; or
 - 20 years from the date the information was created.
- For sections 37(1)(a) – (d), the ‘relevant death’ means the death of the individual to whom the communication relates. In the case of section 37(1)(d) the ‘relevant death’ means that of the sovereign who was reigning when the information was created.
- An authority cannot apply section 37(1)(b) where the information is over 60 years old.
- Section 37(2) provides an exclusion from the duty to confirm or deny where the information is exempt under section 37(1).
- If the authority is applying an absolute exemption then it can issue a ‘neither confirm nor deny’ (NCND) response without further qualification. There is no requirement to demonstrate prejudice or conduct a public interest test.
- If the exemption is qualified then the authority must carry out a public interest test. It can only issue a NCND response if the public interest in concealing whether the information is held, outweighs the public interest in confirming or denying that it’s held.

What FOIA says

5. Section 37 states:

37.—(1) Information is exempt information if it relates to—
(a) communications with the Sovereign,

- (aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,
- (ab) communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne,
- (ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs), and
- (ad) communications with the Royal Household (other than communications which fall within any of paragraphs (a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs), or
- (b) the conferring by the Crown of any honour or dignity.
- (2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

6. Section 37 is designed to protect information from disclosure where it relates to:
- communications with the sovereign, other members of the Royal Family or the Royal Household; and
 - the awarding of honours by the crown.
7. Section 37 is unusual in that it contains a mix of absolute and qualified exemptions.
8. The absolute provisions of Section 37 are those concerned with information relating to communications with the Sovereign, the heir to the throne and second in line to the throne.
9. The qualified provisions of Section 37 are those concerned with information relating to communications with the Royal Family

and Royal Household and the awarding of honours by the crown. An authority relying on one of these exemptions will need to carry out a public interest test.

10. The first part of this guidance deals with the exemptions for communications with the sovereign, other members of the Royal Family and the Royal Household, whilst the latter section looks at the exemption for information relating to the awarding of honours.

Sections 37(1)(a) – (ad) Communications with the sovereign, other members of the Royal Family and the Royal Household

11. Sections 37(1)(a) – (ad) provide exemptions for information relating to communications with:
 - the Sovereign;
 - the heir to the throne;
 - the second in line to the throne;
 - other members of the Royal Family; and
 - the Royal Household.

Who might use these exemptions?

12. The provisions of FOIA are not directly applicable to the Royal Family or Royal Household. This being the case, the most likely users of sections 37(1)(a) – (ad) will be public authorities who have been in communication with the sovereign, members of the Royal Family or the Royal Household.

The scope of the exemption

13. Central government departments, and to a lesser extent, other public authorities, are likely to hold a range of information falling within the scope of these exemptions, such as:
 - communications between the Sovereign and government ministers;

- correspondence with members of the Royal Family in respect of royal visits or other public engagements;
 - records of audiences (private meetings) with members of the Royal Family;
 - material that has been shown, or will be shown, to the sovereign for approval;
 - copies of speeches given by members of the Royal Family; or
 - copies of messages exchanged between members of the Royal Family.
14. Furthermore, the exemptions will also cover communications made or received by a person (or organisation) who was acting **on behalf** of the sovereign, heir, second in line to the throne and other members of the Royal Family.

Interpreting the phrase 'relates to'

15. The term '**relates to**' should be interpreted broadly. In practice this means that the scope of the exemption will cover more than just the actual communications themselves; it will also apply to information that refers to, or is derived from those communications.

Example

An NHS Foundation Trust receives a request for a copy of a report about a recent fundraising initiative.

A passage of this report makes reference to a letter which the Trust sent to a member of the Royal Family.

The information in this passage will be covered by section 37 exemption even though it is not, in itself, a communication. This is because that passage **relates to** communications with the Royal Family.

[FS50413468](#) concerned a request to English Heritage for the

dates and venues of meetings between its Chief Executive and Prince Charles, and details of the topics that were discussed.

