

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 December 2010

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

Summary

The complainant submitted a number of requests to the Cabinet Office regarding the decision to award peerages to four named individuals. In respect of some requests the Cabinet Office confirmed that it held information but maintained that it was exempt from disclosure on the basis of sections 37(1)(b), 40(2) and 41(1). In respect of the remaining requests the Cabinet Office refused to confirm or deny whether it held any information on the basis of section 37(2) of the Act. In relation to the first type of requests the Commissioner has concluded that the Cabinet Office was entitled to refuse to provide the information it held on the basis of section 37(1)(b). In relation to the second type of requests the Commissioner has concluded that the Cabinet Office was entitled to refuse to confirm or deny whether it held information falling within the scope of these requests on the basis of section 37(2).

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. In March 2000 a press release was issued announcing the awarding of a life peerage to Michael (now Lord) Ashcroft. A 'note for editors' was issued with the press release; the editor's note stated that:

'In order to meet the requirements for a Working Peer, Mr Michael Ashcroft has given his clear and unequivocal assurance that he will take up permanent residence in the United Kingdom again before the end of the calendar year. He would be introduced into the House of Lords only after taking up that residence. These undertakings have been endorsed by the Leader of the Conservative Party and conveyed to the Prime Minister – and to the Political Honours Scrutiny Committee.'

The Request

3. In a letter dated 23 July 2009 the complainant submitted a number of information requests to the Cabinet Office. The ones which are relevant to this Notice, albeit not the requests which are the focus of the complaint, were the following:

'5. What do the Cabinet Office papers show to have been the total number of individuals appointed to a working peerage within the period between 1 March 1998 and 31 March 2002 who were, or were understood to have been, domiciled or resident abroad at the time of their nomination and/or appointment?

6. Do Cabinet Office papers contain any record of any of the following in relation to any individual falling within the category at 5 above, other than [Lord Ashcroft]?

(1) The provision by that individual of any assurances or undertakings as to future residence, to the same effect as those given by [Lord Ashcroft]; or any similar effect;

(2) Any suggestion, agreement or discussion as to the provision of such assurances or undertakings by that individual.'

4. The Cabinet Office responded to the complainant's letter on 1 September 2009 and in respect of request 5 it stated that 'We hold no

information falling within the scope of this part of your request, apart from the information relating to Lord Ashcroft. It follows that we have no information relating to your point 6'.

5. The complainant contacted the Cabinet Office again on 11 September 2009 and expressed some concern over its suggestion that it did not hold any information falling within the scope of the requests it had submitted. The complainant explained that this was because it understood that there were several individuals on whom life peerages were conferred during the specified time period who met the criteria mentioned. The complainant cited four individuals who it appeared, during the period specified in the above requests, were resident and/or domiciled abroad at the time and/or, in at least one instance, a foreign national. The complainant noted that the four individuals were on the same list of appointments as Lord Ashcroft and were Barons Acton, Grenfell and Parekh and Lord Black. The complainant noted that Barons Acton and Grenfell both gave addresses as outside of the UK and provided these addresses (although it did not confirm where it had located such information); that Baron Parekh was born in India and in 2007 was honoured by the Indian government for his services to the nation; and that Lord Black was appointed in September 2001 but until about May 2001 was a Canadian citizen and so was domiciled and/or resident outside of the UK for the period identified in the request above. The complainant argued that if its information was correct then it was inconceivable that the Cabinet Office did not hold any records relating to such individuals of the kind that it had requested. The complainant emphasised that its position was that at least some of the four individuals listed above were resident and/or domiciled overseas and/or a national of a foreign state when their appointments were approved by the Prime Minister, and made without such conditionality being imposed as was imposed in respect of Lord Ashcroft.
6. The complainant explained to the Cabinet Office that in case its failure to disclose information in relation to the above requests arose from some flaw in their wording, it now submitted the following more specific requests:

'13. In relation to each of Lords Acton, Grenfell and Parekh

- (1) When was he first nominated for a life peerage?
- (2) What, according to Cabinet Office records, was or were at that time:
 - (a) his residential addresses(es)
 - (b) his domicile
 - (c) his nationality?

