

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 2021

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information concerning Waheed Saleem and the honours system.
2. The Commissioner's decision is that the Cabinet Office has appropriately applied section 21(1), information accessible by other means, section 40(2), personal information and section 37(1)(b), the conferring by the crown of any honour or dignity, with the public interest favouring maintaining the exemption. The Cabinet Office failed to issue its refusal notice to the complainant within the required timescale. The Commissioner has therefore recorded a breach of the procedural sections 10(1) and 17(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Background

4. Nominations for honours are submitted to the relevant honours committee for review before they are sent to the Main Honours Committee. Information on the honours system is available online at various GOV.UK links¹.
5. This case relates to Mr Waheed Saleem who is a member of the Community and Voluntary Service Honours Committee.
6. An individual member of a particular honours committee, such as, in this case, the Community and Voluntary Service Honours Committee, participates in the review of nominations for people involved in community and voluntary service before nominations are passed to the Main Honours Committee.

Request and response

7. On 15 May 2020, the complainant wrote to the Cabinet Office and requested information in the following terms:

“Please would you let me know in writing if you hold information of the following description: Concerning Waheed Saleem:

 1. His role in the honours system;
 2. How he was chosen for this role including correspondence, CV, references, application forms;
 3. The work he does in the honours system including making recommendations for honours;
 4. How many people he has recommended for honours, including the year in which he recommended them;
 5. The rules, regulations and standards which he has been informed must be upheld within the honours system;
 6. How many people he has suggested should not be given honours, including the year when he made such suggestions.”
 8. The Cabinet Office responded on 23 July 2020 with a refusal notice in reliance of section 37(1)(b) - conferring by the Crown of any honour or
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¹ [Honours committees - GOV.UK \(www.gov.uk\)](http://www.gov.uk) [How the honours system works - GOV.UK \(www.gov.uk\)](http://www.gov.uk) [Honours: lists, reform and operation - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

dignity, section 40(2) - personal information and section 21(1) – information accessible by other means.

9. Following an internal review the Cabinet Office wrote to the complainant on 13 August 2020 upholding its initial response.

Scope of the case

10. The complainant contacted the Commissioner on 13 August 2020 to complain about the way his request for information had been handled. He explained:

"I requested some details from the Cabinet Office about the role played in the Honours System by Waheed Saleem...., who introduced himself on his LinkedIn profile by stating that he worked for the Cabinet Office "making recommendations for UK honours for people involved in the community and voluntary sectors".

11. The Commissioner considers the scope of her investigation is the application of section 37(1)(b) to points 3, 4, 5 and 6 of the request; section 21(1) to points 1, 3 and 5 and section 40(2) to point 2 of the request.

Reasons for decision

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

12. Section 37 FOIA states that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
13. The Cabinet Office provided the Commissioner with the information falling within points 3, 4, 5 and 6 of the request which it considers to be exempt under section 37. The Cabinet Office explained that the information held regarding points 3 and 5 comprises generic information on the work of honours committee members and the regulations and standards applicable to all such members. The information on Mr Saleem's voting records requested at points 4 and 6 is specific to Mr Saleem.
14. In respect of points 3 and 5 of the request the Cabinet Office provided the Commissioner with the withheld information in the form of a particular document produced by the Honours and Appointments Secretariat of the Cabinet Office which is provided to Honours Committee members. The document illustrates the work Mr Saleem undertakes as a Committee member, including the rules, regulations

and standards which he is expected to uphold. The document is not specific to Mr Saleem but relates to all such Committee members.

