

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **13 January 2020**

Public Authority: **The Cabinet Office**

Address: **70 Whitehall
London
SW1A 2AS**

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office seeking information about honours nominations received in relation to Gordon Banks, the professional footballer. The Cabinet Office confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of sections 37(1)(b) (honours), 41(1) (information provided in confidence) and 40(2) (personal data) 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.
3. The Commissioner does not require the Cabinet Office to take any steps as a result of this decision.

Request and response

4. The complainant submitted the following request to the Cabinet Office 13 February 2019:

'My request concerns the issue of honours for Gordon Banks the professional footballer and former England goalkeeper who was born on 30 December 1937 and who died on 12 February 2019...'

...1...Can you list each and every occasion when Mr Banks was recommend or nominated or considered for a Knighthood. In the case of each consideration or nomination can you please detail the actual

Honours list and year. Please include every single instance irrespective of whether the honour was accepted or rejected or not proceeded with for whatever reason.

2...Can you please provide copies of any written recommendations or nominations for a Knighthood together with all supporting documents. Please feel free to redact the names of any members of the public who may have nominated him. But please do not redact the names of any Prime Minister, Secretary of State, Government Minister, MP, civil servant or member of The Royal Family behind the nomination or mentioned in the documents. Please do not redact any organisations or bodies from the documentation including but limited to The DCMS, any professional sporting body or a football club.

3...As far as each attempt to get a Knighthood for Mr Banks is concerned can you please provide copies of correspondence and communication written by The Cabinet Office to the person(s) or organisation(s) behind each nomination. Can you also provide copies of each correspondence and communication written by the person(s) or organisation(s) behind every nomination to The Cabinet Office. In each instance can also include copies of any supporting documents. Please feel free to redact the names of any members of the public who may have nominated him. But please do not redact the names of any Prime Minister, Secretary of State, Government Minister, MP, civil servant or member of The Royal Family mentioned in the documents. Please do not redact the names of any organisation or body identified or mentioned in the documents.

4..Can the Cabinet Office please provide copies of all written correspondence and communication including emails to the DCMS which in any way relates to the issue of a Knighthood for Mr Banks. Can you also provide copies of all correspondence and communications written by the DCMS to the Cabinet Office which relates to the issue of a Knighthood to Mr Banks. Please feel free to redact the names of any members of the public from the documents. But do not redact the names of any organisation or body mentioned in the documents. Please do not redact the names of any Prime Minister, Secretary of State, Government Minster, MP, civil servant or member of The Royal Family.

5...Has the Cabinet Office lost documentation relating to attempts to get Mr Banks a Knighthood. If so can it please provide further details. Can it please provide copies of all documents including internal communications and external communications which in any way related to the idea of documents relating to Mr Banks going missing.'

5. The Cabinet Office responded on 8 March 2019 and explained that it was seeking to withhold the information falling within the first four parts of the request on the basis of section 37(1)(b) (honours) of FOIA. It also considered some of this information to be exempt from disclosure on the basis of sections 40(2) (personal data) and 41(1) (information provided in confidence) of FOIA. In respect of part five of the request the Cabinet Office explained that it did not recognise claims that the nomination papers were lost and that it had previously publicly addressed this issue. The Cabinet Office also explained that internal correspondence discussing the allegations were themselves exempt from disclosure on the basis of section 37(1)(b) of FOIA.
6. The complainant contacted the Cabinet Office on 17 March 2019 and asked it to conduct an internal review of the decision to withhold information falling within the scope of his request.
7. The Cabinet Office informed him of the outcome of the internal review on 8 April 2019 and stated that it did not hold any information falling within the scope of his request.

Scope of the case

8. The complainant contacted the Commissioner on 9 April 2019 in order to complain about the Cabinet Office's handling of his request. He noted the contradictory position adopted by the refusal notice and internal review and argued that, assuming that the Cabinet Office did hold information falling within the scope of his request, then this should be disclosed.
9. During the course of the Commissioner's investigation she established with the Cabinet Office that it did hold information falling within the scope of the complainant's request and it considered this information to be exempt from disclosure on the basis of the exemptions cited in the refusal notice. The focus of this decision notice is therefore to determine whether this information is exempt from disclosure on the basis of these exemptions.

