

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 April 2020

Public Authority: Department for Digital, Culture, Media & Sport
Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for Digital, Culture, Media & Sport (DCMS) for information as to whether the BBC nominated the television presenter and documentary filmmaker Ms Stacey Dooley for an MBE in 2018. DCMS refused to confirm or deny whether they held the requested information under section 37(2)(the conferring by The Crown of any honour or dignity) FOIA. The Commissioner has concluded that DCMS was entitled to refuse to confirm or deny whether it holds any information under section 37(2).
2. No steps are required.

Request and response

3. On 24 January 2019, the complainant wrote to DCMS and requested information in the following terms:

'My request concerns the MBE awarded to the television presenter, Stacey Dooley in The Queen's Birthday Honours List of 2018.

I understand the DCMS was the sponsoring body for Ms Dooley's Honour. As such, the Department is likely to retain documentation relating to this matter.

Please note that the reference to BBC in the questions below should include The BBC and/or any BBC representative and employee acting in an official capacity.

- 1. Did the BBC write to the DCMS to recommend Ms Dooley for this particular Honour and/or a place in any of the Honours Lists of 2018? I am interested in receiving details of all recommendations, including but not limited to the MBE. If so, can you identify the relevant Honours and the relevant lists.*
- 2. If the answer to Question 1 is yes, can you please provide a copy of any written recommendation (including emails) together with any supporting documentation.*
- 3. Had the BBC previously contacted the DCMS about including Ms Dooley's name on another Honours List. This would be a list other than the one published in 2018. If so, can you please provide details of the relevant Honours and Honour Lists.*
- 4. If the answer to Question 3 is yes, can you please provide copies of any written recommendations (including emails) together with supporting documentation.*
- 5. Please can you provide copies of any other documentation held by the Department which relates to attempts by the BBC to secure an honour for Ms Dooley'.*
4. DCMS responded to the request on 11 February 2019. They stated that they could neither confirm nor deny whether they held the requested information under section 37(1)(b)(the conferring by the Crown of any honour or dignity).
5. In respect of the public interest test, the Department noted that *'it is clear that there is a public interest in the transparency of government. This transparency allows the public to hold government to account and helps ensure that government are working for the best interests of the people they govern'*. DCMS also recognised that there is a public interest in the workings of the honours system.
6. However, DCMS stated that, *'whilst accepting these public interests, they must be weighed against the importance of confidentiality with regard to the awarding of honours. It is essential to protect the integrity of the honours process and without this confidentiality, the system would not be able to function'*.
7. DCMS explained that:

'Non-disclosure of information relating to individual awards ensures that those involved in the honours process can engage fully in a candid

manner, with 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'.

8. Following an internal review DCMS wrote to the complainant on 8 April 2019. The review stated that the Department had been correct to apply section 37(2) as the requested information, if held, would fall within section 37(1)(b). DCMS stated that to confirm or deny that the information was held *'would impact the honours process by revealing whether the requested organisation made a nomination'*.
9. Having considered all the circumstances of the case, DCMS confirmed that they considered that the public interest favoured maintaining the exclusion from the duty to confirm or deny if the requested information was held.

Scope of the case

10. The complainant contacted the Commissioner on 9 April 2019 to complain about the way his request for information had been handled.
11. The Commissioner considers that the scope of her investigation has been to ascertain whether DCMS were correct to provide a neither confirm nor deny response to the complainant's request under section 37(2) of the FOIA.

