

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 January 2018

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office for information about honours offered to the actors Paul Scofield and Peter O'Toole but which they had refused. In relation to Paul Scofield the Cabinet Office confirmed that it held information but sought to withhold this on the basis of section 37(1)(b) (the conferring by the Crown of any honour or dignity) and section 41(1) (information provided in confidence) of FOIA. In relation to Peter O'Toole the Cabinet Office refused to confirm or deny whether it held any information relying on section 37(2) by virtue of section 37(1)(b). The Commissioner's decision is that the Cabinet Office was entitled to rely on the exemption at section 37(1)(b) to withhold the information it acknowledges holding about Paul Scofield. The Commissioner has also concluded that the Cabinet Office can rely on section 37(2) to refuse to confirm or deny whether it holds any information about Peter O'Toole.

Request and response

2. The complainant submitted the following request to the Cabinet Office on 16 April 2017:

'My request concerns the following deceased individuals who are all known to have turned down Honours

Francis Bacon, artist (28 October 1909 – 27 April 1992

David Bowie, rock star, actor, (8 January 1947 to 10 January 2016)

Henry Moore, sculptor, (30 July 1878 to 31 August 1986)

John Osborne, dramatist (12 December 1929 to 24 December 1994)

Peter O'Toole, film actor (2 August 1932 to 14 December 2013)

Harold Pinter, playwright and screenwriter, (10 October 1930 to 24 December 2008)

Paul Scofield, (21 January 1922 to 19 March 2008)

1...In the case of each individual does the Cabinet Office hold the original correspondence and communication in which either the individual or someone acting on their behalf turned down the offer of an Honour.

2...If the answer is yes can you please provide copies of this correspondence and communications including emails and the transcripts and or notes of any relevant telephone conversations.

3...In the case of each individual does the Cabinet Office hold other correspondence and or internal communications and or documentation which in any way relates to their decision to refused an honour (s)

4...If the answer is yes can you please provide copies of this documentation, correspondence and internal communications.

5...In the case of each individual can you please list each occasion when an offer was recommend but refused. In the case of each individual can you specific the relevant Honours List and the relevant title. In the case of each individual can you state the reason given for the refusal.

I should add I do not think my request has any data protection implications. Each of the individuals is deceased and it is a matter of public record they declined the offer/recommendation of an Honour'.

3. The Cabinet Office responded to the request on 9 May 2017. The Cabinet Office explained that it did not hold any information about John Osborne; it explained that the only information it held about Harold Pinter was exempt from disclosure on the basis of section 21 of FOIA and was available online¹; and finally the Cabinet Office explained that in relation to the information concerning Francis Bacon, David Bowie, Henry Moore, Peter O'Toole and Paul Scofield, it had nothing to add to the responses and information provided to the complainant in response

¹ The Cabinet Office directed the complainant to the following link:
<https://www.gov.uk/government/publications/individuals-now-deceased-who-refused-honours-between-1951-and-1999-freedom-of-information-releas>

to replies to his previous FOI requests seeking similar information, albeit that the Cabinet Office did not cite a particular exemption to refuse these parts of the request.

4. The complainant contacted the Cabinet Office on the same day and asked it to conduct an internal review of this request.
5. Having failed to receive a response to this internal review, the complainant chased this matter up with the Cabinet Office on 13 June 2017 but he did not receive a response.

Scope of the case

6. The complainant contacted the Commissioner on 13 June 2017 in order to complain about the Cabinet Office's handling of his request. He agreed to restrict the scope of his complaint to the Cabinet Office's response to the parts of the request seeking information about Peter O'Toole and Paul Scofield.
7. During the course of the Commissioner's investigation the Cabinet Office confirmed that it held information about Paul Scofield but it considered this information to be exempt from disclosure on the basis of sections 37(1)(b) and 41(1) of FOIA. In relation to Peter O'Toole, the Cabinet Office refused to confirm or deny whether it held any information falling within the scope of the request on the basis of section 37(2) by virtue of section 37(1)(b). Furthermore, the Cabinet Office explained that its failure to complete the internal review was due to an administrative error for which it offered its apologies to the complainant.
8. In light of this clarification provided by the Cabinet Office, this decision notice considers whether the information it holds about Paul Scofield is exempt from disclosure on the basis of the sections 37(1)(b) and 41(1). The notice also considers whether the Cabinet Office is entitled to rely on section 37(2) in relation to the information the complainant sought about Peter O'Toole.

Reasons for decision

Request for information about Paul Scofield

9. 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.
10. The Commissioner is satisfied that the withheld information the Cabinet Office holds about Paul Scofield clearly falls within the scope of the exemption at section 37(1)(b) given that it relates to proposed honours. This information is therefore exempt on the basis of section 37(1)(b).
11. However, section 37(1)(b) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of the FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest arguments in favour of disclosing the withheld information

12. The complainant argued that it is already a matter of public record that the various individuals listed in his request had declined or refused an honour. He emphasised that all of the individuals listed were deceased and given that the material was historical in nature he did not envisage any reason why it could not be disclosed.

