

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 December 2022

Public Authority: The English Heritage Trust
Address: The Engine House
Fire Fly Avenue
Swindon
SN2 2EH

Decision (including any steps ordered)

1. The complainant has requested information relating to Oliver Reed's blue plaque nomination.
2. English Heritage ('EH') refused to provide the requested information, citing section 36(2)(b)(i) (prejudice to the effective conduct of public affairs).
3. The Commissioner's decision is that section 36(2)(b)(i) is engaged and the public interest lies in maintaining the exemption. In failing to respond to the request within twenty working days, EH breached section 10 of FOIA.
4. The Commissioner does not require the public authority to take any steps.

Request and response

5. On 16 December 2021, the complainant wrote to EH and requested the following information:

"1. I understand that the historians working for and or acting on behalf of English Heritage (EH) recently carried out what EH has described as 'thorough background research' into the late actor Oliver Reed following his recommendation for a Blue Plaque. At the end of this request (and for your convenience) I enclose a copy of a press statement which I

received from [Redacted] in the EH press office last week. This statement which acknowledges the research, points out that 'an historical overview of his life and work' was presented to the panel. Can you please provide a copy of 'this historical overview' and a copy of the research on which it was based. Please feel free to redact the names of any historians and or EH staff and or members of the public from the documents provided.

2. Can you please provide a copy of the original letter (s) and or emails and or written communications from members of the public in which Mr Reed was proposed for a plaque. Please remove the name and personal details of the authors of these letters and or emails and or written communications.

3. Can you identify the building (s) which would have played host to a plaque to Oliver Reed.

Statement

'The Blue Plaques Panel considered the nomination for the actor Oliver Reed in June 2021 and, having examined the evidence, made the decision not to shortlist Reed for a blue plaque.

We receive up to 100 nominations for blue plaques every year and can only install around 12 annually.

As with all nominated figures, English Heritage historians conducted thorough background research on Oliver Reed and provided the panel with a historical overview of his life and work.

The panel considered that, despite Oliver Reed's high public profile, his legacy in the field of acting was not sufficiently strong."

6. EH responded on 9 March 2022. It confirmed that the information it held in response to part 1 of the request was exempt under section 36(2)(b) and (c) and the information that it held in response to part 2 of the request was exempt under section 41. It confirmed to the complainant that 'for all shortlisted cases, the choice of address that will bear the plaque is made during a second stage of research. Since Reed was not, on this occasion, shortlisted, this address research was not carried out.'
7. Following an internal review EH wrote to the complainant on 11 May 2022. It upheld its original decision.
8. During the course of this investigation, EH disclosed to the complainant the information previously withheld under section 41, with personal information redacted under section 40.

9. EH also changed its position in relation to part 3 of the request, stating that it did hold a list of addresses relevant to Oliver Reed's nomination.

Reasons for decision

Section 40(2) – personal data

10. Section 40(2) states that information is exempt if it is third party personal data and disclosure would contravene the data protection principles.
11. The complainant hasn't expressed any concerns about the redaction of the names of the nominator. They haven't made their position clear in relation to the addresses.
12. The Commissioner doesn't believe that any individual who contacts EH, for the purpose of nominating an individual for a blue plaque, would have the expectation that their personal data would then be disclosed to the world at large.
13. Furthermore, EH has explained that, in the event of a successful nomination it would approach any tenants, or homeowners, regarding the matter privately to obtain their consent.
14. With the above in mind, the Commissioner is satisfied that section 40(2) has been applied correctly and the personal data can be withheld.

Section 36 – prejudice to the effective conduct of public affairs

15. Section 36(2)(b)(i) of FOIA states that information is exempt if, according to the opinion of the qualified person, its disclosure would, or would be likely to, inhibit the free and frank provision of advice.
16. In its refusal notice, EH explained to the complainant that it is essential that 'Blue Plaque historians are able to carry out their research freely and without public security and that this research can be assessed and discussed by the panel without the fear or pressures of outside influences. It is only through vigorous investigation and discussion of all the information available that a sound outcome can be achieved.'
17. In their internal review outcome request the complainant stated, 'I do not believe that disclosure of information relating to Mr Reed who died in 1999 would inhibit any other blue plaque deliberations relating to other individuals.'
18. In its internal review outcome, EH clarified to the complainant its previous decision was 'made with regards to the nomination of Oliver

Reed, and the advice given and deliberations held for this nomination only; the decision was not made due to concerns that disclosure of the requested information would inhibit deliberations relating to other individuals, as you have stated.'

19. Section 36 is a unique exemption which relies upon the opinion of the public authority's 'qualified person' in order to be engaged. EH confirmed that Kate Mavor, Chief Executive, had given their opinion that section 36(2)(b)(i) applied.
20. With section 36, the Commissioner does not necessarily need to agree with the opinion of the qualified person in order for the exemption to be engaged. He needs only satisfy himself that the qualified person's opinion is an opinion that a reasonable person could hold.
21. The Commissioner questioned the qualified person's decision, since according to EH's website¹, once an application has been turned down, ten years must pass before the nomination can be considered again. The Commissioner expressed doubts that deliberations made about Oliver Reed in 2021 would affect deliberations made in 2031.
22. EH confirmed that there may be exceptions to the 10-year rule. It also explained, 'I think it is important to point out that the time that may or may not pass is off (sic) little matter in regards to inhibiting the free and frank exchange of advice. If an individual (the Blue Plaques Historian) feels inhibited when composing the report, then critical detail may be left out, giving an incomplete or inaccurate account of events.'
23. There are several reasons why the Commissioner disagrees with the qualified opinion's person in this instance. Having looked at the withheld information, it doesn't appear to cover anything novel about Oliver Reed's life that is not in the public domain. Furthermore, there's also no guarantee that he will be nominated again.
24. However, the Commissioner does accept that the qualified person's opinion is not an unreasonable one, i.e., it is an opinion that a reasonable person could hold. Therefore, section 36(2)(b)(i) is engaged and the Commissioner will go onto consider where the balance of the public interest lies.

¹ [Propose a Plaque | English Heritage \(english-heritage.org.uk\)](https://www.english-heritage.org.uk/propose-a-plaque/)

25. The Commissioner considers the public interest finely balanced in this case because neither side of the argument is particularly strong. On the one hand, the withheld information is not particularly free or frank and contains mainly biographical information; the Commissioner doubts the severity, extent and frequency of any prejudice that disclosure would cause.
26. On the other hand, the disclosure that EH has provided confirms that Oliver Reed was nominated for a blue plaque just once in 2021. Furthermore, this request appears to represent a private concern of the requestor, who is concerned that EH made its decision based on Oliver Reed's personal life, rather than his professional life. The Commissioner doesn't consider there to be a strong public interest in this information.
27. The Commissioner is mindful that this request is a result of an enquiry that the complainant made to EH. Comparing the statement with the withheld information, the Commissioner doesn't consider it adds anything new to EH's position that 'The panel considered that, despite Oliver Reed's high public profile, his legacy in the field of acting was not sufficiently strong has compared the statement upon which this request was based.' Therefore, the Commissioner has decided the public interest lies in maintaining the exemption.

Procedural matters

28. In failing to respond to the request within twenty working days, EH breached section 10 of FOIA.

Right of appeal

29. 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

30. 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.
31. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF