

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 August 2016

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the public authority for a copy of the citation used to support the award of an honour to Lin Homer¹ by Her Majesty The Queen. The public authority withheld this information on the basis of the exemption at section 37(1)(b) FOIA (the conferring by the Crown of any honour or dignity).
2. The Commissioner's decision is that the public authority was entitled to rely on the exemption at section 37(1)(b).
3. No steps are required.

Request and response

4. The complainant originally wrote to the public authority on 4 January 2016 in the following terms:

"I pose the following FOI request of you.....in the form of three sets of questions

1. *By how many persons was the Order of the Bath to Mrs Homer nominated? Of these persons, if more than one, how many were civil servants and/or government ministers and how many were non-*
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¹ Dame Linda Margaret Homer DCB, former Chief Executive of HM Revenue and Customs.

official persons? Does Mrs Homer know who any of these persons are? Can you name them?

2. By how many persons was the honour nomination considered? What were their qualifications? Does Mrs Homer know who these people are? Can you name them?

3. Can you elaborate in greater detail the specific factors included within the citation term 'for public service particularly to public finance?' "

5. The public authority provided its response to the above request on 22 January 2016. Following that the complainant submitted the following request to the public authority on 8 February 2016²:

"In respect of question three in particular perhaps I can request the actual words of the specific citation by whoever nominated the honour itemising the individual factors implicit in it."

6. The public authority addressed this request as well as the complainant's queries with regards to its response to the original request in one letter dated 9 March 2016. It confirmed that it held information within the scope of the subsequent request and concluded that this information was exempt from disclosure on the basis of sections 37(1)(b) and 40(2) FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 21 April 2016 in order to complain about the public authority's decision to withhold the information held within the scope of the request he submitted to the authority on 8 February 2016.
8. The scope of the Commissioner's investigation therefore was to determine whether the public authority was entitled to rely on the exemptions at section 37(1)(b) and 40(2).

² This follow up request was submitted as part of the complainant's request for an internal review of the public authority's response to his previous request.

Reasons for decision

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

9. The Commissioner first considered whether the public authority was entitled to rely on this exemption to withhold the information held within the scope of the request.
10. Section 37(1)(b) of FOIA states that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
11. Given that the request specifically seeks a copy of, or the actual wording of, the citation used to support Ms Homer's honour, the Commissioner is satisfied that the withheld information clearly falls within the scope of the exemption at section 37(1)(b). The information is therefore exempt on the basis of section 37(1)(b).
12. However, section 37(1)(b) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of the FOIA. The Commissioner has therefore considered 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 arguments in favour of disclosing the withheld information

13. The public authority acknowledged that it was in the public interest to ensure that the awarding of honours and dignities is accountable and transparent.
14. The complainant has argued that there is little public interest in withholding the information in view of the consent order issued following an appeal of the Commissioner's decision by the Home Office to The First-Tier (Information Rights) Tribunal in case EA/2010/0043. He has argued that the information subsequently disclosed by the Home Office in that case provides a precedent for disclosing the withheld information.

Public interest arguments in favour of maintaining the exemption

15. The public authority has argued that the public interest in ensuring transparency and accountability in the honours system must be weighed against the importance of confidentiality with regard to individual honours cases which is essential to protect the integrity of the honours system and without which the system could not function.

16. It argued that non-disclosure of information relating to individual cases ensures that those involved in the honours system can take part on the understanding that their confidence will be honoured and that decisions about honours are taken on the basis of full and honest information about the individual concerned.
17. The public authority explained it has always been the case in the honours system that those involved in the process required the freedom to be able to discuss and deliberate individual honour cases in a safe space. Otherwise, it argued, those participating in the process would be reluctant to do so if they thought that their views, given in confidence, were likely to be published and this would undoubtedly have a prejudicial effect on the integrity of the honours system.
18. The public authority however stressed it was not treating the exemption as absolute and that it recognised the public interest in disclosing the withheld information. However, it did not consider that disclosure would advance any significant or specific public interest in this case. It pointed that a short citation has been published which explains the rationale for awarding the honour.
19. It drew the Commissioner's attention to the fact that Parliament recognised the particular sensitivity of releasing information relating to Honours - even when relatively old- by expressly providing that the exemption relating to Honours information does not expire after 30 years but instead remains applicable for 60 years after the date of its creation.³
20. The public authority therefore concluded that the public interest inherent in the protection and preservation of the integrity and robustness of the honours system outweighs the public interest in disclosing the withheld information.

Balance of the public interest arguments

21. With regard to the weight that should be attributed to maintaining the section 37(1)(b) exemption, as a general principle the Commissioner accepts the public authority's fundamental argument that for the honours system to operate efficiently and effectively there needs to be a

³ Section 63 FOIA explains that a number of exemptions cannot apply to information which is contained in a 'historical record', ie information which is more than 30 years old. However, section 63(3) has the effect of extending this 30 year period to 60 years for information which falls within the scope of section 37(1)(b).

level of confidentiality which allows those involved in the system to freely and frankly discuss nominations. Furthermore, the Commissioner accepts that if views and opinions, provided in confidence, were subsequently disclosed then it is likely that those asked to make similar contributions in the future may be reluctant to do so or would make a less candid contribution. Moreover, the Commissioner also accepts that disclosure of information that would erode this confidentiality, and thus damage the effectiveness of the system, would not be in the public interest.

22. Having examined the withheld information the Commissioner is satisfied that as the contents relate to individual nominations, disclosure of such information would significantly undermine the confidentiality of the honours system. The Commissioner agrees that there is a clear public interest in ensuring that the honours system is accountable and transparent in order to ensure public confidence in the system.
23. She does not share the view that information disclosed by the Home Office in EA/2010/0043 is substantively similar to the withheld information in this case which is for a copy of the actual citation. In that appeal which was pursuant to a request submitted by this complainant, the Home Office voluntarily supplied him with a complete list of all public and voluntary services undertaken by Lin Homer in support of the awarding of an honour. A copy of the actual citation itself was not disclosed.
24. Given the risk of a chilling effect on future honours nominations and discussions on the merits of individual nominations, the Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Right of appeal

25. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

26. 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.
27. 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

Terna Waya
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