Reasons for decision

12. Section 37(1)(b) of the FOIA provides an exemption for information relating to the conferring of any honour or dignity by the Crown. The function of the exemption is to help preserve the integrity and robustness of the honours system in order to ensure that awards continue to be conferred solely on merit.
13. The need to maintain public confidence in the honours system is of particular importance, given that recipients often enjoy privileged positions. The exemption also plays an important role in protecting the confidentiality of individuals who have participated in the honours process.
14. Section 37(1)(b) of the FOIA states that:
*'Information is exempt information if it relates to...
the conferring by the Crown of any honour or dignity'.*

15. The term 'relates to' is interpreted broadly, and means that the scope of the exemption will cover every aspect of the honours process from nomination, through to the publication of the honours list and beyond.
16. Section 37(2) of the FOIA states:

'The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)'.
17. To engage section 37(2) of the FOIA, the requested information (if held) must fall within the scope of one of the exemptions contained within section 37(1).
18. As the complainant has requested information about the MBE (Member of the Order of the British Empire) awarded to Ms Stacey Dooley¹ in the 2018 Birthday Honours, the Commissioner is satisfied that if DCMS held such information it would be exempt from disclosure on the basis of section 37(1)(b) of the FOIA. The Commissioner is therefore satisfied that section 37(2) is engaged, and that DCMS were entitled to issue a NCND response to the request.
19. As a class based exemption there is no need to demonstrate prejudice but as a qualified exemption section 37(1)(b) is subject to a public interest test.

Public interest arguments advanced by the complainant

20. In his complaint to the ICO, the complainant contended that *'it is common knowledge that Ms Dooley was awarded an Honour in The Queen's Birthday Honours List of 2018'*. He emphasised that he was not asking for information about whether any individual nominated Ms Dooley for the MBE, but *'instead, I am asking for information which specifically relates to how the BBC (including anyone acting specifically on its behalf) may have lobbied to secure an Honour on the presenter's behalf'*. The complainant contended that there are *'strong public interest grounds in favour of disclosure'* and that *'the public has a right to know if the broadcaster is using licence fee payers funds and resources to secure Honours for its stars'*.
21. The complainant also contended that the public *'have the right to know if the Corporation (BBC) is holding out the promise of Honours or at*

¹ Television presenter, documentary filmmaker and winner of the BBC's Strictly Come Dancing in 2018

least Honours recommendations as part of any contract negotiations with its stars'.

22. In subsequent submissions to the Commissioner, the complainant stated that he did not believe that asking for information about an organisation (ie the BBC) had any implications for confidentiality or data protection. He noted that he had not asked for the identity of any civil servant or individual involved in the honours process and contended that, *'in any case, if DCMS was worried about disclosure in this regard it could have redacted that information'.*
23. The complainant reiterated his belief that there are strong public interest grounds in favour of confirming or denying whether the information requested was held. He stated that *'the public has a right to know if the national broadcaster is using its position to lobby for honours for any of its talent including but not limited to Ms Dooley'.*
24. The complainant contended that any written submission (by the BBC) in favour of a recommendation would be likely to involve costs. He noted that the generation of documentation, for whatever reason, by a public body, and the subsequent submission of any such documentation to another public body will carry costs of its own. He contended that any approach by the BBC would be likely to have resulted in a response from DCMS and that response would also involve costs of its own. Furthermore, the complainant stated that the BBC would have been unlikely to have made an approach to the Department without the backing of Ms Dooley or her representatives. He suggested that the BBC may have met with Ms Dooley or corresponded with her and any kind of such contact would also include expenditure.
25. The complainant stated that DCMS arguments relating to the independence of the BBC were confusing. He stated that, *'the fact remains that the Department is legally obliged to disclose any information it holds when that information is not covered by an exemption. The Department's stance also ignores the fact that the BBC is a public body which is funded by the licence fee and which comes under the orbit of DCMS'.*
26. The complainant contended that the suggestion that much information about the honours system is already publicly available is irrelevant. *'Clearly, this information does not shed any light on the reasons for Ms Dooley's honour and it does not provide any clues about the BBC's potential involvement'.*
27. The complainant submitted that DCMS claim that all honours recommendations are properly vetted is difficult to justify. He stated that:

'It's hard to think of an Honours List which hasn't been the subject of justifiable controversy. I note the concern surrounding Theresa May's recent decision to recommend Geoffrey Boycott for a Knighthood. I also note the revelation that Mrs Thatcher recommended Jimmy Savile for a Knighthood² after she was alerted to serious concerns about his personal conduct'.