15. The Commissioner is satisfied that all this information falls within the scope of the exemption at section 37(1)(b) as it relates to the conferring of honours.
16. Section 37(1)(b) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) FOIA. The Commissioner will consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest in disclosure

17. The complainant, in requesting an internal review, made various points to the Cabinet Office, as follows:
 - Mr Saleem publicly advertises his role on his LinkedIn profile.
 - Mr Saleem did not describe his role as part of making collective recommendations.
 - As a Deputy Police and Crime Commissioner Mr Saleem has significant influence over the police whilst advertising that he recommends people for honours.
 - The Honours System is known to be vulnerable to abuse; internal mechanisms to prevent abuse have weaknesses.
 - The request targets an individual in the light of his conduct.
 - The complainant also made comments related to how Mr Saleem's conduct in public life has been the focus of media attention
18. Regarding the public interest in disclosure, the Cabinet Office noted the importance of transparency in government in encouraging public interest and awareness of how the honours system works and the way in which decisions are taken. The Cabinet Office acknowledged that, in respect of the document referenced in paragraph 14, there is a public interest in knowing more about the work of Committee members, how they make their recommendations regarding the award of honours and the rules to which they adhere.

Public interest in maintaining the exemption

19. The Cabinet Office explained in detail the procedures set out in the document referenced at paragraph 14 and the care with which particular documentation should be handled by Committee members. Disclosure of the information would potentially result in impacting Committee members' work within the honours system by being subject to unnecessary attention or lobbying. The Cabinet Office went on to explain its concerns that disclosure could have an inhibiting effect on the

conduct of Committee members. If details about the process to which they adhere was disclosed it could discourage them in the conduct of their work. The Cabinet Office advised:

"We consider that it is important that nothing should be done to discourage Committee members from having anything less than full and frank discussions with each other about the merits of honours nominations or giving a proper consideration to those nominations. This would undermine the honours system and would not be in the public interest."

20. The Cabinet Office also pointed out that the copy of the document held is not the most recent version of the document and its disclosure could therefore cause confusion as to the current practices of the honours process. It advised that the document was not written with the intention of being shared with an "external audience" and as a result it could:

"therefore result in the public gaining an unbalanced or inaccurate view of the honours process."

21. With regard to Mr Saleem's voting records the Cabinet Office considers that the information requested is honours information which relates to individual cases which should be kept confidential. It advised that:

"...people participate in the honours system on the understanding that their confidence will be upheld, even on the matter of whether they have been nominated for an honour. Confidentiality is essential to the integrity of the honours system and in guaranteeing its affective [sic] operation."

22. The Cabinet Office further explained its view that if this information was disclosed for all Committee members it would be possible to establish the proportion of nominated people who had progressed to be recommended for honours during a particular period and which members had supported most people, or least people. This could result in members being pressurised on their decisions and reasoning. The Cabinet Office advised:

"If Committee members were subjected to such scrutiny about their decision-making, it would deter potential candidates from serving on the honours committees and could inhibit the work of those people who did serve."

The Commissioner's view

23. The Commissioner is aware that the complainant considers that Mr Saleem has invited public scrutiny of the recommendations he makes for honours by "advertising his ability to do so" and therefore, in the complainant's opinion, public scrutiny of his recommendations may be expected.
24. The Commissioner notes that members of the honours committees, including the members of the Communities and Voluntary Services Committee, are listed on GOV.UK, as referenced above in paragraph 4. Mr Saleem is listed there. Mr Saleem brings attention to this in his LinkedIn profile but does not provide any information other than information which is already a public record. In this regard Mr Saleem is not the only member of the Committee to include his role in the honours system on their LinkedIn profiles.
25. It is not the Commissioner's role to judge or comment on the conduct of Mr Saleem, rather she must determine whether the public interest in disclosure of the requested information presents compelling reasons for disclosure.
26. The Commissioner has read the document referenced at paragraph 14. She considers that, although it provides further information on the role of members of the Committees considering nominations, and therefore provides additional transparency to the information already in the public domain, the document is primarily a briefing document for members. The information is not specific to Mr Saleem, nor is it specific to the particular Committee on which he serves, although it does provide the regulations and expectations placed on Committee members including specific procedures not in the public domain. She accepts the Cabinet Office's reasoning with regard to withholding the document to protect the operation of the honours system. She does not accept that an out of date document would cause confusion nor that a document to be placed in the public domain requires a specific or different drafting.
27. With regard to the recommendations made by Mr Saleem the Commissioner, having seen the figures, is not convinced of the significance of the numbers in isolation nor the public interest served in the knowledge of the figures irrespective of the points made by the complainant at paragraph 17.
28. The Commissioner accepts the possibility of the consequences, outlined in paragraph 22, resulting from the disclosure of the same information for all Committee members. She is less convinced that such scrutiny would deter candidates from serving on an honours committee.
29. Nevertheless, in balancing the public interest factors in favour of disclosure of the information at points 3, 4, 5 and 6 of the request against those in favour of maintaining the exemption the Commissioner

finds the public interest in not undermining the honours system carries a more compelling weight. In considering this decision the Commissioner has taken into account the extent to which the public interest is met by information already in the public domain regarding the operation of the Honours system. Her decision is that the exemption should be maintained.

