

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 2 August 2022

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information concerning the honours nomination and assessment process. The Cabinet provided some information and withheld other information under section 37(1)(b) of the FOIA – (the conferring by the crown of any honour or dignity).
2. The Commissioner's decision is that the Cabinet Office was not entitled to rely on the exemption at 37(1)(b). The Commissioner also finds that the Cabinet Office breached sections 10(1) and 17(3) in its handling of the request.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - Disclose the information withheld under section 37(1)(b), with the exception of the names and contact details of staff included within the withheld information.
4. 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 11 January 2021, the complainant wrote to the Cabinet Office and requested information in the following terms:

"1. On which dates does the main honours committee sit (I understand this is twice yearly)

2. On which dates do the individual honours subcommittees sit

3. A case management system is used by the cabinet office to process honour nomination cases, could you provide a flowchart or description of how cases progress through this system, which civil servants are involved in writing and producing citations from the honours nomination forms and who would perform any preliminary sifting and reviews before the cases are presented to the subcommittees.

4. What end format of information is submitted to the subcommittees, is the [sic] entire submitted nomination material or a shortened version

5. On what basis is the decision of which awards list the entry is to go in made. I note that on some of the publically [sic] accessible honours citation forms there are boxes related to which 'list' the honour is to be placed in.

6. Is there any form of civil servant recommendation as to which award may be suitable (under the above processes) which the subcommittees then rubber stamp - or is this a sole suggestion and decision by the committees".

6. The Cabinet Office responded on 2 February 2021 and provided the information requested.

7. On 3 February 2021 the complainant wrote back to the Cabinet Office and requested clarification/further detail in relation to some of the requests, as detailed below, before they decided whether or not to ask for an internal review:

"1. You did not provide exact dates in your response

1.a) Please list the exact dates for the individual subcommittee and main committee meetings that have already been scheduled for/or taken place this year between 1st January 2021 and 1st July 2021.

2. Your response does not specifically give workings of the case management system you use.

2.a) Do you have a process map, of how cases are handled within the computerised case management system which you use?

3. You do not answer the point as to whether the cabinet office makes any preliminary sifting decisions for cases held by the cabinet office (1/3 of cases not delegated to departments).

3.a) Can you give specific details of job titles who make sifting decisions

for cases held by the cabinet office and do they give a specific recommendation on which cases are of the most merit that are held by the cabinet office themselves.

3.b) Are all cases still then sent to the subcommittee and/or is a 'short list' produced of the cases with the most merit?

3.c) Can you also provide details of what is covered in any advisory statement given to subcommittees".

8. The Cabinet Office treated the communication of 3 February 2021 as a new request. It wrote to the complainant on 3 March 2021 and confirmed that it held information relevant to the request, but that it would need to extend the time taken to complete its public interest test considerations in respect of the exemption under section 37 of the FOIA.
9. The Cabinet Office responded to the request on 9 April 2021. It provided information in relation to question 1(a) (dates of meetings), and some information relating to question 3(a) (job titles of individuals who typically attend the sift committee). The Cabinet Office withheld all other information relevant to the request under section 37(1)(b) of the FOIA.
10. On 9 April 2021 the complainant wrote back to the Cabinet Office and requested an internal review of its application of section 37(1)(b) to withhold information relevant to the request.
11. The Cabinet Office provided the outcome of its internal review on 23 July 2021 and upheld its decision that section 37(1)(b) applied to all other information held relevant to the request of 3 February 2021.

Scope of the case

12. The complainant initially contacted the Commissioner on 8 June 2021 to complain about the way their request for information had been handled. The complainant asked the Commissioner to consider whether the Cabinet Office had correctly applied section 37 to the request of 3 February 2021 and to consider the delays in the Cabinet Office dealing with the request.
13. During the course of the Commissioner's investigation, the Cabinet Office confirmed that all information relating to part 1(a) had been disclosed, but its substantive response dated 9 April 2021 incorrectly stated that it had withheld information relating to question 1(a). The Cabinet Office also confirmed that, having reviewed its handling of the request as part of the investigation, it did not hold any recorded information relevant to parts 2(a), the second part of 3(a) and 3(b) of the request. The Cabinet Office also maintained that information held relevant to part 3(c) of the request was exempt under section 37(1)(b) of the FOIA.

14. The scope of the Commissioner's investigation is to consider whether the Cabinet Office holds any recorded information relevant to parts 2(a), the second part of 3(a) and 3(b) of the request and whether the Cabinet Office correctly applied section 37(1)(b) to withhold information relevant to part 3(c) of the request. In addition, the Commissioner will also consider procedural matters associated with the handling of the request.