English Heritage held information about one such meeting. However they withheld it under section 37(1)(aa), the exemption for information relating to communications with the heir to the throne.

The Commissioner agreed that the withheld material was information relating to communications with the heir, and upheld English Heritage's decision not to disclose it.

16. This will include information **intended** for communication such as:

- records of proposals to send correspondence or organise meetings; or
- draft versions of letters and speeches.

This is irrespective of whether those communications were ever sent or received, or the meetings ever took place.

Example

A public authority received a request for a copy of a speech that a member of the Royal Family was scheduled to give an official engagement.

In the event, the engagement was cancelled and the speech was never actually delivered.

Nevertheless, the authority would still be able to apply section 37 to the information because the speech was **intended** for communication.

17. This broad interpretation was affirmed by the Information Tribunal in the case of [Brown vs ICO and the Attorney General \(EA/2011/0002, 26 August 2011\)](#).

[Brown vs ICO and the Attorney General \(EA/2011/0002, 26](#)

August 2011) concerned a request Mr Brown had made to the Attorney General for information about the handling of Royal Wills. The Attorney General refused his request under section 37(1)(a).

In his appeal to the Tribunal, Mr Brown argued that section 37 was not engaged because a will is not a form of communication. However, the Tribunal ruled that the information was covered by the exemption because it derived from communications with the Queen.

In dismissing the appeal, the Tribunal observed that;

'...Section 37 is addressed to and includes information relating to specified communications. On any basis, section 37(1) is simply not confined to the communication itself. As the Commissioner made clear in his written submissions, section 37(1) is much broader. (para 42)

'In any event, another decision of this Tribunal, namely *DfES v Information Commissioner and Evening Standard* (EA/2006/0006) firmly took the view, with which this Tribunal respectfully agrees, that a broad interpretation should be afforded to the phrase or concept "relates to" as used in section 37...' (para 44)

Sections 37(1)(a) – (ab) Communications with the sovereign, the heir to the throne and the second in line to the throne

18. Sections 37(1)(a) - (ab) state;

37.— (1) Information is exempt information if it relates to—

(a) communications with the Sovereign,

(aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,

(ab) communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to,

the Throne.

19. Prior to 19 January 2011, all of the provisions of section 37 were qualified, meaning each was subject to a public interest test.
20. However, the Constitutional Reform and Governance Act 2010 amended section 37 to make the following categories of information subject to an absolute exemption:
 - information relating to communications with the sovereign [section 37(1)(a)]; and
 - information relating to communications with the heir to the Throne or second in line to the Throne [section 37(1)(ab)].
21. This means that an authority no longer has to apply the public interest test to information falling within these categories; it can apply the exemption without any further qualification.
22. The Constitutional Reform and Governance Act also introduced a new category of absolutely exempt information through the addition of section 37(1)(ab).
23. Section 37(1)(ab) provides that, where a person has inherited the role of sovereign, heir, or second in line to the Throne, information that relates to communications with that person **before** they ascended to that role will be absolutely exempt.

Example

The person who was third in line to the throne ascended to become second in line.

Several months later a government department received an FOI request for copies of any correspondence it had exchanged with that person.

The information covered by this request included a letter the person sent to the department when he was third in line to the throne.

This information was caught by the scope of section 37(1)(ab). This is because it is a communication with a person

who subsequently became the second in line to the throne.

Section 37(1)(ac) Communications with the Royal Family

24. Section 37(1)(ac) states;

37.— (1) Information is exempt information if it relates to...

(ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs)...

25. Section 37(1)(ac) provides an exemption for information relating to communications with the Royal Family. It is a qualified exemption and therefore subject to a public interest test.

26. It can only be applied to information that falls outside the scope of the three absolute exemptions discussed above [sections 37(1)(a) through to (ab)].

27. If the information falls under **both** section 37(1)(ac) **and** one of the absolute exemptions, then the authority must apply the latter.

Example

An authority received a request for a copy of an email sent by a member of the Royal Family to the heir to the throne.

