

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2024

Public Authority: Cabinet Office
Address: 5 Downing Street
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested a copy of the Honours Secretaries' Handbook and related validation forms. The Cabinet Office disclosed the forms in full, and the Handbook with redactions made under sections 23(1) (Information supplied by, or relating to, bodies dealing with security matters) or 24(1) (National security) in the alternative, section 37(1)(b) (The conferring by the Crown of any honour or dignity) and section 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that section 37(1)(b) was applied correctly to all of the withheld information.
3. The Cabinet Office did not complete its deliberations on the balance of the public interest within a reasonable time, and therefore breached section 17(3) of FOIA.
4. The Commissioner does not require further steps.

Request and response

5. On 9 November 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I note that Chapter 6 of the Honours Secretaries Handbook, along with forms provided to the Lord Lieutenant were released under ICO Judgement FS50722418¹ stating:

'The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation. Disclose the withheld information. That being Chapter 6 of the Honours Secretaries' Handbook and the two versions of the validation form'.

For the same reasons set out in this ICO decision notice, I request that the most up to date full version of the Honours Secretaries' Handbook is released, including any further updates with respect to the existing Chapter 6 and other forms that were released in accordance with ICO Judgement FS50722418.

You may redact the document as necessary to keep any personal information confidential."

6. The Cabinet Office contacted the complainant on 10 December 2021, stating that it required further time to consider the public interest relating to section 37 of FOIA. It extended the time for considering the public interest several times.
7. Following the Commissioner's intervention, the Cabinet Office responded to the request on 30 March 2022. It disclosed two forms in full: 'Validation comments from the Lord-Lieutenant' and 'Nomination for a UK National Honour Departmental Comments'.
8. It disclosed a copy of the Honours Secretaries' Handbook, with redactions made for information exempt under the following exemptions:
 - sections 23(1) (Information supplied by, or relating to, bodies dealing with security matters) or 24(1) (National security) in the alternative;
 - section 37(1)(b) (The conferring by the Crown of any honour or dignity); and
 - section 40(2) (Personal information).
9. It said the public interest favoured maintaining these exemptions.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2614055/fs50722418.pdf>

10. The complainant requested an internal review on 31 March 2022. The Cabinet Office provided the internal review outcome on 24 June 2022. It upheld its decision to apply the exemptions.

Scope of the case

11. The complainant contacted the Commissioner on 24 June 2022 to complain about the way his request for information had been handled. He believed there was clear public interest in the disclosure of the remaining information and that it was in keeping with other decisions issued by the Commissioner on related matters².
12. The complainant also expressed concern at the substantive delay in responding to his request.
13. The analysis below considers the Cabinet Office's application of the cited exemptions. The Commissioner has considered the delay in responding to the request under section 17(3) of FOIA. He has also commented on the delay in conducting the internal review in the "Other matters" section of this notice.
14. The Commissioner has viewed the withheld information.

Reasons for decision

Section 37(1)(b) – The conferring by the Crown of any honour or dignity

15. Section 37(1)(b) states that information is exempt if it relates to the conferring by the Crown of any honour or dignity. It is a class-based exemption, meaning that if the information is of the type described in the exemption, then it is covered by that exemption. The Cabinet Office considered that section 37(1)(b) applied to all of the remaining withheld information.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021337/ic-119699-b5y0.pdf>, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021336/ic-111465-j9k5.pdf> and <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4026027/ic-184190-n1k1.pdf>

16. The remaining withheld information comprises parts of the Honours Secretaries' Handbook. This information sets out certain processes that government departments should follow when making honours nominations and undertaking other necessary work in relation to the honours system.
17. The Commissioner is satisfied that the withheld information clearly falls within the scope of the exemption at section 37(1)(b) as it relates to the conferring of honours. Section 37(1)(b) is, therefore, engaged.

Public interest test

18. Section 37 is subject to a public interest test under section 2(2)(b) of FOIA. This means that, even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption is stronger than the public interest in disclosing the information.

Public interest arguments in favour of disclosing the information

19. In his complaint to the Commissioner, the complainant argued:

“Much of the information in this handbook, apart from personal details, should be released into the public domain. Honours should be, and must be assessed in a transparent way and it is in the public interest to fully understand the process and checks made for there to be full confidence in the honours system. There have been numerous examples, such as HMRC Checks Guidance Documents, which the cabinet office refused to release and later were ordered to be released in the public interest. The information set out in my request should be released and I disagree with the exemptions the cabinet office site [sic].”
20. He also referred the Commissioner to his previous decisions on related matters which had favoured disclosure, linked to in paragraph 11, above.
21. When responding to the request, the Cabinet Office told the complainant:

“There is a general public interest in the disclosure of information and I recognise that openness in government may increase public trust in and engagement with the government. I recognise that the decision to award an honour has a public significance and that it is in the public interest that the process of award of honours and dignities is accountable and transparent.”
22. It told the Commissioner:

"We recognise there is a general public interest in the honours process and the importance of transparency in government that encourages public interest, and the public's awareness of how the honours system works, and the way in which such decisions are taken."

Public interest arguments in favour of maintaining the exemption

23. The Cabinet Office told the complainant:

"The principle of non-disclosure of information ensures that committee members are provided a safe space to discuss honours nominations freely and honestly. The confidentiality of the proceedings also permits those who assess nominations to do so free from lobbying on behalf of potential or actual candidates. Confidentiality, therefore, ensures that decisions about the awards of honours continue to be taken on the basis of full [sic] and honest information about the nominee."

