

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 January 2023

**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 Cabinet Office for information relating to honours and awards for the late John Gielgud. Cabinet Office refused to comply with the request on the basis that it was vexatious by virtue of section 14(1) of FOIA.
2. The Commissioner's decision is that Cabinet Office was entitled to rely on section 14(1) of FOIA to refuse to comply with the request.
3. No steps are required.

#### **Request and response**

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4. The complainant submitted the following request for information on 6 March 2021:

"My request concerns honours and awards for the late John Gielgud (aka Sir Arthur John Gielgud). Sir John who was born on 14 April 1904 was a celebrated actor and director who died on 21 May 2000. My reference to The Cabinet Office in the questions below should be taken to mean The Cabinet Office, the relevant Honours committee (s), the Prime Minister's private office and any individual (s) known to have had any involvement with the processing of Honours recommendations for Sir John. Please note that I am interested in all Honours including those Honours which were rejected by Sir John and those which were suggested or recommended for Sir John but which for whatever reason were not proceeded with.

1...Does the Cabinet Office hold a file or similar which contains information relating to Honours for Sir John. If the answer is yes, can you, please provide a copy of this file and its contents.

2...Irrespective of whether the Cabinet Office does hold a file can you list each and every occasion when Sir John was recommended/ considered for an Honour. In each case can you specify the year, the relevant Honours List and the actual Honour. Please do include all recommendations including those occasions when the Honour was rejected by Sir John, or the recommendation was not proceeded with for whatever reason. In each case can you state whether the Honour was accepted, rejected or not proceeded with for whatever reason.

3...Did the Cabinet Office (or anyone acting on its behalf) ever consult with third parties about Sir John's suitability for an Honour. These third parties will include but will not be limited to the Home Office and the Metropolitan Police. If the answer is yes, can you, please provide copies of the Cabinet Office's correspondence and communications with these third parties. Can you also provide copies of any replies to these approaches received by the Cabinet Office?

4...Does the Cabinet Office hold any information, or has it ever held any information to suggest that Sir John's homosexuality and or his arrest for 'cruising ' in 1953 influenced the decision-making process when it came to the awarding of Honours for Sir John. Perhaps an Honour was delayed or not proceeded with because of his homosexuality and or his arrest. Perhaps there were discussions about withdrawing his recently awarded Knighthood in the light of the arrest. If you do hold documentation relevant to this point, can you, please provide copies of this documentation.

5...Did the Cabinet Office ever write to Sir John and or his representatives about the issue of Honours. If the answer is yes, can you, please provide a copy of this correspondence and communication?

6...Did Sir John and or his representatives ever write to the Cabinet Office about the issue of Honours. If the answer is yes, can you, please provide a copy of this correspondence and communication?

7...If information relevant to my request has been destroyed can you please provide the following information. Can you provide a description of the document, which was destroyed, and can you state when it was destroyed and why? In the case of each piece of correspondence and communication which has been destroyed can you provide details of any author (s) or recipient(s). If any destroyed documentation continues to be held in another form, can you, please provide copies of that destroyed documentation."

5. Cabinet Office responded on 4 June 2021 and stated that it was not obliged to comply with the request for information on the basis that the request is vexatious for the purposes of section 14(1) of FOIA.
6. The complainant requested for an internal review on 5 June 2021 setting out why they believed that the request was not vexatious. Cabinet Office provided the outcome of the internal review on 16 November 2021, in which it upheld its original position.

## Reasons for decision

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7. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
8. Whilst the term 'vexatious' is not defined in FOIA, in the case of the Information Commissioner v Devon CC and Dransfield the Upper Tribunal commented that the term could be defined as the 'manifestly unjustified, inappropriate or improper use of a formal procedure'.<sup>1</sup> The Tribunal's definition clearly established that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
9. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues; (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request, and (4) harassment or distress of, and to, staff.
10. However, the Upper Tribunal did also caution that these considerations were not meant to be exhaustive. Rather, it stressed the importance of:  
  
    'adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.' (Paragraph 45).

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<sup>1</sup> [2016] UKUT 0273 (AAC)  
[https://assets.publishing.service.gov.uk/media/578f2b5aed915d3cfd000179/GIA\\_0246\\_2015-00.pdf](https://assets.publishing.service.gov.uk/media/578f2b5aed915d3cfd000179/GIA_0246_2015-00.pdf)

11. The Commissioner's guidance<sup>2</sup> on dealing with vexatious requests sets out a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether a request is vexatious, including the context of the request and the history of the public authority's relationship with the requester, when this is relevant.
12. To support their position, that the withheld information should be disclosed, the complainant has relied on their submissions in the internal review request, which the Commissioner has taken into account when determining the outcome of this case.

