

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 January 2011

Public Authority: The Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Summary

The complainant requested information concerning an honour awarded to a named individual. The public authority refused to disclose the information on the basis of section 37(1)(b) (information relating to the conferring by the Crown of any honour or dignity) and section 40(2) (personal information). The Commissioner upholds the refusal of the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The Cabinet Office administers the honours system and details of that process are published at: www.direct.gov.uk/honours. There are two routes to nominate an individual for an award:
 - nomination by an individual member of the public or a public/private sector organisation familiar with the work of the candidate.
 - submission by a government department that has identified a candidate doing good work within its sphere of interest. (Candidates may be identified as a result of nominations sent to that department from public or private sources).

3. Nomination forms may go through several stages before reaching the Honours and Appointments Secretariat of the Cabinet Office. The nominations are considered by a specialist assessment sub-committee which is composed of senior civil servants and independent experts. The sub-committee will assess the nominations and will forward their assessments to the main selection committee. The main committee considers the balance of the proposals and forwards its recommendations to the Cabinet Secretary who, in turn, submits the list to the Prime Minister for submission to Her Majesty the Queen.

The Request

4. On 20 January 2010 the complainant made a request for information about the awarding of an honour to a named individual in the New Year Honours List. She asked for the following information:

'Please provide any information which you are able to disclose regarding that appointment.

I am particularly interested in knowing how many people nominated [named individual] for an honour (not their names, just how many there were) and would also like to see copies of any minutes of meetings where his particular appointment was discussed – edited of course to remove any other information about any other honours or appointments which were also discussed at any such meetings.

I would also like to see any other information which may shed any light upon why this person was deemed suitable to receive an honour from the Crown for [reason for award], precisely what those services were and how and by whom their effectiveness was assessed. Together with any papers which demonstrate that the appointment was determined upon objective, fair and impartial criteria and that there was no political interference or other undue pressure in the awarding of this honour and that it was not done by way of payment in reward for carrying out favours or political instructions as opposed to impartial judicial functions.

If you have had any other requests for information about the award of any honours to [named individual], please include your responses to those requests also'.

5. The Cabinet Office responded to the request on 17 February 2010 and confirmed that it held the information but was refusing to disclose it under the exemption provided by section 37(1)(b) of the Act.

6. The complainant responded on 17 February 2010 and requested that the Cabinet Office carry out an internal review of its handling of the request.
7. The Cabinet Office responded with the outcome of the internal review on 15 March 2010. The Cabinet Office told the complainant that it was maintaining its decision that the information was exempt by virtue of section 37(1)(b) and in addition it was also now relying on section 40(2) in combination with section 40(3) and section 40(4).

The Investigation

Scope of the case

8. On 18 March 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

'I do not agree with the application of the exemptions or the conveniently changed exemptions at internal review, particularly in regard to my question about how many people nominated this abomination of an honour. The Cabinet Office have not considered the specifics of my request and have trotted out a generic canned response and irrespective of the denial of this in the reply to the internal review, I do not believe that any consideration was given to the specifics of my request. For the reasons outlined in my internal review request, their arguments against disclosure are wrong'.

9. Regrettably there was a delay in allocating the case due to a backlog of complaints received by the Commissioner.

Chronology

10. The Commissioner wrote to the Cabinet Office on 13 September 2010 to ask for a copy of the withheld information that fell within the scope of the request together with additional information about its application of the cited exemptions and the public interest arguments.
11. The Cabinet Office responded to this on 27 September 2010 and provided the Commissioner with a copy of the withheld information which consisted of two copies of a citation document and an extract of a meeting note. The Cabinet Office also provided a detailed submission in relation to the exemptions claimed. The Cabinet Office told the Commissioner that it did not hold information in relation to the number

of *people* who nominated the named individual. However the information that it did hold within the scope of the request was considered exempt under section 37(1)(b), and in addition section 40(2), 40(3) and 40(4).

