

## Freedom of Information Act 2000 (FOIA)

**Date:** 20 June 2017

**Public Authority:** The 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 Cabinet Office seeking information relating to the 'shortlisting' of David Cameron's resignation honours list. The Cabinet Office argued that the shortlisting process was conducted in Mr Cameron's personal and political capacity and thus any information generated by this process would not be held by the Cabinet Office for the purposes of FOIA. The Commissioner accepts that there is a political dimension to the shortlisting process. However, in her view any information generated by this process would also be held for official purposes and therefore if any such recorded information is physically held by the Cabinet Office then such information would be held by the Cabinet Office for the purposes of FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - confirm or deny whether information falling within the scope of the request is held, and if held, disclose this information or issue a refusal notice citing an exemption as a basis to withhold this information.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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4. The complainant submitted the following request to the Cabinet Office on 1 September 2016:

*'I request information held by you concerning the process of shortlisting Mr Cameron's recommendations for honours around the time of his resignation – particularly any discussion or criteria by or with which names were not recommended for honours.'*

5. The Cabinet Office contacted the complainant on 30 September 2016 and explained that it held the requested information but needed additional time to consider the balance of the public interest test under section 37 of FOIA.
6. The Cabinet Office provided the complainant with a substantive response on 16 November 2016. The response explained that the Cabinet Office did not hold the requested information and provided the following reasoning:

*'The process of shortlisting the names Mr Cameron recommended for inclusion in his resignation honours list was undertaken by Mr Cameron in a personal capacity. As such the Cabinet Office does not hold this information.'*

7. The complainant contacted the Cabinet Office on 16 November 2016 and asked it to conduct an internal review.
8. The Cabinet Office informed him of the outcome of the internal review on 22 November 2016. The review upheld the initial decision, namely that the Cabinet Office did not hold the requested information.

## Scope of the case

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9. The complainant contacted the Commissioner on 28 December 2016 in order to complain about the Cabinet Office's handling of his information request. The complainant argued that any information generated by the shortlisting process would be held by the Cabinet Office for the purposes of FOIA. Furthermore, the complainant argued that the Cabinet Office's extension of time to respond to the request constituted a breach of the procedure under section 10(3) of FOIA given that its position was that it does not in fact hold the requested information for the purposes of FOIA.

## Reasons for decision

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### Section 1 and section 3

10. Section 1(1) of FOIA provides a general right of access to information held by public authorities. More specifically, that right is separated into two parts: Section 1(1)(a) gives an applicant the right to know whether a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the requested information, if it is held. Both rights are subject to the application of exemptions.
11. Section 3(2)(a) of FOIA explains that information will be considered to be held by a public authority if:

*it is held by the authority, otherwise than on behalf of another person'*
12. The Commissioner's guidance on this area of the legislation envisages a number of scenarios where a public authority may physically hold information but such information is considered to be non-official information.<sup>1</sup> Therefore such information is only held by the public authority on behalf of another person and thus by virtue of section 3(2)(a) is not held for the purposes of FOIA. The examples given in the Commissioner's guidance relate to trade union communications, personal written communications, and party political communications.

### The Cabinet Office's position

13. As is clear from the above chronology of the request, the Cabinet Office does not believe that information created during the shortlisting process referred to in the complainant's request would be held by it for the purposes of FOIA.
14. In addition to its rationale set out in the refusal notice, and quoted above, in its submissions to the Commissioner the Cabinet Office elaborated on its reasoning and argued that for the purposes of conferring a resignation peerage and honours list, the position of the Prime Minister is a political one. The Cabinet Office explained that it has no role in the shortlisting process for a resignation peerage and honours list. Rather the Prime Minister would create a shortlist of names for such awards in a personal and political capacity.

