

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 September 2012

**Public Authority:** The Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

#### Decision (including any steps ordered)

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1. The complainant requested information from the Cabinet Office about the decision of the Honours Forfeiture Committee to recommend that Fred Goodwin's knighthood was cancelled and annulled. The Cabinet Office cited numerous exemptions within FOIA to refuse to disclose the information that it held, including section 37(1)(a) (communications with the Sovereign) and section 37(1)(b) (conferring of an honour or dignity). The Commissioner has concluded that the requested information is exempt from disclosure on the basis of these two exemptions.

#### Request and response

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2. On 1 February 2012 the complainant wrote to the Cabinet Office and requested information in the following terms:

'In the London Gazette, Issue 60048, page 1865, the following notice is included:

"Crown Office

House of Lords, London SW1A 0PW

1 February 2012

Letters Patent dated 1 February 2012 have passed the Great Seal of the Realm cancelling and annulling the Knighthood conferred upon Frederick Anderson Goodwin on the 25 November 2004 as a Knight Bachelor.

C.I.P, Denyer".

The Cabinet Office has also publicized this decision with a

statement on 31 January 2012:

<http://www.cabinetoffice.gov.uk/news/goo...>

I would like to request access to all papers relating to the Honours Forfeiture Committee's consideration of the forfeiture of the knighthood of Frederick Anderson Goodwin, including but not limited to, the original proposal and other papers submitted to the committee, and any minutes and other records of the decision.

I would further like to request access to all records held in relation to the above forfeiture case by the Honours and Appointments Secretariat, including any communications to or from Mr Goodwin, his agents and representatives, or communications to third parties other than individual members of the public.

I am aware that, in the past, you have applied Section 37(1)(b) of the Freedom of Information Act 2000 to requests on the forfeiture of honours. Please note that Section 37(1)(b) (FOIA) only refers to information related to "the conferring by the Crown of any honour or dignity", but not to the cancelling and annulling of honours and dignities. On plain reading of the statute text, this exemption is therefore not applicable in a case such as this one, where an honour was forfeited and not conferred.'

3. The Cabinet Office responded on 1 March 2012. It explained to the complainant that it held information falling within the scope of his request. However, it considered it exempt from disclosure on the basis of the exemptions contained at the following sections of FOIA: 21 (information reasonably accessible by other means), 37(1)(b) (conferring of an honour or dignity), 40(2) (personal data) and 42 (legal professional privilege).
4. The complainant contacted the Cabinet Office on the same day and asked it to conduct an internal review of this decision. He argued that the exemptions were not correctly applied, or where correctly applied, the public interest favoured disclosing the information.
5. The Cabinet Office informed the complainant of the outcome of the review on 2 April 2012. The review upheld the application of the exemptions as set out in the refusal notice and explained that it had concluded that the following exemptions also provided a basis upon which to withhold the requested information, sections: 37(1)(a) (communications with the Sovereign), 37(1)(ad) (communications with the Royal Household) and 36(2)(b)(ii), (ii) and (c) (effective conduct of public affairs).

## Scope of the case

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6. The complainant contacted the Commissioner on 3 April 2012 to complain about the way his request for information had been handled. The complainant explained that although he did not wish to contest the application of section 21, he did wish to complain about the application of the other exemptions. The complainant believed that the public interest favoured disclosure of the requested information. Furthermore, the complainant argued that section 37(1)(b) was not even applicable for the reasons described in his request.
7. There are 131 documents falling within the scope of this request. Section 21 has been applied to four of these documents and therefore the Commissioner has not considered these four documents as part of his investigation.
8. Of the remaining 127 documents the Cabinet Office has withheld all of them on the basis of section 37(1)(b) and all of them on the basis of the various exemptions contained within section 36(2). The remaining exemptions cited in correspondence with the complainant, namely sections 37(1)(a), 37(1)(ad), 40(2) and 42 have been applied to a smaller number of the 127 documents.

