

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 October 2020

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

Decision (including any steps ordered)

1. The complainant has requested information about which individuals who received a New Year's honour in 2017 were nominated by Department for Digital, Culture, Media & Sport (DCMS). DCMS confirmed that they held information falling within scope of the request but they considered this to be exempt from disclosure on the basis of section 37(1)(b)(honours) of FOIA.
2. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 37(1)(b) and that in all of the circumstances of the request the public interest favours maintaining the exemption. However, the Commissioner has found that DCMS breached section 10 of FOIA.
3. The Commissioner does not require DCMS to take any steps as a result of this decision.

Request and response

4. On 10 June 2019, the complainant wrote to DCMS and requested information in the following terms:

'Which of the people who received a New Year's Honour in 2017 were nominated by DCMS? (The list is here for reference: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/581860/new-years-honours-2017-full-list.pdf). What is the process and/considerations for putting forward the

names? If you're able to say which individual ministers were responsible for each name, please include this information?

5. DCMS belatedly responded to the request on 28 August 2019 . They advised that they had dealt with questions 1 and 3 under the FOIA but question 2 had been processed as general correspondence, since it required an explanation, rather than the provision of recorded information.
6. The Department confirmed that they held the information requested but that this was exempt from disclosure under section 37(1)(b)(the conferring by the Crown of any honour or dignity). Addressing the public interest test, DCMS stated that they appreciated the importance of transparency in government, and the public interest in having an honours system that is transparent so that the public can understand how and why honours are awarded.
7. To that end, the Department advised that the Cabinet Office publish general information about the independent honours process, and reports on the operation of that process at www.gov.uk/honours. DCMS noted that also available at that link is the membership of the independent honours committees which assess the merit of nominations and the criteria they use to do so. The names of those individuals who receive an honour from HM The Queen are published in the London Gazette, with a short citation to illustrate what type of service they are receiving their award for (e.g. for services to arts and music) with longer citations being published for those individuals who have been awarded the highest honours.
8. However, DCMS stated that the public interest in the workings of 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. The Department noted that it is open to anyone, including members of the public, charitable and business organisations, and government departments and their arm's length bodies, to put forward an individual for an honour.
9. DCMS advised that it is important that nominations are made in confidence, and that the details of individual nominations, including details of who has proposed a particular nomination or has given it their support, are not released.
10. The Department explained that non-disclosure of information relating to individual cases ensures that all 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.

11. In this particular case, DCMS advised that they did not believe that identifying those individuals who were awarded an honour by HM The Queen in the 2017 New Year List whose names were originally put forward by DCMS, would better serve the public interest than maintaining the principle of confidentiality on which the honours system relies.
12. DCMS confirmed that they did hold information about which individual ministers were responsible for the nomination(s) but that this information was also exempt from disclosure under section 37(1)(b). the Department stated that it was important to note that all nominations, regardless of their origin, go through the same assessment process, and that no nominator, whether Minister or otherwise, can expect their nomination(s) to circumvent any part of the validation process.
13. The complainant requested an internal review on 3 September 2019. She stated that she did not believe that the information she had requested qualified for the exemption, and that there were no public interest arguments against disclosing the information.
14. DCMS provided the internal review on 1 October 2019. The review upheld the application of section 37(1)(b) to questions 1 and 3 of the request. As in the original response, the review recognised that there is a public interest in the honours process and in understanding how and why honours are awarded. However, the review emphasised that protecting the confidentiality around those involved in nominations for honours is paramount to the protection of the integrity of the honours system. DCMS stated that the honours process is robust and includes many checks to ensure that only those who are deserving of an award receive one.
15. The review advised 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. DCMS stated that 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 and DCMS contended that this would clearly not be in the public interest. The review also advised that 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.
16. DCMS therefore confirmed that section 37(1)(b) was correctly applied to the request and that the public interest strongly supported maintaining the exemption.