Section 21 – Information accessible by other means

30. Section 21 FOIA states that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information. Section 21 is an absolute exemption and therefore not subject to a public interest test.
31. The Cabinet Office has relied on section 21 in regard to points 1, 3 and 5 of the request. It explained that the links highlighted above at paragraph 4² provide information on point 1, Mr Saleem's role, that being, an independent member of the Community and Voluntary Service Honours Committee. It went on to note that it is stated:

"Honours committees review honours nominations for people involved in specific activities (like arts and media or sport) which are then sent to the Main Honours Committee."

32. The Cabinet Office went on to explain:

"It therefore follows that Mr Saleem participates in the review of honours nominations for people involved in community and voluntary service and that those honours nominations are passed to the Main Honours Committee. That is his role - and work - in the honours system."

"This information could also be considered to be within the scope of request 5 as the sections³ entitled 'The integrity of the honours system', 'Merit checks' and 'Probity and propriety checks' touch upon the rules, regulations and standards which Mr Saleem is expected to uphold as a committee member."

33. The information provided in the GOV.UK links is not specific to Mr Saleem but nevertheless states his membership of the Community and Voluntary Service Honours Committee. The Commissioner accepts that

³ As seen at <https://www.gov.uk/government/publications/how-the-honours-system-works#how>

information relevant to request points 1, 3 and 5 is reasonably accessible.

34. The Commissioner is satisfied that the information identified above is reasonably accessible to the complainant and therefore exempt from disclosure (in response to a section 1 request) under section 21 of the FOIA.

Section 40 – Personal information

35. Section 40(2) FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
36. In this case the relevant condition is contained in section 40(3A)(a)(i)⁴. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
37. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
38. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

39. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
40. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
41. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

⁴ As amended by Schedule 19 Paragraph 58(3) DPA.

42. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
43. In this case Mr Saleem is clearly the focus of the request. The information requested at point 2 directly relates to Mr Saleem. The information comprises application papers including a CV and a summary from the interview panel concerned with Mr Saleem's appointment. This information therefore clearly falls within the definition of 'personal data' in section 3(2) of the DPA.
44. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
45. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

46. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

47. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
48. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.
49. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states: "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"⁵

⁵ Article 6(1) goes on to state that:

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

50. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:
- i) Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
 - ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
51. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

52. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, the narrower or more trivial the interest, the less likely it is that the interest will outweigh the rights of the data subject.
53. The Commissioner recognises that there will always be a legitimate interest in public authorities being transparent and accountable in their decisions.
54. The Cabinet Office advised:

"Mr Saleem is occupying a position of responsibility in which he exercises a degree of influence over the award of honours to members of the public. It follows that there is an interest in greater knowledge about his qualifications for his role as a Committee member."

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

55. The complainant has made clear his interests, and the interests of the public, in disclosure of information regarding Mr Saleem's CV, application form and other personal documentation. His view is that the points set out in paragraph 17 create a legitimate interest in the disclosure of the information at point 2 of the request.
56. The Commissioner considers that there is a legitimate interest in the public having confidence in the process of selection of those chosen to hold a role which influences the award of honours.

Is disclosure necessary?

57. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA – which is of course publication to the world at large – must therefore be the least intrusive means of achieving the legitimate aim in question.
58. The Cabinet Office explained:

"We do not believe that the disclosure of the information within the scope of request 2 would be necessary to further the interests of there being greater knowledge about Mr Saleem's qualifications to serve as a Committee member.