The authority wasn't able to apply section 37(1)(ac) because the information also fell within the scope of section 37(1)(aa) [the exemption for communications with the heir to the throne].

It must therefore rely on section 37(1)(aa).

28. There is no strict legal definition of the term 'Royal Family'. As a general rule it should be taken to mean all individuals who

are entitled to hold the title of 'Majesty' or 'Royal Highness' and their spouses.

29. If the authority is in any doubt about the status of the individual concerned, it should consult the website of the British Monarchy (www.royal.gov.uk) as this contains an official list of the current members of the Royal Family.
30. Section 37(1)(ac) doesn't cover communications with persons who have subsequently become members of the Royal Family. This means that, if a person has joined the Royal Family through marriage, any communications that predate their membership of the Family will not be covered by the exemption.
31. By the same measure, if the information relates to an individual who has lost their Royal status, the exemption will only cover the period during which that person was a member of the Royal Family.

Section 37(1)(ad) Communications with the Royal Household

32. Section 37(1)(ad) states

37.— (1) Information is exempt information if it relates to...

(ad) communications with the Royal Household (other than communications which fall within any of paragraphs (a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs)...

33. Section 37(1)(ad) provides an exemption for information relating to communications with the Royal Household.
34. Section 37(1)(ad) is a qualified exemption, so the authority will need to carry a public interest test.
35. An authority may only apply section 37(1)(ad) where the information falls outside the scope of sections 37(1)(a) through to 37(1)(c).

36. If the information is caught both by section 37(1)(ad) **and** one or more of sections 37(1)(a) through to (c) then the authority must apply the latter.

Example

In this hypothetical example, an authority received a request for copies of correspondence between the Royal Household and Prince Edward.

The authority wouldn't be able to apply section 37(1)(ad) because the information also fell within the scope of 37(1)(ac) [the exemption for communications with the Royal Family].

It would therefore have to rely on section 37(1)(ac) to withhold the information.

37. The Royal Household comprises all the households of members of the Royal Family. Each household comprises the permanent members of the relevant private office and those who from time to time assist members of the Royal Family with their private and public duties. However, contractors supplying goods and services to the Royal Household, including by royal warrant, aren't included in this definition.
38. Where an authority is still unsure whether the communication relates to the Royal Household, it would be best advised to refer to the more detailed description in the 'Royal Household' section of the Royal website (www.royal.gov.uk)

Sections 37(1)(a) – (ad) and historical records

39. Sections 63(2E) and (2F) state:

63.—(2E) Information cannot be exempt information by virtue of any of paragraphs (a) to (ad) of section 37(1) after whichever is the later of—

(a) the end of the period of five years beginning with the date

of the relevant death, and

(b) the end of the period of twenty years beginning with the date on which the record containing the information was created.

(2F) In subsection (2E)(a) “the relevant death” means—

(a) for the purposes of any of paragraphs (a) to (ac) of section 37(1), the death of the person referred to in the paragraph concerned, or

(b) for the purposes of section 37(1)(ad), the death of the Sovereign reigning when the record containing the information was created.

40. Under Section 63(2E) of FOIA, an authority cannot apply sections 37(1)(a) through to (ad) if the later of the following dates has passed:
- a period of five years from the date of the ‘relevant death’; or
 - a period of 20 years from the creation of the record containing the information.
41. For the purposes of sections 37(1)(a) to (ac), the ‘relevant death’ means the death of the individual to whom the communication relates.
42. For the purposes of section 37(1)(ad), the ‘relevant death’ means that of the Sovereign who was reigning when the record containing the information was created.
43. The following are hypothetical examples of how section 63(2E) might apply in practice.

Example

In August 2014 a public authority received a request for the minutes of a meeting it held with a member of the Royal Family in March 1999.

This information fell within the scope of section 37(1)(ac) [communications with other members of the Royal Family].

The family member in question died in April 2000.

This means that:

- a period of five years from the date of the 'relevant death' elapsed in April 2005.
- a period of 20 years from the date the record was created will elapse in March 2019.