Scope of the case

17. The complainant contacted the Commissioner on 19 November 2019 to complain about the way her request for information had been handled.
18. The complainant stated that she did not think that the exemption applied as *'it couldn't honestly be said that revealing the name of a government department would expose any individuals to greater scrutiny, especially, for example, where someone is nominated for services to sport, there's already an assumption the nomination has come from the department that deals with sport'*. The complainant advised the Commissioner that she only wished to complain about the first question in her request, in which she was not asking for the names of anyone who works for or represents DCMS.
19. The Commissioner considers the scope of her investigation is to determine whether the information requested in the first question of the complainant's request is exempt from disclosure under section 37(1)(b). The Commissioner has had sight of the withheld information and submissions from both parties.

Reasons for decision

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

20. Section 37(1)(b) states that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
21. Given that the request specifically seeks information about individuals who received a New Year's Honour in 2017, the Commissioner is satisfied that all of 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).
22. 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 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

23. DCMS have acknowledged the importance of transparency in government, and the public interest in having an honours system that is transparent so that the public can understand how and why honours are awarded. In submissions to the Commissioner the Department recognised that *'there is a general public interest in having an honours system that is objective, accountable and transparent so that the public can understand how and why decisions are made'*.
24. DCMS advised the Commissioner that they were content to confirm that the Department receives and processes the nominations relevant to the sectors and interests within its remit. Therefore, the final awardees within those sectors may have originated from DCMS's nominations list.
25. However, DCMS contended that confirming which recipients were administratively allocated to a list overseen by DCMS officials, at a point when the process lists were submitted to the committees for consideration, would not, in itself, shed constructive light on the honours process. As such, the Department did not recognise any substantive public interest that would be served through release of the information.
26. In submissions to the Commissioner the complainant noted that she was *'asking only about the government department (employing hundreds or even thousands of people) – it is not a small enough group to reveal anything about individuals. I believe there's an assumption that sports figures, for example, have been put forward by DCMS, and I am only wanting to confirm that'*.
27. The complainant contended that *'the British public funds this process and therefore is entitled to as much information as is reasonable for the process to run. Given a history of "cash for honours" in this country, this should be treated as in the public interest by default and only refused when it genuinely affects the decision-making process. We are told that these decisions are made independently by the committee based on the merits of each case – if this is true, section 37(1)(b) has been applied too broadly'*.

Public interest arguments in favour of maintaining the exemption

28. In submissions to the Commissioner, DCMS stated that the public interest in the workings of the honours system must be weighed against the importance of confidentiality. The Department contended that such confidentiality is imperative in order to protect the integrity of the honours process. DCMS also advised that *'confidentiality of this process is also of the utmost importance to allow those who put forward nominations to do so by providing full and frank information about the particular individuals concerned'*. The Department contended that *'this free and honest information is imperative to ensure that those who take part in the process can do so effectively and that decisions can be made*

on the basis of the fullest information available about the individuals nominated'.

29. DCMS acknowledged that the public interest in maintaining such confidentiality can be outweighed in exceptional cases but stated that this case was not such a case. The Department noted that the withheld information, if disclosed, would only disclose which administrative channel a nominee was classified to and would not provide transparency on how the nominations are assessed. DCMS contended that in the absence of a specific public interest in disclosure of the information, to breach the confidentiality of the honours process would make people reticent to nominate in future for fear of the fact that who they nominated could be released to the wider public. DCMS stated that those who nominate, expect the process to be conducted in a confidential manner, and would not expect the fact that they nominated someone to be made public. The Department stated that the resultant reticence to nominate would be likely to reduce the number of people who receive honours for their services. It would also be likely to increase the reticence of people providing their candid advice to the process for fear that their contributions to the process would be released. DCMS contended that *'it is not in the public interest that we release information that would be likely to impact on the public perception of the confidentiality of the honours process'.*
30. DCMS acknowledged that there is a public interest in understanding the process by which nominations are allocated to a department to facilitate consideration, but contended that *'nothing is added to this public understanding to have it illustrated by reference to specific individuals which were or were not administratively allocated to DCMS to do so in any given round'.* The Department noted that their previous responses to the complainant had indicated that a list had been submitted by DCMS (noting this set could be empty), but this did not provide more information about the honours process than was already available.
31. Furthermore, as nominations can be made by multiple sources, DCMS contended that to disclose the names of those individual(s) who received an honour, and who were nominated by DCMS, would provide an incomplete, potentially misleading picture. The individual(s) may have received a nomination from others as well as DCMS, and therefore to disclose information on who the Department nominated would present an incomplete picture. DCMS noted that this would not seem to provide the complainant with any assurances as to the integrity of the process but would instead *'seem merely to provide information that is of some interest to the public, without necessarily being in the public interest'.*
32. In addition, DCMS stated that in testament to the integrity of the honours process, its independent nature means that not everyone that