Reasons for decision

Section 1 – information held

15. As stated earlier in this notice, during the course of the Commissioner's investigation the Cabinet Office stated that it did not hold any recorded information relevant to parts 2(a), the second part of 3(a) and part 3 (b) of the request.
16. Part 2(a) of the request was for:

"2.a) Do you have a process map, of how cases are handled within the computerised case management system which you use?"
17. The Cabinet Office confirmed to the Commissioner that it did not hold recorded information relevant to the request. It advised that "something that resembled a process map was created when the system was at the planning stage, but this was never completed and bears no relation to how the system was built or operates in reality".
18. Part 3(a) of the request was for:

"3.a) Can you give specific details of job titles who make sifting decisions for cases held by the cabinet office and do they give a specific recommendation on which cases are of the most merit that are held by the cabinet office themselves".
19. The Cabinet Office provided information relating to the job titles of those individuals who typically attend sift committee meetings in its response dated 9 April 2021. In correspondence with the Commissioner, the Cabinet Office confirmed that it did not hold any recorded information relating to the second part of this request. However, outside the provision of the FOIA, the Cabinet Office confirmed that case officers within the nominations team make recommendations.
20. Part 3(b) of the request was for:

"3.b) Are all cases still then sent to the subcommittee and/or is a 'short list' produced of the cases with the most merit?"

21. The Cabinet Office confirmed to the Commissioner that although it did not hold recorded information relevant to this request it was able to confirm that a short list is produced of the cases with the most merit.
22. In respect of question 2(a) the Commissioner recognises that this is only seeking to establish whether information is held, ie a positive or negative answer, rather than a copy of any recorded information itself. However, in the Commissioner's opinion, requests which only seek to establish whether recorded information is held – as opposed to actually asking for recorded information itself - are still valid requests¹.
23. In respect of parts 3(a) and 3(b) these questions relate to internal processes and procedures. They do not ask for copies of processes and procedures, or confirmation that the Cabinet Office holds information on the subject in question, they are phrased in such a way as requiring rather confirmation as to whether a particular process takes place, for example whether a short list is produced. In the Commissioner's view any response the Cabinet Office provided to these questions (eg stating that it did not hold the information and thus could not provide it) would still require the Cabinet Office to comply with the requirements of section 1(1)(a) of FOIA.
24. Based on the evidence available to him the Commissioner's decision is that the Cabinet Office should have confirmed that it did not hold any recorded information relevant to part 2(a), the second part of 3(a) and 3(b) of the request in its initial response to the request.

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

25. Section 37(1)(b) states that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
26. Part 3(c) of the request is for details as to what is covered in any advisory statement given to sub committees considering honours nominations. The Commissioner is satisfied that the withheld information falls within the scope of the exemption at section 37(1)(b) as it relates to the conferring of honours, therefore section 37(1)(b) is engaged.
27. 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

¹ The Commissioner has confirmed this position in a number of previous decision notices, see for example including FS50547998 & FS50594414

Commissioner has therefore to consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

The public interest test

The Cabinet Office's submission

28. The Cabinet Office acknowledges the importance of transparency in government workings and the public interest in understanding how the honours system operates and the way in which decisions are taken. However, it considers that:

“If the information is disclosed, those who participate as Honours Committee members, or as individuals consulted as part of the consideration process, will be dissuaded from raising concerns or allegations of misconduct against a nominee. It is in the public interest that they are free to make or discuss these allegations without fear of publicity, attention and intrusions into their privacy. Disclosure could further lead to some individuals refusing to offer advice or views, or providing only anodyne advice as a result of concerns that the information may be made public. Alternatively, some individuals may only offer advice or views on the condition that they are not officially recorded which will make for incomplete record-keeping and inconsistency in decision making. Without this freedom, we risk undermining the very credibility of the honours system. It is essential that we ensure decisions about the award of honours continue to be taken on the basis of full and frank information”.
29. The Cabinet Office considers that the public interest inherent in the section 37(1)(b) exemption is the protection and preservation of the robustness and integrity of the honours system.
30. The Cabinet Office is of the view that, in this case, the public interest favours maintaining the exemption as “the confidentiality of the information remains”. It considers that disclosure may affect the behaviour of persons nominating others, those who are nominated and persons whose opinions are sought as part of the process.
31. The Cabinet Office does not consider that disclosure is necessary to inform public debate or for any legitimate interests in light of “the clear expectations of confidentiality that surround the withheld information”. It would not be in the public interest to disclose information “around the safe space in which the honours process needs to take place”.

The complainant's submission

32. The complainant considers that there is an overriding public interest in disclosure of information which will enable the public to further understand, and have confidence in, the honours award processes. Disclosure would increase public confidence that honours are being awarded in a fair way. Greater transparency on how and who assesses honours nominations could alleviate public perception that honours are only awarded to famous people or friends of politicians and civil servants and encourage others to make their own nominations.
33. The complainant pointed out that they have not requested details of or any information about individuals, but rather the system and processes by which honours committees, civil servants and Lord Lieutenants deliberate on honours.
34. The complainant stated that there appears to be "broad information available that the 'committees' make the decisions - but it is clear there is a wide range of officials making sifting decisions before honours committees make the final decisions"
35. The complainant stated that in recent reviews of the honours system which have been carried out, reference is made to the fact that there needs to be more transparency in this process. The complainant pointed out that there should be no confidential or personal data in the information requested and the request has been made to understand more about how the honours system operates and who is involved in the process.