(3) Do Cabinet Office records disclose any change in his residential address(es), domicile or nationality between his nomination and the time he took up his seat in the House of Lords as a life peer? If so, what change(s) and when?

14. In relation to Lord Black

(1) What, according to Cabinet Office records, was or were his country or countries of residence at the time of his nomination for a life peerage?

(2) Do Cabinet Office records disclose any change in his residence between the time of his first nomination and the time the life peerage was conferred upon him? If so, what changes and when?

15. Do Cabinet Office records contain any record of any of the following, in relation to any of Lords Acton, Grenfell, Parekh or Black (and if so, which?)

(1) The provision by him, in connection with his nomination and/or appointment of any assurances or undertakings as to nationality, domicile or residence;

(2) Any suggestion, agreement or discussion as to the provision of any such assurances or undertakings?

16. If the Cabinet Office does hold any such record as is referred to in question 15 above, what form does that record take?

7. The Cabinet Office responded on 12 October 2009 and in respect of request 13 confirmed that it held 'some' information falling within the scope of this request but it considered all of the information to be exempt from disclosure on the basis of sections 37(1)(b), 40 and 41(1) of the Act. The Cabinet Office stated that its position was the same for request 14 and also provided the same combined response for requests 15 and 16, i.e. confirming that it held some information but considering such information to be exempt from disclosure on the basis of the three exemptions cited in respect of request 13.
8. The complainant contacted the Cabinet Office on 30 November 2009 and asked for an internal review to be conducted into the decision to withhold the information that was held.
9. The Cabinet Office informed the complainant of the outcome of the internal review on 11 January 2010. The review upheld the application

of the exemptions as set out in the refusal notice. The review also confirmed that the sub-section of section 40 it was relying on was 40(2).

10. Following the intervention of the Commissioner – which is discussed in more detail below – the Cabinet Office contacted the complainant again on 22 October 2010 and for **each request** provided either an explicit confirmation that it held or did not hold information falling within the scope of that particular request or, alternatively, explained that it was refusing to confirm or deny whether information was held on the basis of section 37(2).

The Investigation

Scope of the case

11. The complainant contacted the Commissioner on 15 January 2010 in order to complain about the Cabinet Office's handling of the requests quoted above. The complainant highlighted a number of reasons why it believed the requested information should be disclosed. (The Commissioner has not set these reasons out here but has included them in the relevant parts of the Analysis section below.)
12. As is clear from the Chronology section below, although the complainant's dissatisfaction with Cabinet Office's handling of these requests lay simply in the decision to withhold the information it did hold, in the Commissioner's view in responding to these requests the Cabinet Office had in fact failed to comply the requirements of section 1(1)(a). This section of the Act requires that, subject to the application of exemptions, a public authority must inform an applicant whether it holds information of the nature requested. It is section 1(1)(b) of the Act that actually requires a public authority, again subject to the application of exemptions, to actually provide information to an applicant.
13. However, by the time that this Notice is to be issued the Commissioner is satisfied that in respect of each request the Cabinet Office has either confirmed that it holds information or cited section 37(2) as a basis to refuse to provide such confirmation. Therefore this Notice addresses two issues: firstly in respect of the requests that the Cabinet Office has confirmed it holds information for, the Commissioner has considered whether such information is exempt from disclosure on the basis of the exemptions cited in the refusal notice; secondly, in respect of the requests that the Cabinet Office refused to confirm or deny whether it

holds information, the Commissioner has considered whether it was entitled to do so on the basis of section 37(2).

