

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2023

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information about the unauthorised use of Royal names. The Cabinet Office refused the request under section 37(1)(b) (communications with His Majesty and the awarding of honours).
2. The Commissioner's decision is that the Cabinet Office was correct to refuse the request under section 37(1)(b).
3. The Commissioner does not require further steps.

Request and response

4. On 20 May 2022, the complainant requested:

'Your FAQ¹ on use of royal names during the Platinum Jubilee says:

"What happens if I do not seek permission? Each case is assessed individually against principles that are long established, and relevant precedents. Action could be taken against an individual or member of an organisation in relation to any unauthorised use."

¹ [Platinum Jubilee Names Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/platinum-jubilee-names-guidance)

Please provide an electronic copy of all recorded information you hold relevant to the taking of action, or potential taking of action, in such a case. This will include:

- What action might be taken
 - Guidance on the "long established" principles and "relevant precedents".'
5. The Cabinet Office responded on 20 July 2022. It confirmed the requested information was exempt under section 35(1)(a) of FOIA (formulation and development of government policy).
 6. The Cabinet Office provided the outcome to its internal review on 25 October 2022. It upheld its previous use of section 35(1)(a) and also introduced a reliance on section 37(1)(b).
 7. The Commissioner will consider the Cabinet Office's use of section 37(1)(b) first because he considers that is the more appropriate exemption in the circumstances. Depending on his findings, he may go on to consider the Cabinet Office's application of section 35(1)(a).

Reasons for decision

Section 37 - communications with His Majesty and the awarding of honours

8. Section 37 of FOIA states:
 - "(1) Information is exempt information if it relates to—
 - (b) the conferring by the Crown of any honour or dignity."
9. Section 37(1)(b) is a class-based exemption which means there is no requirement for a public authority to demonstrate prejudice to engage the exemption. It is, however, a qualified exemption which means it is subject to the public interest test.
10. The Commissioner's guidance² on section 37(1)(b) states 'There is no legal definition of honour or dignity.' The exemption can apply to, but is not limited to, the following: various orders of knighthood; gallantry medals; other medals and decorations conferred by the Sovereign;

² [Communications with His Majesty and the awarding of honours \(section 37\) | ICO](#)

creation of life peers; creation of hereditary titles; appointment of Lords and Vice-Lords Lieutenant and appointments to the Privy Council.

11. In relation to section 37(1)(b), the term 'relates to' should be interpreted broadly. This means that the scope of the exemption can potentially cover a broad range of information, as long as it is meaningfully related to the conferring by the Crown of any honour of dignity.
12. In the Cabinet Office's internal review outcome, it explained 'Use of the Royal name is a mark of Royal favour, it is only sparingly granted. Permission to use Royal names is granted by the Sovereign, acting on the advice of his ministers. These are often complex and contextual decisions and they are always sensitive and private discussions. Therefore, the exemption for discussions about the conferring by the Crown of any honour or dignity applies in this case.'
13. This request cites the Platinum Jubilee in which the usual rules governing the use of royal names and titles were temporarily relaxed to allow their use for community events. However, the request itself relates to the action, and the guidance that accompanies such action, that could be taken against unauthorised use of any royal name or title.
14. The complainant is concerned that 'Details of what action the government might take against those who use a Royal name without permission is in no way connected to the award of honours or dignities.' However, the Commissioner disagrees. As his guidance states, there is no definition of an honour of dignity in this context and it can capture a wide range of information.
15. As the Cabinet Office has explained, use of the 'Royal' name is a mark of royal favour and must be granted by the sovereign itself and, in that sense, represents an 'honour or dignity' for the purposes of section 37(1)(b). Furthermore, information relating to the action that might be taken against unauthorised use clearly relates to the policies and procedures that underpin that honour or dignity and therefore relate to it.
16. The Commissioner is satisfied that the exemption is engaged and therefore he'll go on to consider the balance of the public interest test.

