

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 June 2023

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

Decision (including any steps ordered)

1. The complainant has requested the minutes of meetings held by the Advisory Military Sub-Committee (AMSC). The Cabinet Office withheld the requested information under Sections 37(1)(b) (the conferring by the crown of any honour or dignity) and 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the Cabinet Office were entitled to rely on Sections 37(1)(b) and 40(2) of the FOIA to withhold this information.
3. The Commissioner does not require further steps.

Request and response

4. On 20 January 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

"Part One. Please provide me with the authority and details where it has been agreed by Parliament that a sub-committee of the HD Committee which is a part of the Cabinet Office and as such a part of Government can be designated as an independent organisation from Government(sic).

Part Two . Judge Buckley in GRC FTT EA/2018/017 decided without a hearing on 11 March 2019 paragraph 108 and 109 the following in relation to a precedent in respect of the Public Interest Test in the relinquishment of the minutes of the AMSC meetings:

"Overall we find that there is a fairly significant public interest in the disclosure of these minutes."

Judge Buckley made that finding as a result of the fact that the AMSC does not make recommendations that are put before the Queen. It does however provide advice to the HD Committee which makes recommendations that are put before The Queen. You are therefore requested to forward to me the minutes of the following meetings of the AMSC, I accept there may be some redactions:

- 1 May 2019
 - 3 September 2019
 - 19 November 2019
 - 4 February 2020
 - 29 January 2021
 - 26 April 2021
 - 23 June 2021"
5. The Cabinet Office responded on 15 March 2022. It stated that the information was partially held, but it considered it exempt under Section 37(1)(b), Section 35(1)(a) and Section 40 of the FOIA.
 6. The complainant requested an internal review on 15 March 2022, and the Cabinet Office provided the outcome on 8 April 2022, upholding its decision that the exemptions were correctly applied.

Reasons for decision

7. During the course of the investigation, the Cabinet Office dropped its reliance on section 35(1)(a), relying solely on section 37(1)(b). Section 37(1)(b) states that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
8. The request specifically seeks the minutes of meetings held by the Advisory Military Sub-Committee, which considers claims for medallic recognition of past military service. As such the Commissioner is satisfied that the withheld information clearly 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. The Commissioner confirms that he has inspected the information in question.
9. Section 37(1)(b) provides a qualified exemption and is therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The

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.

Arguments in favour of maintaining the exemption

10. The Cabinet Office emphasized that the honours process relies on a level of confidentiality in order to operate effectively and efficiently. It set out the following arguments in favour of maintaining the exemption:

- Those involved in the determination of medallic recognition should be able to express their views in confidence, without the fear of premature disclosure.
- The subject of medallic recognition is both sensitive and controversial, and it must be possible to express views freely and frankly. Disclosure could lead to poorer decision making.
- Maintaining the confidentiality of the process ensures that decisions are made on the merits and achievements of each candidate, and not on the basis of lobbying
- It is made apparent to applicants that the details of their application will remain confidential.
- The small size of the committee means it will likely be possible to identify speakers even if their names were redacted.

Arguments in favour of disclosure

11. In its response to the requestor, the Cabinet Office acknowledged the importance of transparency in government, and that disclosure could encourage awareness of and interest in the honours process among the public.

12. In their request for internal review, the requestor stated the information should be released because they considered the AMSC to be largely unaccountable, writing:

“The Chair of the AMSC is apparently authorised to decide which medal submissions he will decide the AMSC will review, without discussion with anyone else. Decisions on advice to be proffered to the HD Committee are made in secret and all that is promulgated on the Gov UK AMSC web page are details of those submissions which the HD Committee and the AMSC decide to put on. If an appeal is made it appears to be the AMSC that makes the decision on the appeal and not the HD Committee.”

The Commissioner's view

13. The Commissioner considers that there is a strong public interest in openness and transparency about matters relating to the nature and extent of the vetting process in relation to the conferring of an honour or dignity. The withheld information in this case would enhance public understanding of the honours system process.
14. 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 released into the public domain it would be likely to result in individuals 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.
15. The Commissioner acknowledges the requestor's concerns about the secrecy of the AMSC's process. However, he considers that this results from the Committee's requirement for confidentiality, and notes while it may not publish the meeting minutes, it regularly publishes its recommendations and terms of reference, which he considers goes some way to meeting the public interest.
16. The Commissioner also notes that the Cabinet Office publishes general information about the independent honours process, and reports on the operation of that process, at www.gov.uk/honours. 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.
17. In balancing the public interest factors the Commissioner has concluded that the public interest favours maintaining the exemption. He has reached this conclusion given his view that disclosure of the withheld information in this particular case would undermine the confidentiality of the honours process and as set out above he considers there to be a significant public interest in protecting the effective operation of the system. Accordingly, the Commissioner finds the Cabinet Office's reliance on section 37(1)(b) was correct.

Procedural matters

18. Section 10 of FOIA sets out the timeframe within which a public authority must respond to an FOIA request. Authorities must respond to

requests promptly, and by the twentieth working day following the date of receipt of the request.

19. From the evidence provided to the Commissioner in this case, it is clear that the Home Office did not deal with the request for information in accordance with FOIA. The Commissioner finds that the Home Office has breached section 10(1) by failing to respond to the request within 20 working days.

Right of appeal

20. 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

21. 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.
22. 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

Joanna Marshall
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