The complainant stressed that he was not implying that Ms Dooley was guilty of any wrong doing, but rather reiterating the point that the honours system is far from perfect.

Public interest arguments advanced by DCMS

28. In their internal review, DCMS confirmed that they had considered the public interest in favour of confirming or denying that the requested information was held. The Department acknowledged that *'there is an interest in the honours process and in understanding how and why honours are awarded'*. The Department noted that there is also a general public interest in the openness and transparency of the honours process and government more generally.

29. DCMS advised the complainant that:

'Transparency helps to assure the public that decisions relating to the awarding of honours are conducted in a fair manner and that the decisions made are done so with the best available information to hand. As you have suggested, there is also a public interest in the expenditure of the BBC. As the BBC are in receipt of public funds, there is an interest in ensuring that this money is spent wisely'.

30. However, whilst agreeing that there is a public interest in transparency in the honours process, DCMS considered that there was a strong case to NCND that information relating a nomination by a named party relating to a named individual is held. The Department accepted that people might be interested in knowing if the BBC nominated Ms Dooley for an honour, *'but for us to confirm whether we hold information in scope would be to reveal information on the matter which (if held) would be personal and confidential and would be treated as such'*.

31. DCMS stated that the awarding of an honour is a way of rewarding those who have contributed to society by serving or helping Britain or who have achieved a great deal in their particular field. They stated that the

² The Commissioner would note that those serious concerns were **not** about Savile's paedophilia, and allegations surrounding the same, which came to light after his death in October 2011. <https://www.bbc.co.uk/news/uk-politics-23355531>

process *'is a robust one in which many checks are undertaken to ensure that only those who are deserving of an award receive one'*.

32. The review stated that to ensure the integrity of the process, and to ensure that it can be engaged with in a free and frank manner, there is a requirement for confidentiality. *'This confidentiality allows those involved in the process to engage in rigorous discussions about the eligibility for an award. Without such candid discussion, decisions would be made without all the required information. This is clearly not in the public interest. This confidentiality also allows those who nominate, to do so without fear that their nomination, or the fact that they nominated someone, will be disclosed'*.
33. In submissions to the Commissioner, DCMS explained that they considered that to confirm or deny that they held information within scope of the complainant's request would inhibit those who wish to nominate people for honours for fear that their nomination would be made public at a future date. This would reduce the candour with which nominations are made, and this would impact the process as nominations are likely to be considered without the full information to hand. They also considered that to confirm or deny that they held the relevant information would affect the functioning of the honours system.
34. The Department explained that, hypothetically, if they were to confirm that they held information, it would confirm that the BBC did nominate Ms Dooley for her honour, thereby exposing confidential information on who has nominated someone for an honour. Conversely, and similarly hypothetically, if the Department were to confirm that they did not hold information within scope of the request it would reveal that the BBC did not nominate Ms Dooley for her honour. In isolation, the second response would not reveal who nominated, however it would rule out an organisation/person from having nominated. Such a response would also undermine any future applications of a neither confirm nor deny response, thereby defeating the purpose of the exemption. DCMS stated that that is not in the public interest.
35. DCMS acknowledged that there is a specific public interest in understanding the honours process and advised that this is why there is *'a wealth of information'* on the honours process found on the Government website (www.gov.uk/honours). The Department contended that the fact that there is a great deal of publicly available information on the honours process helped to ensure that the public interest *'in this specific instance is reduced'*.
36. DCMS recognised that there is a public interest, *'albeit a somewhat reduced one'* in knowing who nominated each individual for an honour and that residual public interest also applied in Ms Dooley's case. However, the Department drew a distinction between previous honours

cases (e.g. involving Harvey Weinstein) and Ms Dooley's case, which *'has a different set of circumstances'* and had *'only a residual public interest due to the lack of any allegations of wrongdoing'*.