It is noted that Mr Saleem is the Deputy Police and Crime Commissioner for the West Midlands and has a number of public-facing roles. He is therefore a publicly prominent figure about whom much is already known by the public. A summary of his public roles is available via his LinkedIn profile."

59. In this case, the Commissioner notes that there is already information in the public domain in relation to Mr Saleem's qualifications and experience. However, disclosure of the information sought at point 2 of the request, relating to how Mr Saleem was chosen for his committee member role, would further meet the legitimate interests identified and cannot therefore be said to be unnecessary.

Balance between legitimate interests and the data subject's interests

60. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

61. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
62. In the Commissioner's view, a key issue is whether the individual concerned has a reasonable expectation that their information will not be disclosed. This expectation can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
63. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
64. The Commissioner is mindful that disclosure under the FOIA is disclosure to the world at large and not just to the requestor. It is the equivalent of the Cabinet Office adding the information to its website.
65. The Cabinet Office explained its view:
- "The disclosure of the application papers has the potential to cause distress to Mr Saleem given that an application for a role is an inherently personal document that is only supposed to be seen by potential employers."
66. Furthermore the Cabinet Office considers that since information concerning the interview application has not been shared with Mr Saleem, it could potentially cause him distress if it were shared with the public when the interview process, including any notes, are intended to be confidential.
67. The Cabinet Office acknowledged that information about the content of Mr Saleem's CV is already in the public domain. However, it explained that Mr Saleem will have determined what to put in his application for the purposes of the application process. It added that, for example, his CV may include particular emphases and information which is not in the public domain; including information about his personal motivations and his opinions about his qualifications for serving on the Committee. The content of comment regarding Mr Saleem's application is not in the public domain.

68. The Cabinet Office advised that the information is already known to a number of individuals in the Honours Secretariat for the purposes of providing support to the committee process.
69. The Cabinet Office has not consulted with Mr Saleem regarding his view of the disclosure of the information.
70. The Cabinet Office advised that the reasonable expectations of Mr Saleem are that information on his performance at interview and the application papers would not be put into the public domain.

The Commissioner's view

71. The Commissioner understands the complainant's reasoning in requesting the information at point 2 of the request. She accepts the legitimate interest in the public knowing about Mr Saleem's qualifications to occupy a position of responsibility and the assessment made of that as part of the application process within the honours system, in the light of the points raised by the complainant.
72. Notwithstanding this, the Commissioner accepts that Mr Saleem would reasonably not expect the disclosure of the requested information. She considers that the information already in the public domain regarding Mr Saleem's experience, positions and qualifications along with reported material in the media provides information to inform the public's legitimate interest. She considers that information from the interview process, including application papers and comments, holds the potential to cause distress to the data subject if such information was disclosed to the world at large.
73. Based on the above factors the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
74. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.
75. It is therefore the Commissioner's view that the Cabinet Office has correctly applied section 40(2) of the FOIA to withhold the requested information.

Procedural matters

Section 10 – Timeliness

Section 17 – Refusal of a request

76. Section 10 of the FOIA states that responses to requests made under the Act must be provided “promptly and in any event not later than the twentieth working day following the date of receipt.”
77. The complainant made his request on 15 May 2020 and did not receive a response until 23 July 2020 some 49 working days later. The Cabinet Office failed to comply with section 1(1)(a) in not confirming to the complainant, within 20 working days, that it held the requested information. The Cabinet Office is therefore in breach of section 10(1) of the FOIA.
78. Section 17(1) of the Act states:
- “A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies”.
79. Therefore a public authority that is relying on a claim that the requested information is exempt information must provide the applicant with an appropriate refusal notice within the time for complying with section 1(1) i.e. within 20 working days.
80. Having first provided a refusal notice applying the exemptions, the Commissioner considers it to be reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Cabinet Office exceeded this time.
81. The Commissioner recognises that this request was received during the first Covid-19 lockdown and that, across the public sector, organisations struggled to adapt to new ways of working. Nevertheless, the provision of any kind of response exceeded 20 working days and therefore the Commissioner also finds a breach of section 17(1).

Right of appeal

82. 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

83. 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.

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

Signed

Susan Hughes
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