## Reasons for decision

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### Section 37(1)(a) – communications with the Sovereign

9. Section 37 is a class based exemption, that is to say if information falls within the scope of the section it is automatically exempt; there is no need for the public authority to demonstrate any level of prejudice that may occur if the information was disclosed in order for the exemption to be engaged.
10. Section 37(1)(a) of FOIA provides a specific exemption for information which relates to communications with the Sovereign.
11. The Cabinet Office argued that 36 of the documents which it withheld were exempt from disclosure on the basis of section 37(1)(a). The Cabinet Office confirmed that the exemption had been applied to information which related to communications with Her Majesty The Queen and/or her Private Secretaries and information which recorded the views Her Majesty or details of consultations with Her Majesty.
12. The Commissioner has reviewed the various documents which the Cabinet Office has withheld on the basis of section 37(1)(a) and he is

satisfied that they all fall within the scope of the exemption for the reasons stated by the Cabinet Office. (In respect of the reference to communications with Her Majesty's Private Secretaries it is clear from the withheld information that they were writing on behalf of The Queen and thus the Commissioner is satisfied that such information falls within the scope of the exemption.) This exemption is an absolute one, following an amendment made by the Constitutional Reform and Governance Act 2010, and is therefore not subject to the public interest test.

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

13. As noted above, the Cabinet Office has relied on this exemption to withhold all of the requested information. As the Commissioner has already concluded that some of this information is exempt from disclosure on the basis of section 37(1)(a) he has not considered the application of section 37(1)(b) to that information. Instead the Commissioner has simply considered the application of section 37(1)(b) to information which is not exempt under section 37(1)(a).
14. Section 37(1)(b) provides a specific exemption for information which relates to the conferring by the Crown of any honour or dignity.
15. As the wording of his request makes clear the complainant does not believe that this exemption can be used to withhold information which relates to the annulling or forfeiture of honours. This is on the basis that on a plain reading of the relevant section of FOIA this exemption only applies to information regarding the 'conferring' of any honour not to information relating to the forfeiture of an honour.
16. In its submissions to the Commissioner the Cabinet Office outlined the following reasons to support its position that whilst section 37(1)(b) does not explicitly refer to forfeiture, it does, and was intended to apply to the withheld information in his case:
  17. Firstly, a common sense interpretation of the exemption would include information about the removal of an honour as much as it would include information about individuals who had been nominated but upon whom no honour had been conferred, or information relating to individuals who had been nominated but turned down an award. The Cabinet Office noted that although such scenarios are not expressly referred to in FOIA, it was not plausible to seriously argue that such situations were not covered by the exemption. Indeed the Cabinet Office noted that the Commissioner had accepted in previous decision notices that the exemption included information relating to individuals who had refused an honour.

18. Secondly, in the context of the award of honours 'conferring' does not have a meaning which is necessarily time limited, i.e. up to the point of acceptance. It obviously applies to the granting of an award, but it may also have a continuous meaning in the sense that an award is 'conferred' upon a recipient for long as they have the award bestowed upon them, which as decision regarding Mr Goodwin's knighthood demonstrated, the award can be removed.
19. Thirdly, as a matter of interpretation 'conferring' includes the act of removing or forfeiting an honour to avoid the perverse situation of the exemption not covering a significant part of the honours award process. The Cabinet Office did not believe that Parliament would have intended to offer protection to information relating to the award of an honour only, but would not have offered similar protection to information relating to the removal of one. (The Cabinet Office noted that information relating to the forfeiture of an honour was likely to contain far more sensitive information than information associated with the awarding of the honour).
20. Fourthly, any forfeiture case is necessarily concerned with the honour that was conferred upon an individual. This is because the discussion of any forfeiture case requires consideration of the whole case, including the reasons for the original conferment of the honour. It would simply not be sensible or practical to discuss any forfeiture case without considering the honour that was originally awarded; the two are inextricably linked. It would be wrong to make an artificial distinction and say that section 37(1)(b) may apply to identical information considered for one purpose but not for another purpose.
21. The Commissioner believes that the phrase 'relates to' in the context of section 37 should, in line with how it is interpreted in other contexts (e.g. section 35(1)(a)), be interpreted broadly. Consequently any information which 'relates to' the conferring of an honour or dignity would fall within the scope of this exemption. Therefore the Commissioner is satisfied that information about the forfeiture of an honour is itself information that relates to the conferment of an honour. On this basis, and furthermore for the reasons advanced by the Cabinet Office, the Commissioner is satisfied that the withheld information falls within the scope of the exemption contained at section 37(1)(b) of FOIA.
22. Section 37(1)(b) is a qualified exemption and therefore the Commissioner must consider the public interest test at section 2 of the FOIA 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 maintaining the exemption**