Reasons for decision

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 request specifically seeks information about the potential awarding of an honour to Gordon Banks, 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).
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 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 Cabinet Office acknowledged that there is a need for transparency in the honours process and it accepted that people may be interested in knowing the process behind a decision to award an honour to someone in the public eye.
14. The complainant argued that there were strong public interest arguments which merited the disclosure of information on this occasion. He argued that the refusal to award Gordon Banks a knighthood had been the subject of much discussion since his death in February 2019. He suggested that Mr Bank's family, friends, MPs and some of the country's leading sports commentators have all expressed dismay at the failure to award him a knighthood. The complainant argued that as a member of England's victorious 1966 World Cup squad he has a special place in the hearts of the public and more of a claim to be a national hero than many of those who have secured a knighthood. The complainant acknowledged that he had no idea what sort of information the Cabinet Office did hold and it may be the case that the documents include unexpected evidence and arguments on why the Mr Banks did not receive a knighthood. However, the complainant argued that this the should be released if only to draw a line under the ongoing debate.

Public interest arguments in favour of maintaining the exemption

15. The Cabinet Office explained that in its view it was essential that all those involved in the honours system are given the courtesy of confidentiality for a period of time after their case has closed and it emphasised that the exemption relating to honours information does not expire until sixty years after the date of its creation. It argued that the public interest inherent in section 37(1)(b) is the protection and preservation of the integrity and robustness of the honours system. Furthermore, the Cabinet Office argued that disclosure of the withheld information would undermine the confidentiality of the information and disclosure may affect the future behaviour of those nominating, those nominated and those whose opinions are sought as part of the process.

16. The Cabinet Office acknowledged that section 37(1)(b) is not an absolute exemption and it did not impose this exemption without considering the merits of each case. However, it argued that the balance of the public interest favoured maintaining the exemption given that disclosure of this information would reveal details of the individuals who had nominated Mr Banks and also details of the discussions between the Cabinet Office and DCMS about this particular nomination. The Cabinet Office also noted that the Commissioner had previously taken the view that the balance of the public interest test under section 37 may sometimes favour disclosure when a distance of time has passed since an individual's death. However, the Cabinet Office noted that Mr Banks had passed away in February 2019 it did not consider that sufficient a distance of time had elapsed.

Balance of the public interest test

17. 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 Cabinet Office'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, which would not be in the public interest.
18. With regard to the specific circumstances of this request, the Commissioner accepts some questions have been raised as to why Mr Banks was not awarded a knighthood. Disclosure of the withheld information would provide the public within an insight into the discussions surrounding his nomination. In light of this, and given the points that the complainant has raised, she accepts that there is a public interest in the disclosure of the withheld information to aid the public's understanding of how the processes and procedures of the honours process were applied in the specific circumstances of Mr Banks' nomination.
19. However, the Commissioner is conscious that disclosure of the withheld information would result in the disclosure of information about the particular merits of a specific individual's nomination for an honour. In the Commissioner's view disclosure of such information would significantly undermine the confidentiality of the honours process. As a result, she accepts that such a disclosure would present a real risk of having an effect on the candour of future contributions by individuals to the honours process. In reaching this decision, as the Cabinet Office

noted, in the Commissioner's view the balance of the public interest test under section 37 may sometimes favour disclosure when a distance of time has passed since an individual's death. However, in the circumstances of this case, Mr Banks died only one day before this request was submitted. Therefore, the Commissioner agrees with the Cabinet Office given the timing of this request the public interest in maintaining the exemption is not materially diminished.

20. Furthermore, the Commissioner is conscious that it is not uncommon for members of the public or groups to argue that a prominent individual has not been awarded a particular level of honour, when in their view, they should have been. In many cases, including Mr Banks', the Commissioner would not seek to question the good intentions of such parties. However, if the Cabinet Office were to disclose the information it held about nominations in all, or even just some, such cases then in the Commissioner's view this would have a fundamental impact on the confidentiality of the honours system. Moreover, this would have a significant and deleterious impact on its efficiency and effectiveness which, in the Commissioner's view, would be firmly against the public interest. In light of the above, the Commissioner has therefore concluded that the public interest favours maintaining the exemption contained at section 37(1)(b) of FOIA.
21. In light of this decision the Commissioner has not considered the other exemptions cited by the Cabinet Office.

Right of appeal

22. 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

23. 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.
24. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
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SK9 5AF