

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 June 2013

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

Decision (including any steps ordered)

1. The complainant requested information concerning discussions between civil servants and officials regarding the OBE and subsequent knighthood awarded to Jimmy Savile. The Cabinet Office withheld all of the requested information on the basis of section 36 (effective conduct of public affairs) and section 37(1)(b) (honours exemption) of FOIA and further argued that some of the information was also exempt on the basis of section 40 (personal data). The Commissioner has concluded that although sections 36 and 37 are engaged, the public interest favours disclosing the information. Furthermore, the only information which the Commissioner believes is exempt from disclosure on the basis of section 40 are the names of junior civil servants.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with the information that he requested with the names of junior civil servants redacted.
3. 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 the Act and may be dealt with as a contempt of court.

Request and response

4. On 11 October 2012 the complainant wrote to the Cabinet Office and requested information in the following terms:

'My request today concerns the award of an OBE and knighthood to the television entertainer, Jimmy Savile. Please disclose:

1) Whether any correspondence exists between either civil servants or ministers discussing the award either of an OBE in 1971 or a knighthood in 1996 [the knighthood was actually awarded in 1990] to Mr Savile, prior to either award being made, and:

2) If it exists, please release copies of any and all correspondence, both ministerial and civil service, in relation to point 1).'

5. The Cabinet Office responded on 8 November 2012 and explained that it held information falling within the scope of the request but it considered it to be exempt from disclosure on the basis of section 37(1)(b) of FOIA, the honours exemption. However, it needed further time to consider the balance of the public interest test.
6. The Cabinet Office contacted the complainant again on 6 December 2012 and explained that it had concluded that all of the information he had requested was exempt from disclosure on the basis of sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) (the effective conduct of public affairs) in addition to section 37(1)(b) of FOIA. The Cabinet Office confirmed that it had concluded that the public interest favoured maintaining each of these exemptions. The Cabinet Office also explained that it considered some of the information falling within the scope of the request, namely the personal data of people who contributed opinions in respect of Jimmy Savile, to be exempt from disclosure on the basis of section 40(2) of FOIA, the personal data exemption.
7. The complainant contacted the Cabinet Office on 7 December 2012 in order to ask for an internal review of this decision.
8. The Cabinet Office informed the complainant of the outcome of the internal review on 18 December 2012. The review explained that the Cabinet Office remained of the view that the exemptions contained at sections 36, 37(1)(b) and 40(2) provided a basis to withhold the requested information.

Scope of the case

9. The complainant contacted the Commissioner on 19 December 2012 in order to complain about the way his request for information had been handled. The complainant provided detailed submissions to support his view that the withheld information should be disclosed. Although the

Commissioner has not set out these arguments here, he has referred to them in his analysis below.

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 which discusses the awarding of an OBE and knighthood to Jimmy Savile, the Commissioner is satisfied that the withheld information clearly falls within the scope of the exemption contained at section 37(1)(b). It is therefore exempt from disclosure on the basis of section 37(1)(b).
12. 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

13. The Cabinet Office argued that it was firmly of the view that it is not in the public interest to reveal all of the details of individual honours cases; this is in order to protect the integrity of the honours system. The principle of confidentiality extends not only to those considered for honours, but also to those participating or who have participated in the honours system in the past. The Cabinet Office explained in the majority of cases it believed it would not serve the public interest if it became apparent that correspondence and records of discussions concerning individual honours might occasionally be made public.
14. The Cabinet Office also argued that disclosure of the withheld information would impair the ongoing investigations currently being carried out by the Department of Health (DoH) and the NHS into Jimmy Savile's involvement in Broadmoor Hospital, Stoke Mandeville Hospital and the Leeds General Infirmary. (The Cabinet Office's position in relation to this argument is discussed in further detail in the section 36 analysis below).
15. The Cabinet Office acknowledged that this was an exceptional case in light of the information that had come to light in 2012 concerning Jimmy Savile. It explained that it had carefully considered whether, given

these circumstances, and the fact that the recipient of the awards is deceased, the public interest favoured disclosing the information. However the Cabinet Office explained that precisely because this was an exceptional case, with the aforementioned reviews underway, and the consideration of the potential impact of disclosing the information on those involved in the review, lead it to conclude that the public interest favoured maintaining the exemption.

