

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 February 2015

**Public Authority:** Foreign and Commonwealth Office  
**Address:** King Charles Street  
London  
SW1A 2AH

#### Decision (including any steps ordered)

---

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) for a copy of the file it held concerning the Birthday Honours List for 1974. The FCO argued that the information was exempt from disclosure under section 23(1) (security bodies) or in the alternative section 24(1) (national security) of FOIA. It also sought to apply the exemptions contained at sections 37(1)(b) (honours) and 40(2) (personal data). The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 37(1)(b) of FOIA and that in all the circumstances of the case the public interest favours maintaining the exemption.

#### Request and response

---

2. *The complainant* submitted the following request to the FCO on 23 May 2014:

*'I would like to request access to a file which is listed on the National Archives as FCO 57/476.*

*The file relates to the Prime Minister's List for HM The Queen Birthday Honours List for 1974.*

*According to the NA catalogue the file is currently retained by the Foreign and Commonwealth Office'.*

3. The FCO contacted the complainant on 26 June 2014 and confirmed that it held information falling within the scope of his request. However, it considered section 24(1) of FOIA to apply and it needed more time to consider the balance of the public interest.

4. The FCO provided the complainant with a substantive response to his request on 22 July 2014. The FCO explained that it had concluded that the requested information was exempt from disclosure under section 23(1) or section 24(1) of FOIA. It also explained that some of the information was exempt from disclosure on the basis of sections 37(1)(b) or 40(2). It confirmed that in relation to the qualified exemptions, the public interest favoured maintaining each of the exemptions.
5. The complainant contacted the FCO on 5 August 2014 in order to ask for an internal review into this refusal. He argued that in the circumstances of this request section 23(1) was a qualified exemption and the FCO had failed to consider the public interest test in relation to this exemption. He also questioned whether the disclosure of the requested material would harm national security.
6. The FCO informed him of the outcome of the internal review on 12 September 2014. The review upheld the application of the various exemptions and explained why, in the circumstances of this case, the exemption contained at section 23(1) remained absolute and therefore not subject to the public interest test.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 30 September 2014 in order to complain about the FCO's handling of his request. He explained that he did not accept that the entire contents of the file should be withheld given that it was 40 years old.

### **Reasons for decision**

---

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

8. 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.
9. Although the refusal notice and internal review indicated that the FCO only considered parts of the withheld information to fall within this exemption, the Commissioner has established that the FCO actually considers the entirety of the withheld information to be exempt from disclosure by virtue of section 37(1)(b) of FOIA.

10. The Deputy Commissioner (the signatory to this notice) has personally reviewed the content of the file on FCO premises. The request specifically seeks information concerning the Queen's Birthday Honours List for 1974. Based on his inspection, the Commissioner is satisfied that all the information on the file clearly falls within the scope of the exemption contained at section 37(1)(b). The withheld information is all therefore exempt on the basis of section 37(1)(b).
11. 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 disclosing the withheld information**

12. The FCO acknowledged that it was in the public interest to ensure that the awarding of honours and dignities is accountable and transparent.
13. The complainant did not advance any particular reasons why disclosure of this information would be in the public interest. However he did argue that given the age of the information the FCO had exaggerated the negative consequences of its disclosure.

### **Public interest arguments in favour of maintaining the exemption**

14. The FCO argued that it was firmly in the public interest in order to maintain the integrity of the honours system. It argued that non-disclosure of information relating to individual nominations ensured that:
  - Those invited to offer information about a candidate can continue to do so freely and honestly, in confidence, on the understanding their confidence will be honoured;
  - Decisions about honours continue to be taken on the basis of full and honest information about the person concerned and their achievements; and
  - Those who sit on honours assessments panels can carry out their work free from pressure for, or on behalf of, potential or actually candidates.

## **Balance of the public interest arguments**

15. 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.
16. 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 FCO'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 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 accepts that disclosure of information that would erode this confidentiality, and thus damage the effectiveness of the system, would not be in the public interest.
17. Having examined the withheld information the Commissioner is satisfied that, as it comprises candid assessments of the merits of individual nominations, disclosure would significantly undermine the confidentiality of the honours system. To a small extent the Commissioner does accept that the impact of disclosure in this case would be mitigated by the age of the information. Nevertheless, disclosure even some 40 years on would still constitute a significant breach of confidentiality, given the context in which the information was created and communicated. This would be likely to have an inhibiting effect on those asked to give opinions on and make assessments of the merits of individual nominations for the purposes of the honours system.
18. The Commissioner agrees that there is a clear public interest in ensuring that the honours system is accountable and transparent in order to ensure public confidence in the system. Furthermore, the Commissioner notes that FOIA specifically recognises that even relatively old information concerning honours nominations can require protection.<sup>1</sup>

---

<sup>1</sup> Section 63 of FOIA explains that a number of exemptions cannot apply to information which is contained in a 'historical record', ie information which is more than 30 years old.

However, he is not aware of any particular arguments that would add further weight to the disclosure of this specific information. His inspection of the file did not reveal anything exceptional in its contents which would give additional weight to the public interest in disclosure in this case.

19. In the absence of such arguments, and given the importance of maintaining the integrity of the honours system by protecting the confidentiality of the frank assessments of those nominated, the Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
20. In light of this decision the Commissioner has not considered the FCO's reliance on the other exemptions cited. He notes, however, that some of those considered for an honour had worked in the field of national security, which would justify the application of the exceptions under section 23 and/or section 24 of FOIA.

---

However, section 63(3) has the effect of extending this 30 year period to 60 years for information which falls within the scope of section 37(1)(b).

## Right of appeal

---

21. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.
23. 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**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**