

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2012

Public Authority: The Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information from the Cabinet Office regarding a number of deceased individuals who had been nominated for an honour but had refused to accept the award. The Cabinet Office disclosed some information, including the various individuals' responses in which the honours were rejected, but withheld the remaining information on the basis of sections 37(1)(b), 40(2) and 41 of FOIA. The withheld information comprised comments recorded about the individuals named in the request and correspondence concerning the individual circumstances of one particular nominee. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 37(1)(b) and that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Request and response

2. On 14 February 2012 the complainant wrote to the Cabinet Office and requested information in the following terms:

'My request concerns the recent release by the Cabinet Office of a list of individuals who were offered but who subsequently turned down honours of one kind or another.

You will be aware that all these individuals are deceased.

1...I would like to request copies of all correspondence and communications between the Cabinet Office/Downing Street and any of the individuals listed below which in any way relates to the

granting of the honour and the subsequent decision to turn it down. I am interested in receiving copies of both sides of the correspondence.

2...Copies of any internal files and or other kinds of internal documentation which in any way relates to the decision to grant honours to the individuals listed below and their subsequent decision to turn it down.

The individuals I am interested in are...

*Roald Dahl
Lucien Freud
LS Lowry
Henry Moore
Francis Bacon
Robert Graves
Aldous Huxley'*

3. The Cabinet Office contacted the complainant on 9 March 2012 and explained that it held information falling within the scope of his request but it needed further time to consider the balance of the public interest test under section 37(1)(b) of FOIA.
4. The Cabinet Office provided him with a substantive response on 8 May 2012. In this response the Cabinet Office provided the complainant with some of the information he had requested. It explained that the remaining information was exempt from disclosure on the basis of the exemptions contained at section 37(1)(b), 41(1) and 40(2).
5. The complainant contacted the Cabinet Office on 22 May 2012 and asked for an internal review of this decision.
6. The Cabinet Office informed the complainant of the outcome of the internal review on 12 June 2012; the review upheld the application of the exemptions as set out in the refusal notice.

Scope of the case

7. The complainant contacted the Commissioner on 26 June 2012 to complain about the way his request for information had been handled. The complainant asked the Commissioner to consider the Cabinet Office's decision to withhold some of the information he had requested on the basis of the exemptions cited in the refusal notice.

Reasons for decision

Section 37(1)(b) – information relating to the conferring of an honour dignity

8. The Commissioner has initially considered the Cabinet Office's application of section 37(1)(b) which provides a specific exemption for information which relates to the conferring by the Crown of any honour or dignity.
9. Given the nature of the information requested by the complainant, i.e. information relating to the decision to grant honours to various named individuals and their subsequent refusals, the Commissioner is satisfied that the withheld information falls squarely within the scope of this exemption.
10. However, section 37(1)(b) is a qualified exemption and therefore the Commissioner must consider the public interest test at section 2 of the FOIA and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of maintaining the exemption

11. In its submissions to the Commissioner the Cabinet Office emphasised that it had looked carefully at the information falling within the scope of this request and it had in fact disclosed the majority of the information it held. However, for the reasons set out below it had concluded that the public interest did not favour disclosure of the withheld information which comprised some of the comments recorded about the individuals named in the request and correspondence concerning the individual circumstances of one particular nominee.
12. The Cabinet Office explained that it had always been the case that those involved in the honours system require the freedom to be able to discuss and deliberate individual honours cases. It considered this issue of confidentiality to be as relevant today as when the various documented discussions took place. The Cabinet Office argued that it was firmly of the opinion that the views expressed by individuals about potential honours candidates should remain confidential and should not be revealed to the public. If such information was disclosed the Cabinet Office believed that those participating in the system would be reluctant to do so if they thought that their views, given in confidence, were likely to be subsequently published.
13. The Cabinet Office explained that it was fundamental to the current operation of the honours system, as it was when these nominations

were considered, that those involved in the process can offer truthful and honest observations in confidence and which remain confidential. Therefore it would not serve the public interest if it became apparent that the content of confidential enquires, records of discussions and correspondence concerning individual honours cases might be made public. The Cabinet Office noted that Parliament had also recognised the particular sensitivity of releasing information about honours nominations – even when relatively old – by expressly providing that the exemption contained at section 37(1)(b) does not expire after 30 years but instead remains applicable for 60 years after a document's creation.

14. Furthermore, the Cabinet Office explained that it could not assume that the individuals commenting on the case are now deceased. (It identified two individuals who had offered their opinions who were still alive). However, it simply did not know whether all of the other individuals expressing the comments are now deceased, and therefore it believed that it was its responsibility to respect the confidentiality that the individuals would have expected at the time.

Public interest arguments in favour of disclosing the withheld information

15. The complainant did not advance any specific public interest arguments supporting the disclosure of withheld information (unsurprisingly, neither did the Cabinet Office). The Commissioner notes that in similar cases in the past, it has been acknowledged that the honours and appointments process is of interest to the public and therefore there was a public interest in knowing that the honours process is transparent and that the process of awarding honours and dignities is clear.