In this case, the later date (March 2019) has yet to pass, so the authority will be able to apply section 37(1)(ac) to the letter.

Example 2

In June 2014, a public authority received a request for a copy of a letter it sent to member of the Royal Family in November 1985.

The Royal Family member in question died in October 2004.

This means that:

- a period of five years from the date of the 'relevant death' elapsed in October 2009.
- a period of 20 years from the date the record was created elapsed in November 2005.

In this example the later date (October 2009) has passed, so the authority can't apply section 37(1)(ac) to the letter.

The public interest test for sections 37(1) (ac) and (ad)

44. Sections 37(ac) and (ad) are subject to a public interest test. This means that they can only be maintained if the public

interest in maintaining the exemption outweighs the public interest in disclosure.

45. When applying the test for these exemptions it is important to keep in mind that the public interest isn't the same as what interests the public. The fact that the lives of the Royal Family are often the focus of considerable public and media attention does not automatically mean that there will be a public interest in disclosure.
46. Furthermore, authorities should avoid basing their public interest arguments purely around the seniority of the Royal Family member(s) in question. The focus of the test should be on the content and sensitivity of the information being considered for release, not the individual's position within the Royal Family.
47. The key public interest factors inherent in sections 37(ac) and (ad) are summarised below.
48. More general advice on how to conduct a test can be found in our guidance [The public interest test](#).

Factors in favour of disclosure

49. Appropriate weight should always be afforded to the general argument that disclosure promotes transparency and accountability of public authorities.
50. The arguments in favour of disclosure will also be strengthened if the information would broaden public understanding of the Royal Family's constitutional role and provide a greater insight into the nature of its relationship with central government and other public authorities. This factor is likely to carry more weight if that information would help the public to understand what influence, if any, the Royal Family exerts in matters of public policy.
51. If the information infers that the authority gave unexpected weight to the views of the Royal Family then this will further strengthen the arguments in favour of disclosure.
52. Conversely, the arguments in favour of disclosure could also carry some weight if the information shows that this was not the case, as its release could help to reassure the public that

authorities are not unduly influenced by the views of the Royal Family.

53. Finally, the public interest arguments in favour of disclosure are likely to carry additional weight if the information would in some way serve to further public debate about the constitutional role of the Royal Family or inform broader debate about constitutional reform.

Factors in favour of maintaining the exemption

Confidentiality of communications with public authorities

54. Members of the Royal Family will sometimes carry out public roles where their performance is dependent on maintaining the confidentiality of their communications with public authorities.
55. There is an inherent public interest in preserving that confidentiality where disclosure would compromise a Family members' ability to carry out their role.
56. For instance, some members of the Royal Family perform ambassadorial roles in the form of official foreign visits and meetings with foreign dignitaries. If disclosure would impair their ability to successfully fulfil those ambassadorial functions then there will be a strong public interest in maintaining the confidentiality of the information. This point is further illustrated in the hypothetical example below.

Example

A government department sent a confidential briefing to a member of the Royal Family. The briefing contained its candid views on the head of state of a country she was scheduled to visit on an official engagement. The visit was part of a series of diplomatic overtures by the UK government designed to improve relations with that country.

The department subsequently received a FOIA request for copies of any correspondence it had exchanged with the Royal Family in connection with the visit.

If the briefing was released it could have strained relations between the two countries, and jeopardised the success of the

Royal visit. The family member's ability to perform her role could therefore hinge on the briefing remaining confidential. In this case, therefore, there was likely to be a strong public interest in maintaining the confidentiality of the communication in question.

Preservation of political neutrality

57. The Royal Family perform a wide variety of public and private roles and it follows that their communications could contain views and opinions on a whole range of subjects.
58. In some cases, the content (or context) of these communications may give the misleading impression that a member of Royal Family holds a particular political viewpoint or preference.
59. There is an inherent public interest in preserving the political neutrality of the Royal Family, as this is key to the stability of our constitutional democracy, and cannot be restored once lost. Therefore an authority should afford some weight to this factor where it is satisfied that disclosure would compromise the political neutrality of the Royal Family in this way.