12. The Commissioner asked the Cabinet Office to explain why it told him it did not hold the number of people who nominated the named individual when it had in fact already confirmed it held the requested information. It appeared to the Commissioner that an objective reading of the request together with the response would suggest that the Cabinet Office must hold some information about this. The Cabinet Office confirmed to the Commissioner that it did hold relevant information related to the nomination. The Commissioner takes an objective view that the request for information on the number of people who nominated an individual would include government departments as well as individuals, taking into account the published procedures.

Analysis

Exemptions

Section 37(1)(b)

13. Section 37(1)(b), which is set out in full in the attached legal annex, provides an exemption for information that relates to the conferring by the Crown of any honour or dignity. This exemption is subject to the public interest test, meaning that the information should be disclosed unless the public interest in the maintenance of the exemption outweighs the public interest in disclosure.
14. The Commissioner has considered the content of the withheld information which comprises two citation documents and a meeting note. It is clear that the information within those documents relates to the named individual who subsequently received an honour in the New Year Honours List as a result of that nomination. Therefore the exemption provided by section 37(1)(b) is engaged as the Commissioner identifies the information as being related to the conferring by the Crown of an honour.
15. However, section 37(1)(b) is a qualified exemption. Therefore, the Commissioner must consider the public interest test set out at section 2(2)(b) of the Act and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the withheld information

16. The Cabinet Office told the Commissioner that it understood that disclosure of the information could lead to assuring the public that there was no undue pressure or influence in awarding this or any other honour. It also accepted that there was a public interest in the transparency of the process of awarding honours and dignities. However, the Cabinet Office was of the view there was already transparency and accountability demonstrated in the information that is publicly available about how the honours process works. The Cabinet Office argued that this information should assure and satisfy the public on this point.
17. The Cabinet Office drew the Commissioner's attention to the extensive reform¹ of the honours system that has taken place over the past five years aimed at increasing transparency in that system. It specifically referred to the assurances given by previous Prime Ministers Tony Blair and Gordon Brown, and the current Prime Minister, David Cameron that they would not seek to amend any list of names before being put to Her Majesty the Queen. As such the Cabinet Office believed this satisfied the public interest in demonstrating that there was no undue political interest being brought to bear generally on the process.
18. The Commissioner understands that it is the complainant's view that the public interest lies in the public having confidence that people are selected for such honours on merit and worthiness as opposed to other reasons (such as being linked to a minister or political party). The complainant told the Commissioner that she believed that the public interest lies in there being a means of independent challenge to any appointment.
19. The Commissioner believes that disclosure of the withheld information in this case, which was recorded as part of the process of awarding an honour, could further the transparency and accountability of the honours system. The Commissioner has had sight of the information and based on the content of it considers that disclosure could satisfy the public interest on the transparency of the system. The Commissioner considers arguments about transparency and

¹ In July 2004, two reports recommended changes to improve the honours system. These reports (the Public Administration Select Committee (PASC) report, and Sir Hayden Phillips' report to the cabinet secretary) led to significant changes in how the honours system works. In February 2005, the government published a response to the reports explaining how the honours system would change to become more open, diverse and easy to understand. Those changes led to the present honours system. The changes included changing the way honours committees work.

accountability to be valid public interest factors in favour of disclosure and accordingly attributes considerable weight to such arguments.

Public interest arguments in favour of maintaining the exemption

20. The Cabinet Office told the Commissioner that it would not be in the public interest to know the details of individual successful honours cases and argued strongly that such information should remain confidential. The Cabinet Office maintained that confidentiality was a fundamental principle of the honours system. It explained that the reasons for all awards are set out in a short citation which is published in the London Gazette. The Cabinet Office did not believe it was in the public interest to make public the number of people nominating a candidate or more specific details as to why they were nominated.
21. The Cabinet Office also argued that disclosure of the withheld information may embarrass individuals involved in the honours process. It maintained that it would go against the nature of a process where people are invited to offer truthful and objective observations on the named individuals they nominate.
22. The Cabinet Office did not believe that revealing details of this particular case would aid any more fully informed debate on the honours system. It also argued that there may be a personal interest on the part of the requester to know more about the awarding of the honour in this particular case, but that this was not necessarily a genuine public interest argument.

