

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 July 2019

Public Authority: The National Archives
Address: Ruskin Avenue
Kew
Richmond
Surrey TW9 4DU

Decision (including any steps ordered)

1. The complainant has requested information relating to the closed file *FCO 87/842/1 – Closed extracts: Folios 110, 119, 124. (From open parent piece FCO 87/842.*
2. The Commissioner's decision is that The National Archives (TNA) has correctly applied section 37(1)(b) to the withheld information.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 1 June 2018, the complainant wrote to TNA and requested the following information:
FCO 87/842/1 – Closed extracts: Folios 110, 119, 124. (From open parent piece FCO 87/842: Assassination of Lord Louis Mountbatten at Mullaghmore, Republic of Ireland, 27 August 1979).
5. TNA responded on 5 September 2018 and refused to provide the requested information. It cited section 37(1)(a), 37(1)(b) and section 40(2) as its basis for doing so.
6. Following an internal review TNA wrote to the complainant on 6 November 2018. It maintained its original position and additionally cited section 41(1).

Scope of the case

7. The complainant contacted the Commissioner on 3 December 2018 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if TNA has correctly applied the exemptions it has cited.

Reasons for decision

Section 37(1)(b) – Information relating to conferring honours

9. Section 37(1)(b) of the FOIA states that information is exempt if it relates to the conferring --by the Crown of any honour or dignity. It is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of the FOIA.
10. As part of the application of this exemption, TNA consulted with both the Cabinet Office (Honours Department) and the Foreign and Commonwealth Office (FCO). A copy of the file was sent to the Cabinet Office, who confirmed that section 37(1)(b) was engaged and recommended continued closure. Following this advice, a public interest test was compiled in consultation with the FCO, considering arguments both for and against the release of this information.
11. TNA explained that all exemptions that require a public interest test (PIT) are submitted to the Advisory Council on National Record and Archives (ACNRA) for their opinion in regards to the public interest of releasing the information. Following advice and opinions on the outcome of the PIT from all relevant government departments and the independent Advisory Council, TNA determined that the whole file engaged section 37(1)(b).
12. Having viewed the withheld information, the Commissioner is satisfied that all the information that was withheld relates to the conferring of honours, including that covered by section 37(1)(a) and therefore the exemption at section 37(1)(b) is engaged.
13. There is no need for the information to be sensitive in any way for the exemption to apply. It is sufficient that the information falls within the class of information described by the exemption. The Commissioner finds that the information is exempt by virtue of section 37(1)(b).
14. As the Commissioner has found that the section 37(1)(b) is engaged she has next 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 test

TNA's arguments

15. TNA explained that consideration was given as to whether the public interest would be better served by the release of this information or by withholding it. In favour of releasing the information, the importance of transparency and accountability of the award of honours and dignities, which encourages public confidence in the honours system, and in government decision-making, was acknowledged. It was also recognised that there is a public interest in being able to understand and evaluate the workings of government, particularly with respect to the Republic of Ireland.
16. It further explained that these factors were 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 it could not function. 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 respected and that decisions about honours and awards are taken on the basis of full, frank, open and honest information about the individuals concerned. It was also highlighted, that it is important that individuals who are recommended for honours, but to whom they are not granted, do not learn of this which adds to the overall importance of the confidentiality of the honours system.
17. TNA referred to the ICO decision involving the Cabinet Office and Lord Ashcroft and his undertaking¹ highlighted the important principle within the section 37(1)(b) exemption – ‘the expectation of confidentiality’ – and how far the honours systems relies heavily on the provision of personal and confidential information regarding nominees. The correspondence in this file has been generated in accordance with nominations and allows for the proposed awards to be challenged, which is part of the honours process. Without trust in this system, which expects the strictest confidence, such information may not continue to be supplied. The maintenance of this confidentiality is what underpins this exemption and therefore to release such correspondence would erode the confidentiality of the honours process, thus damaging the effectiveness of the system, which would not be in the public interest.

¹ (FS50197502; https://ico.org.uk/media/action-weve-taken/decision-notices/2010/521584/FS_50197502.pdf)

18. Furthermore, in the previously mentioned case the Commissioner, in her analysis of this exemption and the decision of parliament to make it a qualified exemption, explains that, *'In most cases, awards of honours or dignities are not controversial and there will be a greater likelihood that where this exemption is applied it will be strongly engaged.'* Having consulted with both the FCO and Cabinet Office, it is both these departments' and TNA's position that this case is one where this exemption is strongly engaged due to the expectation of confidence the individuals had when providing their opinions on the proposed Honours/Awards mentioned in this record.

Complainant's arguments

19. The complainant argued that the Mountbatten murder is important historically and is now forty years old, and though communications with the Royal Family will have to be held back, some FOI cases concerning honours have been successful, the Commissioner ruled against the Cabinet Office:

"The Commissioner had decided that the Cabinet Office was wrong to rely on the exemptions provided by sections 37(1)(b), 40(2), 40(4) and 41 in order to withhold all of the information relevant to this request. The Commissioner finds that the disclosure of some limited information is warranted to serve the public interest in relation to section 37(1)(b) of the Act. He has also found that sections 40(2), 40(4) and 41 were not appropriately applied in respect of the limited information the Commissioner has identified for disclosure."

20. It is possible that the exemption might relate to the consideration of the creation of a new honour or medal in memory of Lord Mountbatten rather than an award to any particular individual (with section 40 referring to civil servants and third parties rather than candidates). There is a recent Upper Tribunal decision finding that discussions about the creation of such a new honour or medal would fall under section 37(1)(b) (Cabinet Office v IC and Morland [2018] UKUT 67 (AAC)).
21. The complainant went on to provide references to several cases where the public interest favoured disclosure of material caught by section 37(1)(b). The Commissioner reviewed the ICO website and notes the exceptional circumstances in the cases relating to Lord Janner (FS50633149) and Jimmy Savile (FS50478062 and FS50534996) that added weight to the public interest in disclosing the requested information.
22. However, she further notes that in FS50370643 the Commissioner concluded that all of the information was exempt from disclosure on the basis of section 37(1)(b). For the information concerning the years 1951

to 1989 the public interest favoured disclosing the information but for the information concerning the years 1990 to 2010 the public interest favoured maintaining the exemption.

23. FS50677400 related to information on the attendance of members at specific Honours, Decorations and Medals committee meetings rather than the proposed recipients of honours.
24. The Commissioner therefore does not consider that these cases set any precedent and has consequently considered this case on its own merits.
25. Having reviewed the withheld information and considered the arguments presented by both parties, the Commissioner considers that the public interest rests in favour of maintaining the exemption. She therefore finds that TNA has correctly applied section 37(1)(b) to all the withheld information.

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: 0870 739 5836

Email: grc@justice.gov.uk

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

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

Pamela Clements
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