23. The Cabinet Office argued that it was in the public interest to maintain the integrity of the honours systems and to protect the content and details of individual cases within the system. This is because the principle of confidentiality is fundamental to the functioning of the honours system, including papers considered by, and discussions of, the Forfeiture Committee.
24. More specifically the Cabinet Office argued that those involved in discussions about individual honours cases require a safe space to discuss and deliberate on cases, including forfeiture cases which by their very nature are highly sensitive both at the time of the discussion and some time to follow. Such a safe space allows those involved in a case to engage in frank discussions without external comment, speculation or enquiries. Such pressure or hindrance may distort the integrity of the process and divert resources from the task in hand. The Cabinet Office explained that at time of the complainant's request the discussion regarding Mr Goodwin's forfeiture remained a live, ongoing issue for two reasons. Firstly, the fact that Mr Goodwin may have been considering his options to challenge the Forfeiture Committee's decision (the Cabinet Office noted that the possibility of his doing so was mentioned in the press<sup>1</sup>). Secondly, the Forfeiture Committee were not only considering whether Mr Goodwin should have his honour forfeited but were also considering a number of policy issues relating to the forfeiture of honours and these discussions did not cease with the annulment of Mr Goodwin's knighthood on 1 February 2012.
25. Furthermore, the Cabinet Office argued that disclosure of information relating to specific honours cases would have a chilling effect on future discussions, either in relation to the forfeiture case in question or more broadly in relation to other different honours cases. This was because those participating in the honours system may be reluctant to do so if they thought that their views, given in confidence, were likely to be published. In the particular circumstances of this case the Cabinet Office again emphasised the fact that in this case it believed that the discussions around Mr Goodwin's honour, and the policies concerning forfeiture more generally, were highly live issues. Disclosure of the requested information at the time of the request would have undermined the position of the Forfeiture Committee members to offer truthful and honest observations in confidence.

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<sup>1</sup> <http://www.dailymail.co.uk/debate/article-2097126/Might-Fred-Goodwin-able-knighthood-back.html>



26. Finally, the Cabinet Office suggested that in its view disclosing the withheld information would not assist the public debate concerning the decision to cancel and annul Mr Goodwin's knighthood; rather the information that was made public at the time was sufficient to inform the public's understanding of the case. The decisions and the reasons for the forfeiture were put into the public domain on 31 January 2012 by way of an unusually detailed press notice on the Cabinet Office website.<sup>2</sup>

### **Public interest arguments in favour of disclosing the withheld information**

27. The Cabinet Office acknowledged that the honours and appointments system was one in which there was a public interest, including in this case the decision to annul Mr Goodwin's knighthood. (However, as noted above it believed that this interest was satisfied by the Forfeiture Committee's decision to publish details of its decision and reasons for it).
28. The complainant did not identify any specific public interest arguments in favour of disclosing the requested information.
29. The Commissioner would simply add that it could be argued that disclosure of the information could be in the public interest if such added scrutiny and transparency improved the public's confidence in the honours process. The decision to annul Mr Goodwin's knighthood was a clearly a high profile one, and moreover was not without some controversy: whilst many welcomed the decision, queries were also raised regarding the basis upon which the decision had been taken.<sup>3</sup>