Public interest arguments in favour of disclosing the withheld information

16. The complainant has argued that there is a compelling public interest in disclosure of the information in order to enhance public debate and scrutiny of Jimmy Savile in light of the allegations that have emerged, and in particular 'his relationship with the establishment'. The complainant emphasised that disclosure would restore the public's faith in the government's commitment to investigate the Jimmy Savile affair transparently and offset accusations of institutional 'cover-ups' which have already been made.

Balance of the public interest arguments

17. In the Commissioner's opinion, when balancing the public interest under section 37(1)(b), consideration should only be given to protecting what is inherent in the actual exemption, namely protecting the integrity and robustness of the process of recognising and rewarding individuals for exceptional merit, bravery, achievement or service to the country. On a practical level, this means that the Commissioner will consider whether the confidentiality of the process should be maintained taking into account safe space and chilling effect arguments.
18. Therefore, in the Commissioner's opinion, when considering the public interest in maintaining the section 37(1)(b) exemption, the Cabinet Office cannot take into account the potential impact of the ongoing DoH and NHS investigations. Such considerations are not inherent to this particular exemption. Section 2(2)(b) requires the public interest in maintaining the exemption, not the public interest in non-disclosure, to be weighed against the public interest in disclosing the requested information. Consequently, in terms of the balance of the public interest under section 37(1)(b), the Commissioner has not placed any weight on the argument that the information needs to be withheld in order to protect the ongoing investigations. These matters are, however, fully considered below in relation to the public interest in maintaining the section 36(2) exemption.
19. 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 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.

20. Taking these points into account, and given the content of the withheld information in this case, the Commissioner accepts that disclosure of the information would, to some degree, undermine the confidentiality of the honours system. The Commissioner accepts that this presents some risk of creating a chilling effect for contributions to future discussions in relation to honours nominees. That is to say, those contributing their opinions to the discussions of nominees may be less free and frank in their contributions. However, the Commissioner believes that to some degree, the impact of any such chilling effect is reduced in this case by the age of some of the withheld information and the fact that the recipient of the awards is deceased.
21. With regard to the public interest arguments in favour of disclosing the withheld information, the Commissioner believes that these need to be given significant weight. In the Commissioner's opinion given what is now known about Jimmy Savile, following the ITV documentary in October 2012, there is a compelling public interest in disclosure of information that would inform the public about the nature of deliberations that led to him receiving these honours. Disclosure would assist in undermining the suggestion of some sort of institutional cover-up, as referenced by the complainant. More importantly, disclosure would enable the public to be better informed about the matters taken into account at times when the award of honours to Jimmy Savile was under consideration. In the Commissioner's opinion disclosure of the withheld information that is the focus of this request would go a significant way to serving the public interest, the nature of which is unique to this particular case.
22. The Commissioner has therefore concluded that the public interest in relation to section 37(1)(b) favours disclosure of the withheld information. The Commissioner wishes to emphasise that in reaching this decision he does not dispute the argument that disclosure would to some degree undermine the confidentiality of the honours system, simply that the public interest arguments in favour of disclosure attract more weight. The Commissioner has elaborated on his reasons for

reaching this decision in a confidential annex which has been provided to the Cabinet Office only.

Section 36 – effective conduct of public affairs

23. The Cabinet Office also argued that the withheld information was exempt from disclosure on the basis of sections 36(2)(b)(i) and (ii) and section 36(2)(c) of FOIA.

24. Section 36(2) states that:

'Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-...

...(b) would, or would be likely to, inhibit-

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.'

25. The qualified person who gave their opinion did not clearly specify which level of prejudice these three exemptions were engaged at, i.e. the lower threshold, i.e. that disclosure 'would be likely' to result in the prejudicial consequences the exemptions were designed to protect or the higher level that disclosure 'would' result in the prejudicial consequences. The Commissioner has therefore considered only whether the exemptions are engaged at the lower threshold of likelihood.