Chronology

14. The Commissioner contacted the Cabinet Office on 29 July 2010 in relation to this complaint. The Commissioner asked to be provided with copies of the information falling within the scope of the various requests and detailed submissions to support the Cabinet Office's application of the various exemptions.
15. The Commissioner received a detailed response from the Cabinet Office on 14 September 2010. In this response the Cabinet Office confirmed that it only held information falling within the scope of 'some' of the requests. The Commissioner was also provided with the information that the Cabinet Office did hold, along with submissions to support its reliance on the exemptions cited in the refusal notice.
16. Having considered the Cabinet Office's response carefully the Commissioner noted that the refusal notice and internal review issued by the Cabinet Office were ambiguous, simply informing the complainant that it held 'some' falling within the scope of the various requests. The Commissioner therefore decided that the Cabinet Office had failed to comply with the requirements of section 1(1)(a) of the Act. Consequently the Commissioner wrote to the Cabinet Office on 23 September 2010 and informed it that in order to comply with the requirements of section 1(1)(a) of the Act it needed to contact the complainant and for each request, e.g. 13(1), 13(2)(a), 13(2)(b) etc, it needed to confirm whether it held information falling within the scope of each request. The Commissioner noted that if the Cabinet Office did not wish to confirm or deny whether it held information for certain requests it would need to cite an appropriate exemption.
17. As noted in the 'The Request' section above the Cabinet Office contacted the complainant on 22 October 2010 and for each request either confirmed whether it held any information or explained that it was refusing to confirm or deny whether information was held on the basis of section 37(2). (The Commissioner has set out in the annex appended to this Notice the Cabinet Office's response to the complainant in respect of each separate request.)
18. In a letter also dated 22 October 2010 the Cabinet Office provided the Commissioner with submissions to support its application of section 37(2) to certain requests.

Analysis

19. For requests 13(1) and 13(2)(a) for each of the Lords Acton, Grenfell and Parekh the Cabinet Office confirmed to the complainant that it held information but considered it to be exempt from disclosure on the basis of sections 37(1)(b), 40(2) and 41(1).
20. For the remainder of the requests the Cabinet Office refused to confirm or deny whether it held any information on the basis of section 37(2).
21. The Commissioner has initially considered the Cabinet Office's reliance on section 37(1)(b) to refuse requests 13(1) and 13(2)(a).

Requests 13(1) and 13(2)(a)

Section 37(1)(b) – conferring of an honour or dignity

22. Section 37 is a class based exemption, that is to say if information falls within the scope of the section it is automatically exempt; there is no need for the public authority to demonstrate any level of prejudice that may occur if the information was disclosed in order for the exemption to be engaged.
23. Section 37(1)(b) of the Act provides a specific exemption for information that relates to the conferring by the Crown of any honour or dignity.
24. The Commissioner is satisfied that the information falling within the scope of requests 13(1) and 13(2)(a) clearly relates to the conferring by the Crown of an honour, specifically the decision to award Lords Acton, Grenfell and Parekh a life peerage, and thus the information falls within the scope of section 37(1)(b).
25. However, section 37(1)(b) is a qualified exemption. Therefore, the Commissioner must consider the public interest test set out at section 2(2)(b) of the Act 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 maintaining the exemption

26. In submissions to the Commissioner the Cabinet Office identified the following arguments which it acknowledged were generic, but which it believed were weighty in this case:

27. As part of the honours and appointments system, enquiries about individual nominations and discussions about policy are made on a confidential basis and involve processing of personal data, sometimes sensitive personal data. It would not serve the public interest if it became apparent that confidential enquiries, records of discussion and correspondence concerning individual honours or honours policy affecting individuals might occasionally be made public. It is also, however, in the public interest to maintain the integrity of the honours system. The Cabinet Office considered it essential for the integrity of the system that decisions about all aspects of honours and appointments should continue to be taken on the basis of honest and full information and that those who assess and decide on the system and policy in all forms can carry out their work free from pressure from or on behalf of, individuals or lobbyist groups. The Cabinet Office stated that protecting the confidentiality of such work is a matter of strong public interest and took the view that there is neither sufficient nor compelling public interest to outweigh that consideration in this case.
28. The Cabinet Office also explained that it had taken into account the fact that the requested information comprised personal data. It argued that whilst this therefore clearly engages section 40, there was an overlap with the application of section 37(1)(b) in that there was patently a public interest in protecting personal data from unwarranted disclosure. Furthermore, in the context of honours, the Cabinet Office explained that it had taken into account the fact that the information requested was exempt from disclosure to the data subjects (i.e. those individuals referred to in the requests) themselves under Schedule 3 of the Data Protection Act.
29. With regard to the specific information falling within the scope of request 13(1) – i.e. the date of nomination – the Cabinet Office referenced the generic public interest in the honours process being operated on a confidential basis as set out above. The Cabinet Office also explained that the dates of nominations were not in the public domain and whilst their disclosure seemed, on its face, benign, there may be circumstances where disclosure of the date of the nomination is not in the public interest. If for example, there is a considerable period between the date of nomination and date of appointment, there can be speculation about the reasons for any delay. There may be delay for a variety of reasons, many of which may not have anything to do with the nominee, but disclosing that there had been a lengthy period between nomination and award could nonetheless lead to unfounded and unfair suspicion that the nominee's character, and the need to investigate that, might be the reason for the delay. With regard to section 13(2)(a) the Cabinet Office simply stated that there

were very strong public interest arguments not to give out such information.

Public interest arguments in favour of disclosing the requested information

30. The Cabinet Office acknowledged that there were generic factors in favour of disclosure of information about honours, namely providing the public with an understanding of the nomination process which could contribute to the genuine need for transparency and openness.
31. However, in respect of the actual information falling within the scope of requests 13(1) and 13(2)(a) the Cabinet Office stated that it did not believe that there was any public interest in knowing when these individuals had been nominated and clearly no public interest in disclosure of the nominees' residential addresses.
32. The Commissioner understands that the complainant believes that the need to disclose information falling within the scope of these requests emanates from the apparent inconsistency in the requirements placed upon Lord Ashcroft when his peerage was approved when compared with the other individuals identified in the requests.
33. In its submissions to the Commissioner of 15 January 2010 the complainant also highlighted what it understood the Commissioner's likely decision would be in a related case. (This had the reference number FS50197952 and the Commissioner issued his decision notice on 28 January 2010; this notice confirmed what the complainant understood the Commissioner's likely decision to be.¹) In this case an applicant had requested details from the Cabinet Office of the undertaking given by Lord Ashcroft to take up permanent residence in the UK in order to meet the requirements for being a Working Peer. The Cabinet Office argued that the information falling within the scope of this request was exempt from disclosure on the basis of sections 37(1)(b), 40(2), 40(4) and 41(1). The Commissioner's decision notice concluded that the Cabinet Office was not entitled to rely on these exemptions and therefore ordered it to provide the applicant with the information that he had requested. The Cabinet Office subsequently did so. In light of the Commissioner's decision in FS50197952 the complainant argued that it would be difficult to see how it 'could in fairness or in law be refused the information' which was the subject of this present case.

¹ This notice can be viewed here:

http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50197952.pdf

Balance of the public interest arguments

34. The Commissioner has set out some general comments in relation to the generic public interest arguments identified above before going on to explain where he believes the balance falls in respect of request 13(1) and 13(2)(a).