Timing and security

60. Timing is an important factor in any case where the information relates to a public engagement, for example a request for correspondence about a royal visit.
61. The public interest in withholding the information is likely to be very strong where:
 - the engagement has still to take place; and
 - the information contains details about the arrangements of the event, the disclosure of which would pose a security risk to the Royal Family.
62. However, there may still be a strong public interest argument for withholding material after the engagement if it contains information that could undermine the security of future royal events.

Example

In 2014 an NHS Foundation Trust received a request for letters it exchanged with the Royal Household regarding the opening of a hospital wing by a member of the Royal Family in 2013.

These letters included details of the routine security measures taken by members of the Royal Family at public engagements. The disclosure of this information could compromise royal security at future events. In this case, therefore, there was a strong public interest argument for withholding the information.

63. There may also be some crossover with national security and health and safety exemptions. (See the section below entitled, 'Interaction between Sections 37(1)(a) – (ad) and other exemptions').

Public versus private life

64. It is important to keep in mind that members of the Royal Family and Household are private individuals in their own right. This is significant because there is an inherent public interest in protecting the privacy of individuals.
65. There is also an inherent public interest in protecting the Royal Family's dignity in order to preserve their position and fulfil their constitutional role as a unifying symbol for the nation.
66. However, the Royal Family's unique role means that their public and private lives will often overlap. Where they do, the public interest in preserving the Royal Family's privacy and dignity is more likely to be a factor if:
- the information clearly relates to a private matter; and
 - it concerns a situation where the individual in question would have had a reasonable expectation of privacy.
67. Authorities should also note that, where information is of a private nature, there may be some crossover with section 40 (the exemption for personal information) and section 41

(Information provided in confidence). (See the section below entitled, 'Interaction between sections 37(1)(a) – (ad) and other exemptions').

Safe space

68. There is an inherent public interest in allowing a 'safe space' for the Royal Family and public authorities to engage with each other in relation to their respective roles.
69. The disclosure of information about a live issue risks throwing a spotlight on any ongoing deliberations, and may leave those exposed by disclosure open to premature public or media scrutiny and pressure.
70. In the case below, the need for 'safe space' was the key factor in the Commissioner's decision that the public interest lay in favour of maintaining the exemption.

In [FS50497753](#) the complainant asked London Metropolitan University for copies of recent minutes from its Academic Council.

The University applied several exemptions to the request including section 37(1)(a).

The Commissioner accepted that section 37(1)(a) was engaged because the information related to communications between a member of the Royal Family and the university.

In considering the public interest the Commissioner found the requirement for safe space to be the deciding factor.

'...the disputed information does not in itself contain anything of upmost significance or that is injurious to a party. Although the information is not trivial, the Commissioner considers it unlikely that its disclosure would trigger, or otherwise inform, public debate to any meaningful extent.

The Commissioner considers that this finding would on the one hand serve to weaken the weight of the public interest in disclosure. Yet, on the other hand, he recognises that it may also indicate that the harm arising from the release of the information is unlikely to be particularly severe, in which event

the case for disclosure should prevail.

'Ultimately, however, the Commissioner has found compelling the fact that the discussions to which the information relates were not completed by the time of the request. The Commissioner agrees with the University that in the circumstances it was preferable to allow the respective parties space in which to engage with each other away from the public glare so that a satisfactory outcome could potentially be achieved...' (Paras 39 - 41)

71. The timing of the request will be a crucial factor in determining the strength of any 'safe space' arguments.
72. Once the issue is no longer live, there shouldn't be any further need for safe space, and arguments for withholding the information on these grounds are unlikely to carry much weight.