Public interest arguments in favour of maintaining the exemption

13. The Cabinet Office acknowledged that there was a need for transparency in the honours process. However, the Cabinet Office drew a distinction between the disclosure of information about the honours process and the disclosure of information about individual honours cases. Moreover, the Cabinet Office suggested that whilst the public may be interested in knowing why particular individuals had refused the offer of an honour, this general interest did not equate to there being a public interest in the information being disclosed. The Cabinet Office explained that in its view it is essential that all of those involved in the honours system are given the courtesy of confidentiality for a period of time after their case has closed. The Cabinet Office emphasised that the exemption contained at section 37(1)(b) can cover information relating to honours up to sixty years after its creation. The Cabinet Office explained that it appreciated that this was not an absolute exemption and it considered the merits of each case. However, in the circumstances of this case it believed that the public interest favoured withholding the information about Paul

Scofield given that the confidentiality of this information is ongoing and disclosure may affect the future behaviour of those who refuse honours.

Balance of the public interest arguments

14. 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 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, which would not be in the public interest.
15. In the Commissioner's opinion the extent to which disclosure of the information about Paul Scofield would undermine the confidentiality of the honours system should not be overstated. Whilst the Commissioner accepts that the information was certainly provided on the basis that it would be treated in confidence, she notes that it is, as the complainant suggests, essentially of a historic nature. Furthermore, although the Commissioner accepts the Cabinet Office's point that the exemption contained at section 37(1)(b) can protect information up to 60 years after its creation, in her view the risk of a chilling effect occurring if increasingly historic information is disclosed is arguably limited. Therefore, whilst the Commissioner accepts that there is a risk of undermining the effectiveness of the honours system if the withheld information was disclosed the risk is not a significant one.
16. With regard to the public interest in disclosure, 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, having reviewed the withheld information the Commissioner is persuaded by the Cabinet Office's view it is difficult to argue that disclosure of this information is necessary in order to ensure public confidence in the system, albeit that the withheld information may nevertheless be of interest to the public.
17. Therefore, and by a relatively small margin, the Commissioner has concluded that the public interest favours maintaining the exemption contained at section 37(1)(b) in relation to the information about Paul Scofield.

18. In light of this decision the Commissioner has not considered whether the withheld information is also exempt from disclosure on the basis of section 41(1) of FOIA.

Request for information about Peter O'Toole

19. Section 37(2) states that:

'The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).'

20. In the circumstances of this request, the Cabinet Office has argued that it can rely on section 37(2) to refuse to confirm or deny whether it holds any information about Peter O'Toole refusing an honour because such information, if it were held, would be exempt from disclosure on the basis of section 37(1)(b) of FOIA.
21. The Commissioner is satisfied that such information, if held, would clearly fall within the scope of section 37(1)(b) of FOIA and section 37(2) is therefore engaged.
22. However, as explained above, section 37(1)(b) is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining section 37(2) outweighs the public interest in confirming whether or not the information is held.
23. The Cabinet Office explained that in respect of Paul Scofield it was in the public domain that he had declined a knighthood. However, the Cabinet Office argued that there was no information in the public domain in respect of whether or not Peter O'Toole had declined any honour. The Cabinet Office acknowledged that there is a need for transparency in the honours process, it believed that there was a stronger case to neither confirm nor deny whether it held information about particular individuals. The Cabinet Office emphasised the confidential nature of the honours process and argued that any individuals who *may* have declined an honour would not expect it to disclose such confidential and personal information. In the circumstances of this case the Cabinet Office acknowledged that Peter O'Toole had died prior to this request being submitted but noted he had passed away in 2013 and therefore given the limited passage of time the public interest favoured maintaining the confidentiality of the honours process and neither confirming nor denying whether Peter O'Toole had refused any honour.
24. The Commissioner notes that the complainant suggested that it is already a matter of public record that the various individuals listed in his request had declined or refused an honour. The Commissioner notes that during the course of his life Paul Scofield confirmed that he had declined the offer of a knighthood. The Commissioner is not aware of

any similar public comments by Peter O'Toole. Furthermore, as discussed above the Commissioner accepts the rationale of the Cabinet Office's argument that for the honours system to operate effectively there needs to be a level of confidentiality for those involved in it. She accepts that this principle extends to protecting whether an individual was offered a particular honour and moreover whether they declined it. Furthermore, the Commissioner accepts that in the circumstances of this case as Peter O'Toole only died three years before the request was made there remains a public interest in protecting any discussions or correspondence he may – or may not – have had with the Cabinet Office about honours nominations. The Commissioner is also not persuaded that there is a particularly compelling public interest in the Cabinet Office confirming whether or not it holds any information about Peter O'Toole. The Commissioner has therefore concluded that the public interest favours maintaining the exclusion to confirm or deny contained at section 37(2) in relation to information about Peter O'Toole.

Right of appeal

25. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Jonathan Slee
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