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1144/awareness\\_guidance\\_12\\_info\\_caught\\_by\\_foi\\_act.pdf](https://ico.org.uk/media/for-organisations/documents/1144/awareness_guidance_12_info_caught_by_foi_act.pdf)

15. The Cabinet Office explained to the Commissioner that it did hold for the purposes of FOIA some information relating to the administrative issues concerning the awarding of the honours given in David Cameron's resignation honours list. However, the Cabinet Office explained that such information did not relate to the shortlisting process, rather it post-dated the shortlisting process and thus fell outside the scope of the complainant's request.<sup>2</sup>

#### The complainant's position

16. The complainant disputed the position adopted by the Cabinet Office. He argued that:

*'That the Cabinet Office does not "hold" information relating to the process for shortlisting Mr Cameron's resignation honours can be nothing more than a ridiculous formalism that erodes the idea of a "public body" into a collective of individuals whose thoughts are all personal to them. It cannot be that an individual working in a government department, creating information within that department (which is still present in its files and on its servers) in line with and because of their employment and position and exercising the privileges given to them by that employment, is acting in a personal capacity.*

*Mr Cameron's considerations for nominating candidates for honours cannot have been conducted in a personal capacity – it is because he was Prime Minister that those cogitations were carried out and are relevant. His workings out could only have been conducted in, and were only relevant to, his position as Prime Minister. Anyone else's fantasy football team of honours candidates may well have been drawn up in a personal capacity. The fact of Mr Cameron being Prime Minister at that time, and that the shortlisting could therefore be acted on in order to grant honours, makes shortlisting a function and privilege of the Prime Minister's public capacity.'*

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<sup>2</sup> In any event, the Cabinet Office indicated that if it did receive a FOI request for such information it would be likely to consider it to be exempt from disclosure on the basis of section 37(1)(b).

### The Commissioner's position

17. The Commissioner accepts that there is some value in respect of the positions advocated by both the Cabinet Office and the complainant. There would appear to be little publicly available information about the process of shortlisting names for a Prime Minister's resignation honours. However, the make-up of the list announced by David Cameron, and indeed those announced by previous departing Prime Ministers, strongly suggests that they are given to political allies and thus the process of shortlisting clearly has a strong political dimension to it. This is in direct contrast to the twice yearly Prime Minister's Honours list where the recipients are either nominated by the public or by government departments. The Commissioner therefore accepts that there is some basis for the Cabinet Office to argue that such shortlisting information is 'non-official' information as per the descriptions in the aforementioned guidance and in effect should be treated as akin to party political communications.
18. However, in the Commissioner's opinion the complainant's line of argument clearly has some merit. The honours which are the focus of his request are after all the *Prime Minister's* nominations; whilst the nominees may be political ones, David Cameron was obviously only in a position to make them by virtue of the fact that he was Prime Minister, an official government position, not simply because he was leader of the Conservative Party. Consequently, in the Commissioner's opinion any information created during the shortlisting of the potential nominees for a Prime Minister's resignation honours list would have an official dimension to it.
19. In conclusion, the Commissioner accepts that any information generated by the shortlisting process whilst clearly having a political dimension, would also be held for the official purposes. In other words, the fact that it is held for both political and official purposes would be enough to make any information generated by the shortlisting process (if indeed such information was held) subject to FOIA.

### **Section 10 – time for compliance**

20. Section 10(1) of FOIA requires a public authority to respond to a request promptly and in any event within 20 working days. Section 10(3) allows a public authority to extend this time period, as is reasonable in the circumstances, if the requested information attracts a qualified exemption and the public authority needs additional time to consider the balance of the public interest test.
21. In the circumstances of this case, although the Cabinet Office extended the time it needed to respond to the request by use of the provision within section 10(3), it did not in fact seek to withhold the requested

information on the basis of a qualified exemption. Indeed, as the above analysis makes clear, the Cabinet Office's view is that information generated by the shortlisting process would not in fact be held by it for the purposes of FOIA.

22. The Commissioner agrees with the complainant that in such circumstances the Cabinet Office was not entitled to rely on the provision provided by section 10(3). Furthermore, in light of her findings set out above the Cabinet Office was under a duty to comply with section 1(1) of FOIA within 20 working days. The Cabinet Office's failure to do represents a breach of section 10(1) of FOIA.

## Right of appeal

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23. 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)

24. 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.
25. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**