Generic

35. 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. The Commissioner 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. In general then the Commissioner believes some significant weight should be given, as a general principle, to information falling within the scope of 37(1)(b).
36. In reaching this conclusion the Commissioner wishes to emphasise that he is not suggesting that there is an inherent public interest in non-disclosure of information which falls within the scope of section 37(1)(b). Indeed a number of Information Tribunal decisions have indicated that there is no inherent public interest in withholding information simply because it falls within the scope of a class based exemption. This approach was supported by the High Court in the case *OGC v The Information Commissioner*.² However, a significant amount of information which falls within the scope of section 37(1)(b) is likely to include candid discussions about nominations for honours and for the reasons outlined above in the vast majority of cases there is likely to be a public interest in the confidentiality of such discussions being preserved.
37. Similarly, while the Commissioner accepts that weight should be given to the generic arguments in favour of maintaining the exemption, he believes that notable weight should also be given to the public interest in disclosing information concerning honours nominations. In his opinion the public interest is clearly served by having an honours system that is objective, accountable and transparent. In the Commissioner's view this is particularly true in respect of the awarding of peerages because the recipients are entitled to take a seat in the House of Lords and thus have an influence on the passage of legislation in Parliament and may be eligible to join the Government of the day.

² See *Office of Government Commerce v Information Commissioner & the Attorney General* [2008] EWHC 737 (Admin) (11 April 2008), in particular paragraph 79.

This is in contrast, for example, to individuals who receive another form of honour or dignity conferred by the Crown, such as a knighthood, who may well receive some kudos from the receipt of such an award but do not become members of the UK's legislature.

Information falling within the scope of request 13(1)

38. In respect of the information falling within the scope of this request the Commissioner believes that the degree to which its disclosure would undermine the confidentiality of the honours system is limited given the fact that the information being withheld is simply the first date on which each individual was nominated for a peerage. On the face of it is difficult to see how any particularly significant prejudice could arise from disclosure of this information. This is particularly true in cases where there is little or no delay between the date of the nomination and the date of the peerage being awarded, not that the Commissioner is necessarily saying that this is (or is not) the position with any of the nominations relevant to this request. Thus the public interest in maintaining the exemption in respect of this information is arguably limited. However, the Commissioner does accept that even if the public interest in maintaining the exemption is limited in one case because there is little or no delay between the date of the nomination and the date of appointment, the principle of maintaining a consistent approach is an important one. This is because if in one case information was disclosed confirming that there had not been a gap between the date of nomination and the date of the award and in another case the same information was withheld, then it could be inferred in the latter case that there was indeed a notable gap between the dates of the nomination and award. Thus disclosure of the dates of the nominations on a routine basis could undermine the confidentiality of the honours process which, for the reasons set out above, would not be in the public interest. In light of the fact that the degree to which disclosure of simply the dates would actually serve the public interests in disclosure is very limited, the Commissioner has therefore concluded that the public interest narrowly favours maintaining the application of section 37(1)(b) in respect of the information falling within the scope of request 13(1).

Information falling within the scope of request 13(2)(a)

39. In contrast the Commissioner believes that disclosure of the residential addresses provided by the named individuals would significantly undermine the confidentiality of the nominations process because applicants would not expect such information to be routinely disclosed. The Commissioner does accept that disclosure of the addresses would not reveal the nature of internal Cabinet discussions concerning the

merits of nominations and thus could not be said to have a chilling effect on the free and frank discussions of future nominations. Nevertheless, the Commissioner believes that the disclosure of such information would fundamentally undermine the integrity of the honours system given that the information was provided to the Cabinet Office in confidence, an outcome which for the reasons discussed above, the Commissioner believes would be strongly against the public interest.

