

## 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)

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1. The complainant submitted a request to the public authority for documents and correspondence relating to any possible award of an honour to the late US artist Michael Jackson by Her Majesty The Queen. The public authority withheld the information held within the scope of the request 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

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4. The complainant submitted a request for information to the public authority on 18 March 2016 in the following terms:

*"I am writing to make an open government request for all the information to which I am entitled under the freedom of information act. In order to assist you with this request, I am outlining my query as specifically as possible.*

*I am looking for documents and correspondence concerning the attempts by the now deceased US artist, Michael Jackson to receive a knighthood or other honour from the Queen. I understand Lord Granville Jenner and the celebrity [Named Person] were involved but so were*

*other individuals to try and achieve this. I am unable to provide any dates but suspect it may have happened during the period 2000-09."*

5. The public authority provided its response to the request on 12 April 2016. It explained that it did not hold information specifically relating to a Knighthood for Michael Jackson but that it held information relating to an honour for Michael Jackson. It withheld this information on the basis of the exemption at section 37(1)(b) FOIA.
6. The complainant requested an internal review on 13 April 2016. He disagreed specifically with the decision to withhold the information held within the scope of the second part of his request in relation to an honour for Michael Jackson.
7. The public authority wrote back to the complainant on 12 May 2016 with details of the outcome of the internal review. The review upheld the original decision to withhold the information held within the scope of the second part of the request on the basis of the exemption at section 37(1)(b).

### **Scope of the case**

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8. The complainant contacted the Commissioner on 12 May 2016 in order to complain about the public authority's decision to withhold the information held within the scope of the second part of his request.
9. The Commissioner has therefore considered whether the public authority was entitled to rely on the exemption at section 37(1)(b).

### **Reasons for decision**

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

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 relevant part of the request specifically seeks all documentation and correspondence relating to any possible honour for Michael Jackson, 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 appears to suggest that there is little public interest in withholding the information in view of the fact Michael Jackson is now deceased and that one of the individuals whom he claims tried to get Michael Jackson awarded an honour is also now deceased.
15. He has further argued that there is a strong public interest in disclosure in view of the “numerous” child abuse allegations against Michael Jackson which he claims could have been a factor in him being refused an honour.<sup>1</sup>

### **Public interest arguments in favour of maintaining the exemption**

16. 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.
17. 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.
18. 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

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<sup>1</sup> To be clear, the Commissioner does not know if the late artist was ever refused an honour.

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.

19. 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.
20. 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.<sup>2</sup>
21. 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**

22. 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 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.
23. Having examined the withheld information the Commissioner is satisfied that as the contents relate to individual nominations, disclosure of such

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<sup>2</sup> 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).

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. He does not share the view that there is a strong public interest in disclosing the withheld information (which he has seen but appreciates that the complainant hasn't) as a result of the allegations of child abuse against Michael Jackson. 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

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24. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**