37. The Department recognised that there is a strong public interest in understanding how the BBC utilises tax payer money. *'As a publicly funded organisation, the BBC is accountable to the public for its expenditure'*. DCMS accepted that confirming whether or not they held the information requested, and therefore whether or not the BBC did nominate Ms Dooley for her honour would provide some transparency on the BBC's potential role in the nomination process for Ms Dooley's honour. However, the Department contended that confirming or denying that they held such information would provide very little information on the BBC's potential expenditure of public funds in relation to the honour. They also noted that the hypothetical disclosure of such information *'would also seem to be of limited use in trying to ascertain how much public money was expended by the BBC on the matter'*.
38. DCMS advised that there is no financial cost attached to nominating someone for an honour, and so the request *'would therefore not seem to be targeted at exposing any misuse of public funds by the BBC'*. DCMS noted that anyone is able to nominate people for honours and organisations such as the BBC should not be prevented from nominating someone for an honour simply because of their status as a publicly funded organisation.
39. DCMS noted that as an independent organisation, the BBC is responsible for its own contracts and contract negotiations with its staff and talent. Not being a party to the contract of Ms Dooley the Department stated that they were unable to confirm the validity of the complainant's claim about the possibility of contract negotiations including honours. In any case, DCMS noted that a hypothetical confirmation or denial that they held the information requested *'would not serve to provide any clarity on whether there are the clauses contained within contracts for BBC talent'*. For that reason the Department contended that the complainant's argument should be discounted.
40. Addressing the complainant's point about potential lobbying by the BBC, DCMS advised that the decision to award an honour is made by a wholly independent panel and lobbying by any person/organisation, plays no part in the ultimate decision to issue an honour. The rigorous checks that are undertaken at every stage of the process ensure that lobbying cannot and does not influence the decision to award an honour.
41. DCMS stated that if they were to confirm or deny that information is held, then that would disclose information about who had, or had not, as the case may be, nominated Ms Dooley for an honour. Such a

disclosure would breach the confidentiality of the honours process and specifically the nomination process.

42. The Department contended that if individuals or organisations thought that information relating to their nomination of any individual would be released to the wider public, this would likely deter them from contributing or nominating in future. This would not be in the public interest and the impact would be two-fold. Firstly, DCMS stated that it may reduce the number of honours awarded for service to particular fields.
43. Secondly, DCMS contended that a lack of information available to the Independent Honours Committee when making their decisions may result in inappropriate decisions being made. The Department stated that:

'Both government and the wider community expect recipients of honours to be, and to remain, good citizens and role models. The confidentiality of the honours process is crucial to the frankness and candour of internal discussion, and to those who express support – or otherwise – for those under consideration. If Committees can be provided, in confidence, with full and frank information on individuals under consideration, it reduces the likelihood of forfeiture proceedings being instigated should something negative later come to light'.

44. DCMS contended that there is a strong public interest in ensuring that the honours process is not compromised nor that the confidentiality of the honours process is impacted. The Department stated that, *'robust discussions are vital in the decision to award an honour to an individual. These robust discussions need to be informed by all the relevant information to ensure the integrity of the process and ensure that only those who are worthy of an honour receive one'*. The Department noted that in previous decision notices the Commissioner had found that disclosing information on who has nominated someone for an honour would have a detrimental effect on the honours system, and they contended that the same argument applied in the present case.

45. DCMS advised that:

'The process of awarding an honour is shielded from the kind of lobbying that the complainant has concerns about, due to the independent nature of the assessment panels. This should be abundantly clear from the publicly available information on the website. All nominations, irrespective of who they are from, undergo the same rigorous checks and balances to ensure that they meet the strict criteria and that they merit an honour'.