the department's officials nominates necessarily receives an award. Therefore, to disclose merely the names of those individuals that successfully received an honour and who were nominated by DCMS would again give an incomplete picture.

Balance of the public interest test

33. 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.
34. The Commissioner is mindful that individuals and organisations nominating an individual for an honour are assured by the government that *'we will always ensure that your information is held confidentially and accessed only by those people involved in processing the nomination'*.¹ 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.
35. As section 37(1)(b) is a qualified exemption, 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 Harvey Weinstein an honorary CBE 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, that was an exceptional case, in which there was a strong public interest due to the allegations of wrongdoing on the part of Mr Weinstein.
36. Importantly, even in that exceptional 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/organisation who nominated Mr Weinstein for the honour, since *'the responsibility and*

¹ <https://www.gov.uk/government/publications/privacy-information-relating-to-honours-nominations/privacy-information-relating-to-honours-nominations>

accountability for 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'.

37. In the present case the Commissioner acknowledges and appreciates the complainant's argument that she is not seeking the name of any individual working within DCMS but rather the names of any individual honours recipients nominated by the Department as a whole. However, the confidentiality of the honours nomination process extends to government departments such as DCMS.
38. The Commissioner does not consider that the arguments advanced by DCMS as to the potentially misleading or incomplete picture which may be given by disclosure of the withheld information carry significant weight. This is because it should generally be possible for a public authority to put a disclosure into appropriate context. Such arguments would only carry appreciable weight if the information disclosed would create a misleading or inaccurate impression and there were particular circumstances that would mean it would be difficult or require disproportionate effort to correct this impression or provide an explanation. That does not appear to be the case here.
39. The Commissioner recognises that there is a legitimate and important public interest in understanding the honours process. This public interest is generally met by the information publicly available on the government's website (www.gov.uk/honours). Whilst the Commissioner recognises that members of the public may well be interested to know which people who received a New Year's honour in 2017 were nominated by DCMS, this is not the same as there being a strong public interest in the disclosure of the information.
40. The Commissioner agrees with DCMS that whilst there is a public interest in understanding the process by which nominations are allocated to a department to facilitate consideration, this public interest is not furthered by simply disclosing the names of specific individuals who were or were not administratively allocated to DCMS to do so in any given round. That is to say, disclosure of the name(s) would not provide transparency on how the nominations are assessed.
41. Whilst there is a public interest in transparency and openness, in knowing who (individual or organisation) nominated an individual for an honour, the Commissioner considers that public interest is outweighed by the strong and well established public interest in protecting the confidentiality of the honours system and not taking any action which would undermine or have a detrimental effect upon the same. Instances where there is a very strong and compelling public interest which would outweigh the public interest in maintaining this exemption are rare and exceptional (e.g. the Weinstein case referenced above). In

this specific case the Commissioner does not consider that there is any specific or strong public interest that would justify or require the disclosure of the information requested, and the undermining of the confidentiality of the honours process which would result.

42. For the reasons set out above, the Commissioner is satisfied that in this case the public interest favours maintaining the exemption contained at section 37(1)(b) of FOIA.

Procedural Matters

43. By virtue of section 10(1) FOIA, a public authority is required to respond to a request for information within 20 working days. In this case DCMS took over 50 working days to respond to the complainant's request and apologised to the complainant for the delay. The Commissioner therefore finds that DCMS breached section 10(1) of FOIA.

Right of appeal

44. 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

45. 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.

46. 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