26. In determining whether these exemptions are engaged the Commissioner must determine whether the qualified person's opinion was a reasonable one. In doing so the Commissioner has considered all of the relevant factors including:

- Whether the prejudice relates to the specific subsection of section 36(2) that is being claimed. If the prejudice or inhibition envisaged is not related to the specific subsection the opinion is unlikely to be reasonable.
- The nature of the information and the timing of the request, for example, whether the request concerns an important ongoing issue on which there needs to be a free and frank exchange of views or provision of advice.
- The qualified person's knowledge of, or involvement in, the issue.

27. Further in determining whether the opinion is a reasonable one, the Commissioner takes the approach that if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable. This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only unreasonable if it is an opinion that no reasonable person in the qualified person's position could hold. The qualified person's opinion does not even have to be *the most* reasonable opinion that could be held; it only has to be *a* reasonable opinion.
28. With regard to sections 36(2)(b)(i) and (ii), the arguments accepted by the qualified person included that senior officials involved in the DoH investigations needed to have the opportunity to discuss in confidence all issues relating to their investigations and to be able to offer full and frank advice in a safe space. Disclosure of the withheld information would infringe on this safe space because the investigations needed to collect all relevant information and make findings, before partial information is released.
29. With regard to section 36(2)(c), the qualified person's view was that given the nature of the process of the ongoing DoH investigations (including establishing the circumstances around Jimmy Savile's appointment and the roles he held at various hospitals), disclosing the withheld information risked prejudicing the views of those who would be interviewed as part of the investigations. This risked prejudicing the investigations and in turn the effective conduct of public affairs. Furthermore, the qualified person also took into account similar factors considered under the balance of the public interest test in section 37(1)(b), that is say the need to ensure that the effective conduct of public affairs is not prejudiced by the confidentiality of the honours system being undermined.
30. The Commissioner was also provided with some further submissions from the Cabinet Office which explain, with reference to the content of the withheld information itself, why the section 36 exemption was considered to be engaged. The Commissioner has not included such submissions here, as to do so would inevitably disclose aspects of the withheld information, but he has taken them fully into account in reaching his conclusions in relation to these exemptions.
31. In relation to the reasonableness of the opinion in respect of sections 36(2)(b)(i) and (ii), the Commissioner accepts that officials involved in the ongoing DoH investigations clearly need a safe space in which to candidly discuss issues relating to their work away from external

comment and/or media attention. Given the level of public interest in the allegations surrounding Jimmy Savile since the broadcast of the ITV documentary, the Commissioner accepts that disclosure of *any* information associated with the investigations has the potential to encroach on this safe space. The Commissioner therefore accepts that the qualified person's opinion in relation to these two exemptions is a reasonable one and thus sections 36(2)(b)(i) and (ii) are engaged.

32. As regards the reasonableness of the opinion in relation to section 36(2)(c) the Commissioner is not entirely convinced as to the directness of the link between disclosure of the withheld information and the suggestion that this will further colour the view of those who will be interviewed. Nevertheless, the Commissioner accepts that it is not an irrational or absurd suggestion that those interviewed as part of the investigations may be influenced by the content of the withheld information and this may in turn undermine those investigations. Therefore, the Commissioner also accepts that the qualified person's opinion with regard to section 36(2)(c) is a reasonable one and this exemption is also engaged.

Public interest test

33. Section 36 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining each of the exemptions that have been cited outweigh the public interest in disclosing the information.
34. In terms of the public interest arguments in favour of maintaining the exemption, the Commissioner has considered the arguments in relation to section 36(2)(c) separately to the arguments in relation to sections 36(2)(b)(i) and (ii).

Public interest arguments in favour of disclosure

35. As noted above under the consideration of the public interest in relation to section 37(1)(b), the complainant has argued that there is compelling public interest in disclosure of the information in order to enhance public debate and scrutiny of the process by which Jimmy Savile was awarded both an OBE and a knighthood in light of the allegations that have emerged.
36. Furthermore, in relation to the Cabinet Office's arguments supporting the application of the section 36 exemptions, the complainant explained that he did not accept that disclosure of the withheld information would impair a properly and professionally managed investigation. In any event, the complainant emphasised that it was hard to envisage a more pressing case for transparency and that disclosure would actually

enhance the effective conduct of public affairs by showing the historical context in which the decisions to award these honours were made.