Balance of the public interest arguments

16. 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 the premise of the Cabinet Office's argument 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 a disclosure of information that would erode this confidentiality, and thus damage the effectiveness of the system, would not be in the public interest.

17. However, the Commissioner would add a note of caution to the Cabinet Office's position that the views expressed by individuals about potential

honours candidates should remain confidential and should not be revealed to the public. Taken to its logical conclusion, the Cabinet Office's position would presumably be that comments about the merits of an individual's nomination would *never* be disclosed. However, section 37(1)(b) is a qualified exemption and thus there could be circumstances where the public interest favoured disclosure of information of this nature.

18. With regard to attributing weight to the public interest in maintaining the exemption in the particular circumstances of this case, the Commissioner believes that three issues need to be considered: Firstly, the age of some of the information; secondly, and not entirely unrelated to this, the fact that some of the individuals who have commented on the nominees are potentially deceased; and thirdly, as with all cases, the content of the withheld information itself.
19. In relation to the first point, some of the comments about the nominees were made several decades ago, some dating back to the 1950s. To a degree the Commissioner believes that the age of some of the information in the scope of this request must limit the weight given to the public interest in maintaining the exemption. This is because, in the Commissioner's view, it is difficult to realistically argue that the likelihood of a chilling effect occurring of the nature envisaged would be the same if, for example information was disclosed about a nomination being considered in 2011 compared to a nomination that had been discussed, for example, in 1956.
20. In relation to the second point, the Commissioner also believes that it is unsustainable to argue that an individual who is currently involved in offering opinions on potential honours nominees would not draw a distinction between their opinions being disclosed when they were alive, and their opinions being disclosed after they had died. In the Commissioner's view a distinction can therefore be drawn between the chilling effect which may occur if contributions from an individual who is deceased, and indeed died some time ago, were disclosed and the nature and strength of the chilling effect if the contributions from an individual who is still alive were disclosed.
21. The Commissioner recognises that there are some practical difficulties in determining whether certain individuals are still alive. The Commissioner notes that the Cabinet Office identified two individuals who commented on the applications who are still alive but it simply did not know whether all of the other contributors are deceased. Whilst the Commissioner does not dispute the fact that it would very difficult, if not impossible to determine if *all* the individuals named were still alive or not. Based upon a number of simple internet searches the Commissioner has easily determined that a number of the individuals who offered their

contributions have died. Thus whilst the Commissioner accepts that it is difficult to determine whether all of the individuals in question have died, it is clearly possible to do this for some of the contributors.

22. Finally, in relation to the third point, the Commissioner accepts that withheld information which compromises comments about the various nominees clearly represent honest, candid and personal views of the various individuals who had been asked to comment. Furthermore, the information that has been withheld relating to the circumstances of the one particular nominee can also accurately be described as of a candid and frank nature. Therefore if one solely considers the content of the withheld information itself – and sets aside the age of the information and whether or not the contributors themselves are still alive – the Commissioner accepts that disclosure of the information would clearly begin to undermine the general confidentiality of the honours system.
23. With regard to the public interest in disclosing the withheld information, the Commissioner believes that disclosure of the information would certainly inform the public as to the reasons why each of the individuals named in the request had been offered particular a honour. Disclosure would therefore increase transparency in relation to these nominations. Furthermore, given that the nominations span a considerable period of time, it could be argued that disclosure of the information would provide an insight into how the honours process had changed (or not) overtime. However, the Commissioner is not convinced that there are any other pressing public interest arguments which would support disclosure of this information. Moreover he is also not convinced that the arguments surrounding transparency themselves attract significant weight in the circumstances of this case; instead whilst the Commissioner does not dispute that the public may well be interested in the withheld information, this does not equate to there being a weighty public interest in its disclosure.
24. Having considered all the circumstances of this case, the Commissioner has concluded that the balance of the public interest favours maintaining the exemption. In his view although the age of some of the information, and the fact that the some of the contributors are no longer alive arguably lessens the impact of any chilling effect on future contributions to the honours nominations, disclosure of the withheld information would nevertheless clearly impinge on the confidential nature of these particular nominations because of the free and frank nature of the information itself. In the Commissioner's view such a disclosure would begin to lift the veil of secrecy upon which the effective operation of the honours system depends. Such prejudicial consequences do not mean that the public interest will always favour maintaining the exemption when information about individual honours cases are requested. However, in this case, for the reasons stated above, including the fact

that the arguments in favour of disclosure are generic in nature and limited in strength, the Commissioner is satisfied that that the public interest favours maintaining the exemption.

25. In light of his findings in respect of section 37(1)(b) the Commissioner has not gone on to consider the Cabinet Office's reliance on sections 40(2) and 41 of FOIA.

Right of appeal

26. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

27. 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.
28. 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

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
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