### **Balance of the public interest arguments**

30. As a general principle the Commissioner accepts the Cabinet Office's fundamental 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 freely and frankly discuss specific cases. The Commissioner also accepts that disclosure of information that would erode this confidentiality would be likely to result in the two effects that the Cabinet Office has identified, i.e. an encroachment on the safe space of current discussions and a potential chilling effect on future

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<sup>2</sup> <http://www.cabinetoffice.gov.uk/news/goodwin-knighthood-decision>

<sup>3</sup> <http://www.guardian.co.uk/business/2012/feb/01/fred-goodwin-knighthood-darling-backlash>

discussions. The Commissioner accepts that it would clearly not be in the public interest if the effectiveness of the honours system was undermined in this way. In general then the Commissioner believes that some significant weight should be given to information falling within the scope of 37(1)(b).

31. In reaching this conclusion the Commissioner wishes to emphasise that he 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). Indeed a number of Information Tribunal decisions have indicated 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*.<sup>4</sup> 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, and as in this case potential forfeiture cases, and 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.
32. Similarly, while the Commissioner accepts that weight should be given to the generic arguments in favour of maintaining the exemption, he believes that notable weight should also be given to the public interest in disclosing information concerning honours the system. In his opinion the public interest is clearly served by having an honours system that is objective, accountable and transparent.
33. However, as with all cases the actual weight that should be attributed to these arguments is dependent on the content of the requested information itself. It should be remembered that the Commissioner is only considering the application of section 37(1)(b) to the information which has not been withheld on the basis of section 37(1)(a). A significant number of key and substantive documents relating to the decision to annul Mr Goodwin's knighthood fall within the scope of section 37(1)(a). Nevertheless, in the Commissioner's opinion it is clear that the documents that have not been withheld on the basis of section 37(1)(a) also contain some material directly relevant to the discussions surrounding Mr Goodwin's case as well the broader policy issues regarding the forfeiture process itself.

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<sup>4</sup> See *Office of Government Commerce v Information Commissioner & the Attorney General* [2008] EWHC 737 (Admin) (11 April 2008), in particular paragraph 79.



34. Given the content of this information, which contains opinions and comments which were clearly exchanged in confidence, the Commissioner believes that its disclosure at the time of the request would have severely undermined the effectiveness of honours system both in respect of Mr Goodwin's case and the policy considerations regarding the forfeiture process. Moreover its disclosure would be likely to impinge upon the frankness and candour of discussions in future forfeiture cases. There is therefore a weighty and significant public interest in withholding this information.
35. With regard to the arguments in favour of disclosure, the Commissioner notes the Cabinet Office's suggestion that the press release regarding the Goodwin case allowed the public to sufficiently understand the reasons for the decision. The Commissioner agrees that press release explains the Forfeiture Committee's reasons for its decision. However, in the Commissioner's opinion the press release, whilst being unusually detailed by comparison with public comments about other honours decisions, only contains a top level summary of the Forfeiture Committee's rationale. In the Commissioner's view, disclosure of the withheld information he is considering under section 37(1)(b) would assist the public's understanding of both the process behind the forfeiture of honours and how this process actually operated in respect of Mr Goodwin. Given the high profile nature of this case the Commissioner believes that these arguments should not be dismissed lightly.
36. However, on balance the Commissioner has concluded that the public interest favours maintaining the exemption. Disclosure of the information could genuinely inform the public about the operation of the Forfeiture Committee and its decision making process regarding Mr Goodwin's case. Nevertheless, given that at the time of the request the Forfeiture Committee's decision making processes were effectively still live, the Commissioner believes the greater public interest lies in maintaining the integrity of the process at that point in time. The fact that disclosure of information could also impact future discussions about other forfeiture cases adds weight to this conclusion.
37. In light of the Commissioner's findings in respect of section 37(1)(a) and 37(1)(b) he has not gone on to consider the Cabinet Office's reliance on the various other exemptions.

## Right of appeal

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38. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

39. 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.
40. 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** .....

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