Public interest arguments in favour of maintaining the exemptions

37. The Cabinet Office argued that there was a significant public interest in ensuring that the ongoing DoH reviews are carried out effectively and without prejudice.
38. In relation to section 36(2)(c), the Cabinet Office also argued that weight had to be given to the public interest in protecting the confidentiality of the honours system.

Balance of the public interest test

39. In considering complaints regarding section 36, where the Commissioner finds that the qualified person's opinion was reasonable, he will consider the weight of that opinion in the public interest test. This means that the Commissioner accepts that a reasonable opinion has been expressed that prejudice or inhibition would, or would be likely to, occur but he will go on to consider the severity, extent and frequency of that prejudice or inhibition in forming his own assessment of whether the public interest test dictates disclosure.
40. With regard to the weight that should be attributed to the public interest in maintaining sections 36(2)(b)(i) and (ii), as noted above, the Commissioner does not dispute the need for officials involved in the Savile investigations to have a safe space in which to discuss the relevant issues. Furthermore, having accepted that the exemptions are engaged some weight has to be given to upholding these exemptions. However, having had the opportunity to examine the content of the withheld information, the Commissioner does not accept that the safe space needed by the officials will be significantly encroached by disclosure of this particular information. This is because the information focuses on one, relatively narrow, issue, namely Jimmy Savile's receipt of two honours. In contrast the terms of reference for the investigations are wide ranging and cover matters of a wholly different nature. In the Commissioner's view disclosure of the withheld information is likely at most to result in only a relatively narrow infringement into the safe space that is required by the officials in question. However, and for the reasons discussed above in relation to section 37(1)(b), the Commissioner believes that there is a very weighty public interest in disclosure of the withheld information. Consequently, in light of the limited weight that the Commissioner believes should be given to the public interest in favour of maintaining sections 36(2)(b)(i) and (ii), he has concluded that the public interest favours disclosure of the

information when weighed against the public interest in maintaining either or both these two exemptions.

41. Turning to section 36(2)(c), with regard to the weight that should be attributed to the argument that there is public interest in ensuring that the DoH reviews are carried out effectively and without prejudice, again having accepted that this argument is a reasonable one, the Commissioner accepts that some weight should be given to maintaining the exemption. Moreover, the Commissioner obviously accepts that it is clearly in the public interest to ensure that efforts to establish the truth about Jimmy Savile's history of abuse are not undermined.
42. However, the Commissioner considers that the severity, extent and frequency of prejudice to the investigations, envisaged by the Cabinet Office as likely to occur if the withheld information were to be disclosed, would be very limited. The Commissioner has reached this view given the amount of information already in the public domain about Jimmy Savile's history of abuse at the time of the request, and indeed because of the content of the withheld information itself. The Commissioner considers that those appointed to conduct the various inquiries into Jimmy Savile's conduct and the surrounding circumstances will not be significantly distracted from their duty by the disclosure of the withheld information. Whilst it is difficult to predict or quantify, the Commissioner's view is that it must be accepted that those who will be interviewed in the course of the investigations will inevitably be aware of the information already in the public domain. Although the Commissioner acknowledges that the views recorded in the withheld information are not in the public domain, and thus it is not an entirely irrational line of argument to suggest that disclosure of the withheld information could influence some interviewees, in the Commissioner's view the suggestion that the withheld information would materially affect these interviewees is highly speculative. Consequently, the Commissioner considers that only limited weight should be given to this public interest argument.
43. However, the Commissioner accepts that it can be argued that the effective conduct of public affairs could be materially affected if disclosure of information under FOIA undermined the confidentiality of the honours system. For the reasons discussed above in relation to section 37(1)(b), the Commissioner accepts that disclosure of the requested information in this case risks undermining such confidentiality and creating a chilling effect in terms of discussions about future honours nominations. Therefore, in considering the balance of the public interest in relation to section 36(2)(c), the Commissioner accepts that some weight has to be given to the need to protect the confidentiality of such discussions.