Chilling effect

73. There is a risk that the disclosure of communications between the Royal Family and a public authority might inhibit both parties from exchanging free and frank views for fear that these might also be brought into the public domain. The resulting loss of frankness and candour could diminish the quality of advice provided by both parties, and lead to poorer decision making (the so called 'chilling effect').
74. Chilling effect arguments will carry most weight when the communications relate to an issue that is still 'live'. If the issue is no longer live then the arguments will invariably become more and more speculative as time passes.
75. Where an authority is relying on this argument, we would expect it to detail the specific detriment it believes would arise from the disclosure of the particular information in question.
76. Broader arguments, with little reference to the information, around the theme that disclosure would lead to a general 'chilling effect' on any future communications with the Royal Family are unlikely to carry much weight. This is because, the wider the authority's claims about the impact of the 'chilling effect', the harder it will be to sustain a convincing argument.

Interaction between sections 37(1)(a) – (ad) and other exemptions

77. The nature of the information covered by sections 37(1)(a) – (ad) means that there may be some crossover with other FOIA exemptions.
78. Firstly, if the communications were made or received by identifiable individuals then there is likely to be some overlap with [Section 40 \(the exemption for personal information\)](#).
79. If there is evidence that communications were exchanged in the reasonable expectation that they would remain confidential then there may also be some crossover with [Section 41 \(Information provided in confidence\)](#).
80. If the communications concern the organisation or security of Royal engagements, then there may an overlap with [Section 23 \(the exemption for information provided by, or relating to, security bodies\)](#), [Section 24 \(the exemption for national security\)](#) and [Section 38 \(the health and safety exemption\)](#).
81. If the communications relate to royal engagements in other countries or meetings with foreign dignitaries then there may be a crossover with [Section 27 \(international relations\)](#).
82. These examples are not intended to be exhaustive and other exemptions may apply, depending upon the specific circumstances of the case.

Section 37(1)(b): The awarding by the crown of honours and other awards

83. Section 37(1) states:

<p>37.—(1) Information is exempt information if it relates to...</p> <p>(b) the conferring by the Crown of any honour or dignity.</p> <p>(2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).</p>
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84. Section 37(1)(b) provides an exemption for information relating to the conferring of any honour or dignity by the crown.
85. The function of the exemption is to help preserve the integrity and robustness of the honours system in order to ensure that awards continue to be conferred solely on merit.
86. The need to maintain public confidence in the honours system is of particular importance given that recipients often enjoy privileged positions, and, in some cases, will be entitled to take up public roles (for example, a working peer can take up a seat in the House of Lords).
87. The exemption also plays an important role in protecting the confidentiality of individuals who have participated in the honours process.
88. Section 37(1)(b) is class based so there is no need to demonstrate prejudice before engaging the exemption.
89. However, it is also a qualified exemption so the authority will be required to carry out a public interest test.
90. The exemption only covers honours and awards **conferred by the crown**. This means that it can't be applied to information relating to honours and awards conferred by local authorities or other institutions (for example international bodies, humanitarian groups or newspapers).

The definition of an honour or award

91. There is no legal definition of honour or dignity. However, the following list illustrates the range of honours and dignities to which the exemption can apply (please note that this list is not intended to be exhaustive):
 - various orders of knighthood;
 - appointment of Knights Bachelor;
 - military medals and decorations;
 - gallantry medals;
 - other medals and decorations conferred by the sovereign;

- other awards granted by the sovereign;
- foreign or international awards where the sovereign's permission is required, or sought, to accept and wear them;
- creation of life peers;
- creation of hereditary titles;
- appointment of lords and Vice-Lords Lieutenant;
- appointment of Governor-Generals, Governors and Lieutenant Governors; and
- appointments to the Privy Council.

92. The term '**relates to**' should be interpreted broadly. This means that the scope of the exemption will cover every aspect of the honours process from nomination, through to the publication of the honours list and beyond.

93. It will therefore encompass information such as:

- lists of nominees;
- discussions around the merits and achievements of nominees;
- third party submissions regarding the suitability of candidates;
- the reasoning behind the decision to confer/not to confer an honour or award;
- discussions surrounding the forfeiture of an honour or award;
- records relating to deceased nominees or award holders; and
- the policies and procedures that underpin the process (for example the qualifying conditions for a particular honour).

