

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 May 2015

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall

London

SW1A 2AS

### Decision (including any steps ordered)

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1. The complainant submitted a request to the public authority for access to a file relating to the New Year's Honours List for 1992. The public authority denied the request in reliance on the exemptions at sections 37(1)(b) and 40(2) FOIA.
2. The Commissioner's decision is that the public authority was entitled to withhold file T 352/53 in reliance on the exemption at section 37(1)(b) FOIA.
3. No steps required.

### Request and response

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4. The complainant submitted the following request to the public authority on 2 October 2014:

*'I would like to get access to a file class [sic] as closed on the catalogue of the National Archives.'*

*The file has the reference T 352/53 and it relates to the New Years [sic] Honours List of 1992. Its original departmental reference was PHSC – 167...'*

5. The public authority informed the complainant on 30 October 2014 that it did not hold the requested file.
6. The complainant disagreed and requested an internal review on 3 November 2014.

7. The public authority wrote back to the complainant on 1 December 2014 with details of the outcome of the internal review. The review did not uphold the original position and confirmed that the requested file was held by the public authority. However, the authority considered that the file was exempt from disclosure on the basis of the exemptions at sections 37(1)(b) and 40(2) FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 17 December 2014 in order to complain about the public authority's handling of his request. He noted that contents of the file are more than twenty years old and likely to be historic in nature.
9. The Commissioner therefore considered whether the public authority was entitled to withhold file T 352/53 ("the withheld information") in reliance on the exemptions at sections 37(1)(b) and 40(2). In the course of the investigation the withheld information was reviewed by the Deputy Commissioner at the public authority's offices.

### **Reasons for decision**

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#### **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 concerning the New Year's Honours List for 1992, the Commissioner is satisfied that the withheld information clearly falls within the scope of the exemption contained at section 37(1)(b). The information is therefore exempt 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 disclosing the withheld information**

13. The public authority acknowledged that it was in the public interest to ensure that the awarding of honours and dignities is accountable and transparent.
14. The complainant did not advance any particular reasons why disclosure of the withheld information would be in the public interest. However he did suggest that given the age of the information there was unlikely to be any serious negative consequences from its disclosure.

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

15. The public authority argued the public interest in ensuring transparency and accountability in the honours system must be weighed against the importance of confidentiality with regard to individual honours cases which is essential to protect the integrity of the honours system and without which the system could not function.
16. It argued that non-disclosure of information relating to individual cases ensures that those involved in the honours system can take part on the understanding that their confidence will be honoured and that decisions about honours are taken on the basis of full and honest information about the individual concerned.
17. The public authority explained it has always been the case in the honours system that those involved in the process required the freedom to be able to discuss and deliberate individual honour cases in a safe space. Otherwise, it argued, those participating in the process would be reluctant to do so if they thought that their views, given in confidence, were likely to be published and this would undoubtedly have a prejudicial effect on the integrity of the honours system.
18. The public authority however stressed it was not treating the exemption as absolute and that it recognised the public interest in disclosing the withheld information. However, it did not consider that disclosure would advance any significant or specific public interest in this case.
19. It drew the Commissioner's attention to the fact that Parliament recognised the particular sensitivity of releasing information relating to Honours - even when relatively old- by expressly providing that the exemption relating to Honours information does not expire after 30

years but instead remains applicable for 60 years after the date of its creation.<sup>1</sup>

20. The public authority therefore concluded that the public interest inherent in the protection and preservation of the integrity and robustness of the honours system outweighs the public interest in disclosing the withheld information.

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

21. 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 public authority'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 also 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.
22. Having examined the withheld information the Commissioner is satisfied that as the contents candidly discusses the merits of individual nominations disclosure of such information would significantly undermine the confidentiality of the honours system. To a small extent the Commissioner does accept that the impact of such a disclosure is mitigated by the age of the information. Nevertheless, in the Commissioner's opinion disclosure of this particular information, even some 23 years after it was created, is still likely to have a real and significant chilling effect on future honours discussions. 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. However, he is not aware of any particular arguments that would add further weight to the disclosure of the withheld information. In the absence of such arguments, and given the risk of a chilling effect on future honours discussions, the

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<sup>1</sup> Section 63 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, 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).

Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

23. In light of his decision the Commissioner did not consider the public authority's reliance on the exemption at section 40(2).

## Right of appeal

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24. 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)

25. 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.
26. 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**