44. Nevertheless, given the significant weight that the Commissioner considers should be attributed to the public interest arguments in favour of disclosure, the Commissioner has concluded that the public interest in relation to section 36(2)(c) also favours disclosing the withheld information. This is the case even taking into account the cumulative weight to be attributed to the public interest in maintaining the exemption in order to ensure that neither the DoH investigations nor the confidentiality of the honours system are undermined.

Section 40(2) – personal data

45. In submissions to the Commissioner, the Cabinet Office emphasised that given its view that the withheld information was exempt from disclosure on basis of sections 37 and 36, it was not necessary for it to also rely on section 40(2) of FOIA, other than in the event that it was found that these exemptions did not apply. However, in light of his decision in relation to sections 37 and 36 the Commissioner has gone on to consider the Cabinet Office's reliance on section 40(2).
46. Section 40(2) of FOIA states that personal data is exempt if its disclosure would breach any of the data protection principles contained within the Data Protection Act (DPA). The Cabinet Office argued that disclosure of the withheld information would be unfair and thus breach the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

47. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA as:

'...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

48. In relation to the application of section 40(2), the Cabinet Office explained that this was being relied upon to withhold the following information:
- a) Information which comprises the personal data – principally names – of officials who it believed were below 'SCS', i.e. senior civil servant, level at the time; and
 - b) In respect of information which records the personal views and opinions of individuals still alive who were involved in the discussions about Jimmy Savile's nominations for an honour.
49. The Commissioner accepts that the information falling within both categories comprises the personal data of identifiable individuals and thus is potentially exempt from disclosure on the basis of section 40(2).
50. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
 - The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain

does the passage of time mean that disclosure now could still cause damage or distress?

51. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
52. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

The Cabinet Office's position

53. The Cabinet Office argued that the individuals who expressed personal views about Jimmy Savile's suitability for an honour would have a very reasonable expectation that their discussions and accompanying correspondence would be kept confidential. In support of this position, the Cabinet Office referred to its submissions in relation to section 37(1)(b) in which it had emphasised that the award of honours is done on a confidential basis and that this would have been clearly understood by both those who considered the case and by those who would have expressed views.
54. The Cabinet Office acknowledged that this was an exceptional case, but it argued that it is also exceptional for those who were involved in the case at the time. Those offering their opinions were doing so in relation to the question of an *honour* for Jimmy Savile. If these individuals' names were now to be made public, they may be unfairly associated with the allegations which have now come to light in relation to Jimmy Savile when they were simply commenting on an honour without knowledge of other matters.
55. Furthermore, whilst the officials named in the withheld information were all public officials, their views related to a nomination of an individual and the views expressed were, the Cabinet Office argued, their personal views and not simply or necessarily, for example, made on behalf of a government department.
56. Consequently, the Cabinet Office argued that the personal data of those asked to comment on a particular honours case should remain confidential and their right to privacy protected. In terms of the withheld

information in this case, the Cabinet Office explained that it did not consider there to be a compelling public interest to outweigh the prejudice that may be caused to the data subjects.

57. Finally, the Cabinet Office explained that it had not specifically contacted the individuals to establish whether they would consent to the disclosure of their personal data. However, the Cabinet Office explained that given the specific honours exemption in the DPA, it would have concerns about seeking consent to disclose such information which the individuals themselves would not be able to seek access to under the subject access provisions of the DPA.

The Commissioner's position

Names and personal data of officials below 'SCS' level

58. As a general approach, in assessing whether employees can have a reasonable expectation that their names will be disclosed in response to a FOI request the Commissioner recommends that public authorities take into account key factors such as their level of seniority and responsibility and whether they have a public facing role where they represent the authority to the outside world. For example, a junior employee whose name appears on an email simply because they are organising a meeting or distributing a document in an administrative capacity would have a reasonable expectation that their name would not be disclosed.¹
59. Obviously, the withheld information in this case relates to a time period prior to the enactment of FOIA and thus the individuals named in the documents would have had no expectation that their personal data may be disclosed in response to a FOI request. In light of this, and taking into account the Commissioner's current approach to the personal data of junior employees as described above, he is satisfied that disclosure of the personal data of staff below SCS level in the withheld information would be unfair and thus breach the first data protection principle. The Commissioner has identified in the confidential annex the information which he believes falls within this description and thus can be redacted when the withheld information is released.