Balance of the public interest arguments

46. As a general principle, the Commissioner accepts the fundamental argument of DCMS 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. The Commissioner notes that individuals/organisations nominating an individual for an honour are assured by Government that *'we will always ensure that your information is held confidentially and accessed only by those people involved in processing the nomination'*³. The Commissioner accepts that disclosure of information that would erode this confidentiality, and thus damage the effectiveness of the honours system, would not be in the public interest.
47. The Commissioner recognises that section 37(1)(b) is a qualified exemption, and so it follows that there will potentially be some cases where the public interest in maintaining the exemption does not in fact outweigh the public interest in disclosure. This was the case in FS50757813 (December 2018) which concerned a request to the Foreign and Commonwealth Office for information about the decision to award Mr Harvey Weinstein an honorary CBE (Commander of the Most Excellent Order of the British Empire) in 2004. In that case the Commissioner found that the public interest was sufficiently strong to require disclosure of the majority of the withheld information, the Commissioner reaching her decision in the full acknowledgement that disclosure would undermine the confidentiality of the honours process. However, in that case there was a strong public interest due to the allegations of wrongdoing on the part of Mr Weinstein⁴. There are no suggestions or allegations of wrongdoing surrounding Ms Dooley.
48. Even in the Weinstein case, the Commissioner found, by a very narrow margin, that the public interest favoured maintaining section 37(1)(b) to the name of the individual who nominated Mr Weinstein for the honour, the Commissioner finding that, *'the responsibility and accountability for*

³ <https://www.gov.uk/government/publications/privacy-information-relating-to-honours-nominations/privacy-information-relating-to-honours-nominations>

⁴ The movie executive being subsequently found guilty of sexual assault and rape by a New York City jury in February 2020.

awarding an individual with an honour rests with branches of government who deal with the honours system rather than with the individual who made a particular nomination'.

49. The Commissioner acknowledges and accepts the complainant's point that government public domain information about the general functioning of the honours process cannot provide any insight or information as to who nominated Ms Dooley for her honour⁵ (or any other specific case). Nor can such information provide any indication about the potential role of the BBC in the nomination of Ms Dooley's MBE.
50. The Commissioner recognises and accepts (as has DCMS) that there is a legitimate and significant public interest in knowing how a publicly funded organisation such as the BBC spends tax payer money. However, the Commissioner considers that even if, hypothetically, DCMS were to confirm that the BBC did nominate Ms Dooley for her honour, this would be, as DCMS have noted, of limited use in trying to ascertain how much public money was expended by the BBC in the process. In any case, as there is no financial cost attached to nominating someone for an honour, any such cost (e.g. administrative or secretarial) would be incidental and negligible. The Commissioner also considers that any such hypothetical confirmation or denial that DCMS hold the information requested would not provide any clarity or confirmation that there are honours related clauses within contracts for BBC talent, as suggested by the complainant.
51. Whilst the Commissioner recognises that the public would be interested in knowing whether or not the BBC nominated Ms Dooley for her honour, she considers that the complainant's public interest arguments for disclosure as a way of facilitating transparency and accountability of BBC expenditure are misconceived, for the reasons explained above.
52. Given that the requested information relates to the nomination for a specific individual, Ms Dooley, the Commissioner is satisfied that disclosure of the information would significantly undermine the confidentiality of the honours system. The Commissioner considers that such confidentiality applies to both individuals and organisations/bodies who decide, for whatever reason, to nominate an individual for an honour. Furthermore, the Commissioner considers that this argument attracts considerable weight given the recent nature of the information (Ms Dooley having been awarded her MBE in 2018).

⁵ For services to broadcasting

53. The Commissioner agrees that disclosure of the identities of those nominating someone for an honour would be likely to discourage nominations. This would have a detrimental effect on the honours system, which would not be in the public interest. In this specific case, Ms Dooley's honour having not attracted any controversy or significant public debate, the Commissioner does not consider that there is any public interest that would justify overriding the established expectation of confidentiality within the honours system.

Right of appeal

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

55. 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.
56. 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

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