Balance of the public interest arguments

23. Turning to those factors related to the honours system in general, the Commissioner's published guidance on the exemption at section 37 of the Act states the following:

"Two recent independent reviews of the honours system have acknowledged a general concern regarding transparency and accountability of the system itself."

"The Information Commissioner encourages public authorities when applying the public interest test to recognise the considerable need for public confidence in the integrity of the honours system. Specifically, if the system and the individual honours and dignities themselves are to be valued and respected, the public will wish to know that the process for awarding them is objective, accountable and transparent. In particular where the requests for information concern the process of and policy behind the awards of honours and dignities,

authorities are encouraged to take a positive approach in their application of the public interest test and disclose the maximum information possible.”

24. The Commissioner therefore encourages public authorities to recognise the considerable need for public confidence in the integrity of the honours system when considering the public interest test. The Commissioner notes the extensive programme of reform to the honours system in recent years and the various reports associated with that reform, which was driven by public demand for an increase in transparency and public accountability. As a result of this reform there is a considerable amount of information publicly available on the way in which the new system operates.
25. The Commissioner accepts the Cabinet Office's argument 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 discuss nominations freely and frankly. The Commissioner also accepts that the disclosure of information could impact on this confidentiality, and that could potentially damage the effectiveness of the system, would not be in the public interest. The Commissioner believes some significant weight should be given, as a general principle, to information falling within the scope of 37(1)(b).
26. The Commissioner is not suggesting that there is an inherent public interest in non-disclosure of information which falls within the scope of section 37(1)(b). The Commissioner is mindful that there have been a number of Information Tribunal decisions indicating that there is no inherent public interest in withholding information simply because it falls within the scope of a class based exemption. This approach was supported by the High Court in the case *OGC v The Information Commissioner*.² However, a significant amount of information which falls within the scope of section 37(1)(b) is likely to include candid discussions about nominations for honours. For the reasons outlined above in the vast majority of cases there is likely to be a public interest in the confidentiality of such discussions being preserved.
27. The withheld information in this case consists of a commentary on the career achievements of the named third party in their public role. The Commissioner notes that there is some information on this individual's role and achievements already in the public domain. The Commissioner understands that in some circumstances the public profile of an individual may be relevant to the public interest arguments for

² See *Office of Government Commerce v Information Commissioner & the Attorney General* [2008] EWHC 737 (Admin) (11 April 2008), in particular paragraph 79.

disclosure of the information and in this respect the Commissioner refers to a previous decision³ where this was a factor. In the circumstances of this case however, the Commissioner is not persuaded that the public interest in knowing more about the reasons for the awarding of this honour carries significant weight.

28. The Commissioner accepts the Cabinet Office's arguments that disclosure of this information could cause prejudice to the operation of the honours system. He gives little weight to the argument that disclosure might give rise to embarrassment, but he accepts that some confidentiality is required to ensure robustness of the honours process. The Commissioner has considered whether the public interest could also be served by informing the public of the positive contribution of that individual to the community in which they work. However, he gives little weight to this argument, given the published short citation and the profile of the individual concerned as a holder of public office. On this point, and as already stated, the Commissioner believes that the confidentiality of the honours system merits significantly more weight.
29. The Commissioner has considered the complainant's view that the public interest lies in there being a means of independent challenge to any appointment. However, this is not a part of the current honours system and the Commissioner considers the complainant's view on this issue to be irrelevant to the determination of the matters in this case.
30. Considering the circumstances of this case and the strength of the public interest arguments that disclosure of the requested information would prejudice the confidentiality of the honours system the Commissioner is of the opinion that the public interest favours maintaining the exemption in respect of the information falling within the scope of the request.
31. In light of his findings in respect of section 37(1)(b) the Commissioner has not gone on to consider the Cabinet Office's reliance on sections 40(2) in combination with section 40(3) and 40(4).

The Decision

32. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

³ FS50197952

Steps Required

33. The Commissioner requires no steps to be taken.

Right of Appeal

34. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 10th day of January 2011

Signed

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Section 37

Section 37(1) provides that –

“Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
- (b) the conferring by the Crown of any honour or dignity.”