¹ [Requests for information about public authority employees'](#)

Information which records the personal views and opinions of individuals

60. With regard to the expectations of the individuals who provided their opinions and the expectations of those involved in assessing the nominations, the Commissioner accepts the Cabinet Office's argument that given the confidential nature of the honours system the individuals would have had a reasonable – and indeed weighty – expectation that such information would not be made public. However, to some degree the Commissioner believes that it is reasonable to expect this expectation to shift with the passage of time, i.e. those who made contributions cannot necessarily expect their contributions to be withheld in perpetuity. Moreover, the Commissioner notes that the individuals whose views and opinions are recorded are senior in nature and in his opinion this means that in terms of their expectations they must, even in the days prior to the enactment of FOIA, have had some level of greater expectation that they would be publically accountable for their involvement in decision making.
61. In terms of the Cabinet Office's assertion that the withheld information records the personal views of the individuals rather than the views expressed on behalf of government, having considered the content of the information the Commissioner accepts that some comments do appear to have been influenced by an individual's personal knowledge of Jimmy Savile and appear to be written more as some sort of 'supporting statement'. However, for the majority of the comments, in the Commissioner's opinion, these would appear not to have been made on this basis but on the basis of simply the officials being involved in the objective consideration of Savile for an honour. Therefore the Commissioner would resist the Cabinet Office's suggestion that all of the comments represent the personal views of the individuals in question; rather, some of the views are clearly those of officials being expressed on behalf of a government department.
62. In any event, the Commissioner does not accept the premise that disclosure of the names of individuals who offered their opinions on these honours – even in a personal rather than official capacity – may be unfairly associated with the allegations that have now come to light. It is clear from the ITV documentary, and particular the information that has subsequently come to light, that Jimmy Savile successfully used his celebrity status to manipulate his victims in order to commit offences without detection over the course of many decades. In the Commissioner's view to suggest that disclosure of the withheld information would mean that those involved in the consideration of honours would somehow be associated with the allegations seems very unlikely. Jimmy Savile achieved a high degree of public credibility for charitable work. The Commissioner also considers it appropriate, in the circumstances of this case, to note in this decision notice that the

withheld information does not appear to substantiate any suggestion that those involved in the honours process were aware of Jimmy Savile's criminal activities.

63. In conclusion, despite the expectations of the individuals as to whether the personal data would be disclosed, in the Commissioner's opinion it is still fair to disclose the information withheld on the basis of section 40(2) given the compelling public interest in disclosing the requested information that the Commissioner has discussed above. With regard to the information that has been redacted on the basis of section 40(2) the Commissioner recognises that the withheld information could be disclosed with only the names of those who submitted their opinions or views redacted but with the opinions and views themselves unredacted. However, in the circumstances of this case the Commissioner believes that the legitimate public interest is only met, or, perhaps more accurately, best met, by revealing not only the comments of the individuals but also revealing who made them so that the recorded deliberations about the awarding of the honours can be fully and accurately understood.

64. Turning to the conditions in Schedule 2 of the DPA, the Commissioner believes that the most appropriate one in this case is the sixth condition which states that:

'The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms of legitimate interests of the data subject'.

65. For the reasons discussed in relation to the public interest considerations relating to sections 36 and 37, and for the reasons discussed immediately above, disclosure of the opinions and views made by individuals, along with the names of those individuals is necessary to serve a legitimate interest. Moreover, whilst the Commissioner accepts that disclosure of such information would be contrary to the expectations of the individuals in question, he does not accept that the consequences of such a disclosure are as potentially severe as the Cabinet Office has argued. Therefore the Commissioner has concluded that section 40(2) cannot be relied upon to withhold this information.

Right of appeal

66. 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

67. 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.
68. 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
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