94. The following decision notice provides an illustration of how broad the scope of the exemption can be. It also demonstrates that the coverage of the exemption isn't necessarily limited to material about the awards process itself.

[FS50441355](#) concerned a request to the House of Commons for information relating to the coat of arms of John Bercow, the Speaker of the House.

The Commissioner accepted that the granting of a coat of arms constituted the conferring of a dignity for the purposes of section 37(1)(b). He also ruled that information about the production and design of the coat of arms was information relating to the conferring of that dignity.

'...the Commissioner notes that the section 37(1)(b) provides an exemption for information which 'relates to' the conferring of an honour or dignity. The Commissioner interprets this phrase broadly and therefore in this context information relating to the conferring of a dignity will include, for example, information which focuses on the design process, the artists, the registering of the coat of arms, etc. In light of this broad reading of the exemption the Commissioner is satisfied that all of the information withheld by the House falls within the scope of section 37(1)(b)'. (Para 11)

95. Please note, however, that the above examples are also not intended to be exhaustive.

Section 37(1)(b) and historical records

63.—(3) Information cannot be exempt information by virtue of section 37(1)(b) after the end of the period of sixty years beginning with the year following that in which the record containing the information was created.

96. Under section 63(3) information relating to honours and dignities remains exempt for a period of 60 years, after which

the public authority is no longer entitled to refuse to communicate the information.

97. This 60 year period begins the year after the record containing the information is created.

Example

In 2014 a public authority received a request for records of the decision to award a named individual a peerage in 1952.

In this case the 60 year period would commence in 1953 (the year after the records were created) and elapse in 2013.

As the 60 year period ended in 2013, the authority wasn't able to apply section 37(1)(b) to the records.

98. However, the authority could still apply section 40 in respect of any personal information caught by the request (assuming the individual(s) concerned are still alive) or section 41 (if the information was provided in confidence).

The public interest test for section 37(1)(b)

Factors in favour of disclosure

99. There is a general public interest in having an honours system that is objective, accountable and transparent so that the public can understand how and why decisions are made.
100. If the public can see how the process works then they are more likely to have confidence that honours are conferred on merit, and not on the basis of other factors such as a candidate's connections or political views. It will also help reassure them that the relevant decision makers aren't subject to any form of undue influence.
101. The arguments in favour of disclosure are likely to carry additional weight if disclosure would help to further public debate around the criteria for conferring awards.

Factors in favour of maintaining the exemption

Safe space

102. The relevant decision makers should be able to discuss and evaluate each individual case on its own merits, free of pressure and scrutiny from the public, media, lobbyists and the candidates themselves. There is, therefore, an inherent public interest in affording those decision makers 'safe space' to discuss nominations.
103. Safe space arguments will only carry weight where the nomination process is still ongoing. Once the decision to confer an honour has been taken, the need for safe space will no longer be a factor as the risk of external pressures influencing the outcome will have faded.

Confidentiality and the 'chilling effect'

104. The honours process relies on the principle of confidentiality, both in respect of the views put forward by the members of the nomination committees and the submissions provided by third parties concerning the suitability of nominees.
105. There is a risk that the routine disclosure of the participants' views through FOIA could erode that principle of confidentiality. This in turn could lead to a 'chilling effect' whereby participants will be less willing to express their free and frank opinions in future.
106. Such a loss of frankness and candour could result in poorer quality debate and decision making and have a detrimental effect on the robustness of the nomination process.
107. The risk of a 'chilling effect' will be at its greatest during the nomination process and will continue to be a significant issue in the period immediately following the publication of the honours list. However, the risk will gradually begin to decrease as time passes and the participants' expectations of confidentiality start to lessen, although it will never diminish entirely.
108. In terms of the nominees themselves, they are likely to have a reasonable expectation that their nominations will remain confidential until the honours list is officially published. Once the list has been published then this should no longer be a factor.