40. In reaching this opinion the Commissioner recognises that the complainant has identified what it understands to be the residential addresses of two of the individuals named in the request (and the Commissioner recognises that the same information can be viewed online³). The Commissioner has therefore considered what effect, if any, this has on the weight that he believes should be attributed to maintaining the exemption. In the Commissioner's opinion a clear distinction has to be drawn between disclosure of information in response to a request under the Act and the availability of the same information in the public domain; disclosure by the Cabinet Office of such information under the Act would undermine the confidentiality of the honours system – precisely because it would be disclosing information it had received in confidence - in a way in which the simple availability of the information online does not. Moreover, such a position assumes that the residential addresses identified by the complainant mirror those held by the Cabinet Office; the Commissioner cannot of course confirm whether this is in fact the case but if it is assumed³ that the addresses held by the Cabinet Office do not match those identified by the complainant then the issue of whether the withheld information is in the public domain simply does not arise.
41. Balanced against this the Commissioner does accept that disclosure of the residential addresses arguably has the potential to be more informative, and thus its disclosure to be more in the public interest, than the information falling within the scope of request 13(1). Such a position acknowledges the thrust of the complainant's argument that as Lord Ashcroft was required to provide assurances regarding his permanent residence, there is a public interest in disclosure of information regarding the details of any other such assurances which linked the award of a peerage to an individual's country of residence. However, the Commissioner believes that the degree to which disclosure of this information could inform this debate is limited because, as he understands it, an individual's nationality and domicile is distinct from an individual's residential address. Moreover, although

³ Baron Acton: <http://www.croftspeerage.co.uk/online/content/index851.htm>
Baron Grenfell: <http://www.croftspeerage.co.uk/online/content/index975.htm>

provisions have recently been made in the Constitutional Reform and Governance Act 2010 in light of concerns about the ordinary residence of peers, the Commissioner believes that it is important to remember that this information dates from a period in which such requirements were not necessary.

42. In relation to the parallel which the complainant has drawn between the information requested in this case and that in FS50197952, the Commissioner is firmly of the opinion that the two cases can clearly be distinguished. This is because, as the analysis of section 37(1)(b) in FS50197952 makes clear the circumstances of Lord Ashcroft's nomination were controversial in nature thus adding to the public interest in disclosure. In the Commissioner's opinion the nomination of the three individuals in question here could not be said to have such a level of controversy. Furthermore, as the analysis in FS50197952 also makes clear the public interest in maintaining the exemption was limited because very little additional prejudice would occur if the information was disclosed in light of the amount of information already disclosed by the Government and Lord Ashcroft. (The request in FS50197952 simply sought the form of the undertaking given by Lord Ashcroft and its recipient; the content of the undertaking itself had been clearly alluded to in a press release and accompanying note for editors.)
43. In light of the notable prejudice to the confidentiality of the honours process which would occur if the requested information was disclosed, allied to the limited value in disclosure of the information, the Commissioner is of the opinion that the public interest favours maintaining the exemption in respect of the information falling within the scope of request 13(2)(a).
44. In light of his findings in respect of section 37(1)(b) the Commissioner has not gone on to consider the Cabinet Office's reliance on sections 40(2) and 41(1) to also withhold the information falling within the scope of requests 13(1) and 13(2)(a). However, his initial view, without a detailed analysis, is that the application of these exemptions would be likely to be upheld.

The remaining requests

Section 37(2) – neither confirm nor deny

45. For the remaining requests the Cabinet Office has refused to confirm or deny to the complainant whether it holds information falling within their scope on the basis of section 37(2).
46. 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 on the basis of section 37(1)(a) or 37(1)(b).
47. The Commissioner accepts that section 37(2) is engaged because if the Cabinet Office held information falling within the scope of any of the remaining requests it would be held by it in relation to the conferring of any honour or dignity and would thus fall within the scope of section 37(1)(b).
48. However, the Commissioner must consider the public interest test at section 2(1) of the Act and determine whether the public interest in maintaining the exclusion to confirm or deny whether information is held outweighs the public interest in providing such a confirmation or denial.

Public interest arguments in favour of maintaining the exemption

49. The Cabinet Office acknowledged that on the face of it confirmation that it did, or did not, hold the information may seem benign. However, it believed that revealing whether or not it held information was tantamount to revealing information which (if held) it would consider to be exempt from disclosure under section 37(1)(b) and this would impair the operation of the honours system.
50. By way of illustration the Cabinet Office provided the following example: If in relation to request 15 it were to confirm that it held information in respect of one peer, but did not hold information in respect of the other peers, then it could be reasonably assumed that there were discussions concerning 'assurances' by that one peer, but no discussion of any assurances by those about whom the Cabinet Office confirmed that it did not hold information about. In effect any response confirming or denying what information was held would be as good as revealing what happened at the time of these nominations being considered.