Public interest test

Factors in favour of disclosure

17. There is a general public interest in having an honours system that is objective, accountable and transparent so that the public can understand how and why decisions are made.

18. If the public can see how the process works then they are more likely to have confidence that honours are conferred on merit, and not on the basis of other factors. For example, a candidate's connections or political views. It also help reassures the public that the relevant decision-makers are not subject to any form of undue influence.
19. In their internal review outcome, the complainant stated, 'There is clearly a very strong public interest in your setting out the legal basis on which you exercise this (purported) power, and in the public being informed as to what "action", exactly, they may face. This is especially so given that the right to freedom of expression is engaged.'

Factors in favour of maintaining the exemption

20. In its refusal notice, the Cabinet Office explained 'Disclosure would weaken the ability of the Cabinet Office to properly assess requests for the use of the title 'Royal'.'
21. It's also explained that 'There is a clear public interest in non-disclosure: a safe and protected space is needed to consider if there is sufficient merit to grant use of a royal name, and furthermore, there is a risk of a chilling effect if the discussions, and communications with the Royal Household on the Sovereign's behalf, around that conferral are made public.'
22. Public officials, both within government and the Royal Household, should not be easily deterred from expressing their opinions. However, the Commissioner acknowledges that disclosure may result in a chilling effect and might dilute the robustness of future communications relating to the use of royal names, especially if the withheld information concerns action that has been taken against the unauthorised use of royal names or titles.
23. The Cabinet Office also explained 'Withholding information ensures that those involved in the process can take part in the understanding that their confidence will be honoured and that decisions about whether to grant the title 'Royal' honours are taken on the basis of full and honest information.'

Balance of the public interest test

24. The Commissioner accepts the public interest arguments at paragraphs 18 and 19. However, the requested information isn't actually about the awarding of honours or dignities or that decision-making process. The requested information relates to the action that may be taken, and previous action that has been taken, in relation to the unauthorised use of royal names.

25. He also accepts the complainant's point that there's a public interest in knowing what action might be taken against unauthorised use of a royal name or title and upon what statutory power this action might be taken. However, the Commissioner doesn't agree with the complainant that the use of royal names or titles relates to freedom of expression. The guidance at reference three clearly outlines the laws that underpin the use of royal names and titles.
26. In its internal review outcome, the Cabinet Office explained to the complainant:
- 'One possible action is to request the person or entity to cease mis-using the royal name, which is often all that is required as most people and companies are keen to adhere to the guidance, which ultimately represents the decision of the Sovereign
- On the basis of the power for granting Royal names, there are statutory scheme³s restricting the use of Royal names, for example in the registration of company names and in other areas more general principles apply.'
27. Though the Cabinet Office didn't direct the complainant to the guidance at reference three, he is satisfied that this information is publicly available. The Commissioner is satisfied that the Cabinet Office has addressed the complainant's specific concerns and, in terms of any action against unauthorised use of royal names or titles, has explained that it will try and informally resolve the matter first which, if someone was unaware of the nuances relating to the use of Royal names and titles, is reasonable.
28. However, the Commissioner is satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosure in this instance and therefore the Cabinet Office was entitled to withhold the requested information under section 37(1)(b). With this in mind, the Commissioner doesn't need to go on to consider the Cabinet Office's application of section 35(1)(a).

Other matters

29. Whilst there is no statutory timeframe under FOIA for conducting internal reviews, the Commissioner's guidance⁴ states that it should take no longer than 20 working days. This can be extended to 40 working
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³ [ROYAL ARMS BLUE BOOKLET - 2023-2.pdf](#)

⁴ [Request handling, Freedom of Information – Frequently Asked Questions | ICO](#)

days in exceptional circumstances where the request is complex. The Cabinet Office exceeded both of these timescales.

Right of appeal

30. 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

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

31. 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.
32. 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

Alice Gradwell
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