The Commissioner's view

36. In accordance with the test set out in section 2(2)(b) FOIA, the Commissioner has 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.
37. The Commissioner considers that there is a strong public interest in openness and transparency about matters relating to the nature and extent of the processes involved in the honours system and how nominations are considered and vetted. The withheld information in this case would enhance public understanding of the involvement of sub-committees in the honours system.
38. The Commissioner accepts that, in order for the honours system to operate effectively and efficiently it is important that there is a degree of confidentiality and a safe space for those involved in the process to freely and frankly discuss nominations. The Commissioner also accepts that if views, opinions and commentary about nominations that are

provided in confidence, were later disclosed into the public domain it would be likely to result in individuals in the future being less willing to make similar contributions in the future and/or provide less candid comments and input. The Commissioner considers that disclosure of information that may adversely impact on this confidentiality, and in turn harm the effectiveness of the honours system would not be in the public interest.

39. In the circumstances of this case, however, the Commissioner considers that these principles carry little or no weight. The withheld information in this case relates solely to the processes followed in relation to subcommittee meetings. The withheld information comprises a number of blank 'templates' used by subcommittees when considering nominations including items such as blank voting forms, blank statistical information on nominations/awards broken down by gender, age, etc and standard letters issued to committee members and Lord Lieutenants explaining the assessment process. The Commissioner is not persuaded that disclosure of the withheld information would change the way in which committee members or Lord Lieutenants consider nominations in the future. He does not consider that disclosure would result in committee members being less candid or honest in their opinions, submissions or recommendations in the future. This is because the withheld information does not refer to any individuals or any specific honour nor does it contain any information which has been provided in confidence about candidates/ nominations.
40. Based on the above, and for the reasons set out above, in all the circumstances of this case the Commissioner considers that the public interest in disclosing the withheld information outweighs the public interest in maintaining the exemption.

Section 10 – time for compliance

41. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.
42. In this case the request was submitted on 3 February 2021. On 3 March 2021 the Cabinet Office confirmed it held information relevant to the request but it needed time to consider the public interest test associated with section 37 of the FOIA. The Cabinet Office issued a substantive response to the request on 9 April 2021 at which time it disclosed some information and stated other information was exempt under section 37(1)(b) of the FOIA.

43. As stated earlier in this notice, the Cabinet Office only confirmed that it did not hold any recorded information relevant to parts 2(a), the second part of 3(a) and 3(b) of the request after the Commissioner commenced his investigation.
44. The Cabinet Office explained that the delay in the substantive response of 9 April 2021 not being issued within the required timescale was a result of the draft response not being forwarded to the FOI team and a failure to identify this oversight on 1 April 2021.
45. Whilst the Commissioner notes the explanations for the delay, as the Cabinet Office failed to comply with sections 1(1)(a) and 1(1)(b) within the required timescale it breached section 10(1) of the FOIA.

Section 17 - refusing a request

46. Under section 17(1) of FOIA, a public authority which, in relation to any request for information, is to any extent relying on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which (a) states that fact (b) specifies the exemption in question, and (c) states (if that would not otherwise be apparent) why the exemption applies.
47. Section 17(3) of FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.
48. Although the FOIA does not define what constitutes a reasonable time, the Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.
49. In this case, the total time taken by the Cabinet Office exceeded 40 working days. Whilst the Commissioner notes the explanations for the delayed response, as outline in paragraph 44 above, he does not consider there to be any exceptional circumstances to warrant this delay and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, the Cabinet Office did not comply with section 17(3) of the FOIA.

Other matters

Section 45 – Internal review

50. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
51. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases
52. In this case the complainant requested an internal review on 9 April 2021 and the Cabinet Office provided the outcome of its review on 8 June 2021. The Cabinet Office explained to the Commissioner that the delay was partly caused by individuals dealing with the internal review being on annual leave at the time the response was due. In addition, the relevant team sent its submission to the case management system as opposed to the FOI team and it was not picked up until 1 June 2021.
53. Whilst he notes the explanations about the delay in sending out the internal review response in this case, the Cabinet Office failed to complete its internal review within the Commissioner's guidance. The Commissioner expects the Cabinet Office to ensure that reviews it handles in the future adhere to the timescales he has set out in his guidance.
54. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"² strategy to improve standards of accountability, openness and transparency in a digital age. The

² <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"³.

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

55. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

56. 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.
57. 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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