51. Thus the Cabinet Office argued that confirming whether or not it held information would be detrimental to the operation of the honours system, the principal tenet of which is that discussions concerning individuals are based upon confidentiality. The Cabinet Office also reiterated its position that it did not believe that this was a situation where there was a public interest in knowing what undertakings had been given as a condition of appointment in respect of these named peers.

Public interest arguments in favour of confirming whether information is held

52. The Commissioner believes that the public interest arguments in favour of confirming whether information is held in respect of each of the remaining requests effectively mirror the public interest arguments in favour of disclosing the information falling within the scope of requests 13(1) and 13(2)(a) which are set out above.

Balance of the public interest arguments

53. Having considered the manner in which these remaining requests are phrased the Commissioner accepts the logic of the argument advanced by the Cabinet Office that confirmation as to whether information is held would, in effect, reveal details of the manner in which these nominations had been considered and thus would erode the confidentiality of the honours process. (In fact, in the Commissioner's opinion simply by confirming whether it holds information falling within the scope of these particular requests is likely to be more prejudicial to the confidential nature of the honours process than actually disclosing the information falling within the scope of request 13(1).) For the reasons set out above the Commissioner accepts that there is a compelling public interest in ensuring that such confidentiality is not undermined.
54. Again, in relation to the public interest in disclosure of the information, the Commissioner accepts that there is a weighty public interest in disclosure of information which would improve accountability and transparency surrounding the honours process. In particular, the Commissioner recognises the recent public debate surrounding a peer's country of residence and whether this should affect such an individual's ability to sit in the House of Lords. Whilst confirmation as to whether information was held in relation to these requests this would only inform the public about the nominations dating from nearly 10 years ago, well before the recent debate and changes in legislation, the Commissioner nevertheless recognises that it could still be of interest to the public in respect of those individuals who still sit in the Lords.

55. However, for reasons that the Commissioner has discussed at length above, he believes that the public interest in maintaining the integrity of the honours process, and thus maintaining the exclusion to confirm or deny in relation to the remaining requests, outweighs the public interest in confirming whether or not the information is held. Again, in reaching this conclusion, the Commissioner would re-iterate the points he has made above in respect of the clear distinctions he believes exist between this case and his decision in FS50197952.
56. In reaching this conclusion the Commissioner has considered whether, by confirming that it held some information falling within the scope of these requests in the refusal notice and internal review, the Cabinet Office has undermined its ability to subsequently adopt a position of refusing to confirm or deny whether the remaining information was in fact held.
57. In the circumstances of this particular case the Commissioner does not believe the earlier confirmation has had this effect. This is because for each the requests numbered 13 to 16 the Cabinet Office simply stated that it held some information. However, each of the four requests contains a number of separate limbs – in effect individual requests in themselves - and based upon the ambiguity of the language used in the refusal notice and internal review response it is not possible to ascertain with certainty which of the various limbs of the request this response relates to.

Procedural Requirements

Section 17 – refusal notice

58. Section 17(1) of the Act requires that public authorities who rely on an exemption as a basis not to comply with either the duty contained at section 1(1)(a) or the duty contained at section 1(1)(b) must issue the applicant with a refusal notice stating which exemption it is seeking to rely on. Such a notice must be issued within the time for compliance set out at section 10(1) of the Act, namely 20 working days following the date of receipt.
59. In this case although the Cabinet Office ultimately relied on section 37(2) of the Act as a basis to not to comply with the requirements of section 1(1)(a) in respect of certain requests it failed to provide complainant with a refusal notice stating this fact within 20 working days of the request. This constitutes a breach of section 17(1) of the Act.