24. The Cabinet Office told the Commissioner:

"The content of the process needs to remain confidential in order to maintain the integrity of the honours system and to ensure that decisions about honours and awards may continue to be taken on the basis of full and honest information. We believe it is crucial that those who offer opinions may do so freely and honestly, in confidence, on the understanding that their confidence will be honoured.

It has always been the case that those involved in the system require the freedom to be able to discuss and deliberate individual honours cases in a safe space. The Commissioner has recognised that for the honours system to operate efficiently and effectively there needs to be a level of confidentiality which allows those involved in the system to hold free and frank discussions.

[...]

Parliament also recognised the particular sensitivity of releasing information about honours by expressly providing that the exemption relating to honours information does not expire after 30 years (now 20 years) but instead remains applicable for 60 years after the date of its creation (see section 63(3) of the [Act](#)). We believe that the public interest inherent in section 37(1)(b) is the protection and preservation of the integrity and robustness of the honours system. We do understand that section 37(1)(b) is not an absolute exemption and we do not impose this exemption without considering the merits of each case. This is evidenced by the disclosure of some of the Handbook's content in this case. However, in this case for the reasons above, we

consider the public interest continues to favour withholding the information and that the confidentiality of this information is on-going.”

25. The Cabinet Office also provided some confidential submissions, setting out specific reasons why disclosure would be prejudicial to the efficient and fair operation of the honours process. The Commissioner cannot reproduce them here, as it would undermine reliance on the exemption being cited, but he has taken them into account in his assessment of the matter.

Balance of the public interest

26. The Commissioner accepts that 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.
27. If the public can see how the process works, 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 also helps reassure the public that the relevant decision-makers are not subject to any form of undue influence.
28. In general, where disclosure would help to further public debate around the criteria for conferring awards, the arguments in favour of disclosure are likely to carry additional weight. However, on that point, the Commissioner notes that the withheld information is not on the criteria for awards. It is information on the procedures to be followed during the process of determining awards.
29. The honours process relies on the principle of confidentiality, both in terms of the submissions regarding individual nominees and the wider framework that ensures nominations are fair, representative and well researched.
30. The Commissioner recognises there is a safe space argument that relevant decision-makers should be able to discuss and evaluate each individual honours case free from pressure and scrutiny from the public, media, lobbyists and the candidates. More generally, the process should be sufficiently robust and not open to manipulation; confidentially regarding the precise procedures followed during the nomination and vetting process protects the integrity of that process.
31. The complainant has referred the Commissioner to previous decisions in which he has ordered disclosure of honours-related information. While acknowledging that in those cases he found the public interest favoured disclosure, the Commissioner would state that each request must be

considered on its own merits, and according to the actual information being withheld.

32. In this case, the Commissioner is satisfied from the Cabinet Office's submissions (which, as set out above, he cannot reproduce here) that disclosure of the withheld information (which represents only a small part of the overall Handbook) could adversely affect or influence the future behaviour of some of those nominating, some of those nominated and some of those whose opinions are sought as part of the process. There is a real chance that this would prejudice the objectivity and fairness of the honours system, which would devalue both its purpose and public standing.
33. Mindful that the public interest inherent in the exemption at section 37(1)(b) is the protection and preservation of the robustness and integrity of the honours system, the Commissioner finds in this case that the public interest in maintaining the exemption is stronger than the public interest in disclosure. The Cabinet Office was therefore entitled to rely on section 37(1)(b) of FOIA to withhold the remaining information.
34. As section 37(1)(b) has been correctly applied to all of the remaining withheld information, the Commissioner has not found it necessary to consider the Cabinet Office's application of sections 23/24 in the alternative, or section 40, to the same information.

Procedural matters

Time taken to consider public interest and respond to request

35. Section 10(1) of FOIA states that on receipt of a request for information a public authority must respond promptly, and within 20 working days.
36. However, where a qualified exemption is being considered, under section 17(3) a public authority can have a 'reasonable' extension of time to consider whether the balance of the public interest favours maintaining the exemption or disclosing the information. While FOIA does not define what might constitute a 'reasonable' extension of time, the Commissioner considers that a public authority should normally take no more than an additional 20 working days to consider the public

interest, meaning that the total time spent dealing with the request should not exceed 40 working days³.

37. While the Cabinet Office did tell the complainant it needed further time to consider the public interest test, in all, it took 98 working days to provide its response to the request.
38. The Commissioner considers that the Cabinet Office breached section 17(3) of FOIA as it did not complete its deliberations on the public interest test within a reasonable time.
39. The Commissioner has made a record of this breach for monitoring purposes.

Other matters

Section 45 – Internal review

40. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
41. The section 45 Code of Practice on request handling sets out, in general terms, the procedure that should be followed. The Code states that internal reviews should provide a fair and thorough review of procedures and decisions taken, and pay particular attention to concerns raised by the applicant. They should be conducted promptly and within reasonable timescales.
42. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
43. In this case, the Cabinet Office took 56 working days to complete the internal review. The Commissioner therefore finds the Cabinet Office did not conform with the section 45 Code of Practice in this regard.

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

44. The Commissioner has made a record of this for monitoring purposes.

Right of appeal

45. 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

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

46. 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.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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