### Cabinet Office's position

13. Cabinet Office provided its submissions to the Commissioner on 20 December 2022, the content of which has not been reproduced in this decision notice but has been taken into account in reaching his decision on this matter.
14. Cabinet Office acknowledges that there is some serious purpose and value in the complainant's request. It says that this view has been taken based on the complainant's aims and the legitimate motivation in wanting to understand more about the handling of honour nominations. It also recognises a wider public interest and objective value but argues that this does not justify the detrimental impact which would be had on Cabinet Office in complying with the request. Cabinet Office contends that there are limitations on such purpose and value and maintains that the complainant's request bore the characteristics of unreasonable persistence, a scattergun approach, being frequent and overlapping and involving disproportionate effort to handle.
15. It argues that over the last three years the complainant has submitted 29 honours related requests which have predominantly asked identical or very similar questions, although relating to different individuals, around the same categories of honour information. It states that these requests contain five to seven sub requests and that dealing with the requests in number and breadth has contributed a considerable burden on Cabinet Office with no prospect that they would cease. It argues that the responses it has provided to the complainant's requests have consistently set out its honours policy and the statutory position under

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<sup>2</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

the FOIA explaining in detail why the complainant is not entitled to the requested information, adding that this view has also been supported by ICO decision notices. Cabinet Office maintains that in over half of the requests submitted by the complainant, no information is held. It states that it has consistently set out its honours policy position. It maintains that files relating to honours nominations prior to the 1970s were routinely destroyed in line with its retention and disposal policy and does not usually hold any substantive information except on rare occasions (for example, where an individual had received an honour many years previously but was still alive when their file came to be assessed). Cabinet Office considers it burdensome to repeatedly set out these details and therefore says, this constitutes an unreasonable persistence by the complainant in attempting to reopen an issue that has already been comprehensively addressed.

16. Cabinet Office argues that one of the types of requests which the complainant submitted in relation to 12 public figures all asked for:
- each occasion when a person was recommended or considered for an honour.
  - copies of any documents which illustrate the recommendation, copies of any written recommendations and any supporting documentation.
  - the contents of the file relating to the issue of honours to a particular individual.
  - any other material including internal documents and external correspondence which relates to the subject of honours.
  - copies of any correspondence written, and
  - copies of any objections to the honour's nomination, including any emails

It maintains that the complainant's request rarely contains contextual explanation as to the focus or purpose of the information being sought and says that it is difficult not to view their repeated requests as a fishing expedition intended to test whether points of interest may be elicited from the personal data of a range of private individuals. Cabinet Office says that the complainant's request is speculatively submitted, and it considers there to be little or no inherent public interest that would warrant increasing the amount of public resources that are being expended to repeatedly respond to them. It contends that locating and considering such extensive information would generate substantial work for Cabinet Office.

17. Cabinet Office argues that all the complainant's requests require searches through a substantial volume of historical information and only contained in paper records that require manual searching. It argues that whilst some searches occasionally find information pertinent to the complainant's request (though little of which is releasable) in over half of the requests submitted by the complainant, no information is held and in large part due to the age of the information often requested. It contends that Cabinet Office has already expended more than sufficient resource on testing and demonstrating the overarching position on the complainant's requests.
18. Cabinet Office argues that the complainant's requests are frequent and overlapping. It says that by merely changing the name of the private individual on whom the complainant is seeking information does not substantially or sufficiently change the nature of the bulk of their request. Cabinet Office alluded to the significant information already in the public domain covering the nature and circumstances in which honours information may be released, of which, it says, few of the complainant's request has met these criteria.
19. Cabinet Office noted that the FOIA recognises that the resources of a public authority allocated to the handling of information requests are finite and that no person should monopolise the use of those resources. It argues that if it continues to deal with such requests on repeated basis, it will have fewer resources to handle information requests from other members of the public and consistent principles of approach could not necessarily apply.

#### The Commissioner's position

20. Having considered the arguments presented by the complainant in their internal review request, the Commissioner acknowledges that there is some value and purpose of the request. However, he also agrees that the value and purpose is a limited one. The Commissioner has considered the nature of information requested, the context and history of the complainant's engagement with Cabinet Office and agrees that to comply with the request would place a disproportionate or unjustified level of disruption, irritation or distress on the public authority.
21. The Commissioner agrees that the complainant has demonstrated an unreasonable persistence, submitted frequent and overlapping requests that appear to be random and speculative. The Commissioner notes that Cabinet Office have repeatedly provided its honours policy position and also advised of its retention policy pertaining to honour nominations prior to the 1970s. Whilst the Commissioner acknowledges that a small percentage of the complainants requests was disclosed, he is of the view that most of the complainant's request for similar information have returned with no information held by the Cabinet Office, largely due to

the age of the information, or withheld by virtue of other exemptions under the FOIA. He therefore considers that based on the honours system and information already in the public domain covering the criteria to be met in order to obtain honours information, the complainant ought to have known that their line of enquiry in respect of historic honours could not procure the disclosure of the information that they sought.

22. In addition, the Commissioner has also noted the burden on the Cabinet Office to manually search through substantial volume of information which it says, it routinely destroys as per its retention policies. As noted above, whilst some searches occasionally find information within scope, a large part of the information is not held largely due to its age. Whilst the Commissioner respects the complainant's intentions and acknowledges the value of openness and transparency in general, he considers the request to be limited in value for the reasons discussed above.
23. The Commissioner accepts that given the breadth of the request and the way in which any relevant records are held, complying with the request would prove to be extremely burdensome for Cabinet Office.
24. Taking all of the above into account, the Commissioner is satisfied that the impact of complying with the request significantly outweighs the limited purpose and value of the request. The Cabinet Office was therefore entitled to rely on section 14(1) of FOIA to refuse the request.

### **Other matters**

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25. The complainant explained to the Commissioner that they were dissatisfied by the significant delay by Cabinet Office in responding to their request for internal review. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in exceptional cases to be completed within 40 working days.
26. In this case the complainant submitted their request for internal review on 4 June 2021. Cabinet Office informed them of the outcome of the internal review on 16 November 2021, about 123 calendar days later. The Commissioner clearly considers this to be an unsatisfactory period of time.



**Right of appeal**

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27. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.

29. 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 .....**

**Esi Mensah  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
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