109. Candidates who were nominated but did not receive an honour might reasonably expect this confidentiality to extend beyond the publication of the honours list, given the potential distress and embarrassment they may suffer, should this become public knowledge. In that situation, strong weight must be given to the heightened expectation of confidence those individuals might have.

Interaction between section 37(1)(b) and other exemptions

110. If the requested material contains references to identifiable individuals then there is likely to be an overlap with section 40 (the exemption for personal information).

111. Authorities should pay particular attention to section 40(4) as this provides an exemption for personal information where the subject of that information wouldn't be entitled to the information themselves under their right of 'subject access' (as provided by section 7 of the Data Protection Act 1998 (DPA)).

112. This is significant because section 7(3)(b) of the DPA states that personal information processed for the purposes of the 'conferring by the Crown of any honour or dignity' is exempt from the right of subject access.

113. However, an authority will only need to consider section 40(4) where it can't rely on section 37(1)(b).

114. Authorities should also keep in mind that information only qualifies as personal information where it relates to a living individual. This means that section 40 cannot be applied to information about deceased individuals.

115. For further information on the application of section 40, please see our guidance [Personal information \(section 40 and regulation 13\)](#).

116. If the scope of the request covers information provided by third parties regarding the merits and suitability of a nominee then there may also be some overlap with section 41 (information provided in confidence).

117. For more information on section 41, please see our guidance [Information provided in confidence](#).

118. These examples are not exhaustive. Other exemptions may apply. As always it is the specific circumstances of the case that will dictate the application of exemptions.

Section 37(2): The exemption from the duty to confirm or deny

37.—(2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

119. Section 1(1)(a) of FOIA places public authorities under a duty to confirm or deny whether they hold the requested information.

120. However section 37(2) provides an exclusion from this duty where the information falls under one of the provisions of section 37(1). This provides the authority with the option to issue a neither confirm nor deny (NCND) response.

121. The process the authority must follow to apply section 37(2) will differ depending on whether the provision being claimed is absolute or qualified.

Issuing a NCND response where the information falls under an absolute exemption [sections 37(1)(a), 37(1)(aa) or 37(1)(ab)]

122. If the authority is satisfied that one of the absolute provisions is engaged, then it can issue a NCND response without further qualification. There is no requirement to demonstrate prejudice or conduct a public interest test.

123. The most likely situation in which an authority will need to use an NCND response will be where it has grounds to believe that confirming or denying the existence of the information would harm the interests the exemption is designed to protect.

124. If the authority doesn't have any obvious need to rely on the NCND exclusion, then it may wish to consider issuing a 'confirm or deny' response as usual.

Issuing an NCND response where the information falls under a qualified exemption [Sections 37(1)(ac), 37(1)(ad) or 37(1)(b)]

125. If the authority is claiming a qualified provision then the application of section 37(2) will be subject to a public interest test.
126. This means that the authority will only be able to issue a NCND response if the public interest in concealing whether the information is held outweighs the public interest in confirming or denying that it's held.
127. The public interest arguments should focus on the specific interests protected by the provision that would be engaged.
128. The following sections of this guidance outline the particular interests and public interest factors most relevant to each exemption:
- 'The public interest test for sections 37(1) (ac) and (ad)'
 - 'The public interest test for section 37(1)(b)'
129. The authority must then balance these factors against the specific public interest in knowing whether that information is held by the organisation. Even if there is significant public interest in using NCND, authorities will still need to confirm or deny if there is equal or stronger public interest in knowing whether the information is held.

More information

130. Additional guidance is available on [our guidance pages](#) if you need further information on the public interest test, other FOIA exemptions, or EIR exceptions.
131. This guidance has been developed drawing on ICO experience. Because of this it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunals and courts.

132. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
133. If you need any more information about this or any other aspect of freedom of information, please [contact us](#), or visit our website at www.ico.org.uk.