The Decision

60. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- (i) The Cabinet Office was entitled to refuse to provide the information it holds falling within the scope of requests 13(1) and 13(2)(a) on the basis of section 37(1)(a) of the Act and in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
 - (ii) The Cabinet Office was also entitled to refuse to comply with the requirements of section 1(1)(a) in respect of the remaining requests on the basis of section 37(2) of the Act and in all the circumstances of the case the public interest in maintaining this exemption also outweighs the public interest in confirming whether information is held or not.
61. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- (i) The Cabinet Office breached section 17(1) by failing to issue a refusal notice citing section 37(2) within 20 working days following the date of the request.

Steps Required

62. The Commissioner requires no steps to be taken.

Right of Appeal

63. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 7th day of December 2010

Signed

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Request	Cabinet Office's response to complainant dated 22 October 2010
13. LORD ACTON	
(1) When was he first nominated for a life peerage?	Information held but exempt on basis of s37(1)(b); 40(2) and 41(1).
(2) What, according to Cabinet Office records, was or were at that time: (a) his residential addresses(es)	Information held but exempt on basis of s37(1)(b); 40(2) and 41(1).
(b) his domicile	Neither confirm nor deny on basis of s37(2).
(c) his nationality?	Neither confirm nor deny on basis of s37(2).
(3) Do Cabinet Office records disclose any change in his residential address(es), domicile or nationality between his nomination and the time he took up his seat in the House of Lords as a life peer? Is so, what change(s) and when?	Neither confirm nor deny on basis of s37(2).
13. LORD GRENFELL	
(1) When was he first nominated for a life peerage?	Information held but exempt on basis of s37(1)(b); 40(2) and 41(1).
(2) What, according to Cabinet Office records, was or were at that time: (a) his residential addresses(es)	Information held but exempt on basis of s37(1)(b); 40(2) and 41(1).
(b) his domicile	Neither confirm nor deny on basis of s37(2).
(c) his nationality?	Neither confirm nor deny on basis of s37(2).
(3) Do Cabinet Office records disclose any change in his residential address(es), domicile or nationality between his nomination and the time he took up his seat in the House	Neither confirm nor deny on basis of s37(2).

of Lords as a life peer? Is so, what change(s) and when?	
13. LORD PAREKH	
(1) When was he first nominated for a life peerage?	Information held but exempt on basis of s37(1)(b); 40(2) and 41(1).
(2) What, according to Cabinet Office records, was or were at that time: (a) his residential addresses(es)	Information held but exempt on basis of s37(1)(b); 40(2) and 41(1).
(b) his domicile	Neither confirm nor deny on basis of s37(2).
(c) his nationality?	Neither confirm nor deny on basis of s37(2).
(3) Do Cabinet Office records disclose any change in his residential address(es), domicile or nationality between his nomination and the time he took up his seat in the House of Lords as a life peer? Is so, what change(s) and when?	Neither confirm nor deny on basis of s37(2).
14. IN RELATION TO LORD BLACK	
(1) What, according to Cabinet Office records, was or were his country or countries of residence at the time of his nomination for a life peerage?	Neither confirm nor deny on basis of s37(2).
(2) Do Cabinet Office records disclose any change in his residence between the time of his first nomination and the time the life peerage was conferred upon him? If so, what changes and when?	Neither confirm nor deny on basis of s37(2).

<p>15. Do Cabinet Office records contain any record of any of the following, in relation to any of Lords Acton, Grenfell, Parekh or Black (and if so, which?)</p> <p>(1) The provision by him, in connection with his nomination and/or appointment of any assurances or undertakings as to nationality, domicile or residence;</p> <p>(2) Any suggestion, agreement or discussion as to the provision of any such assurances or undertakings?</p>	
<p>15. LORD ACTON</p>	
<p>(1) The provision by him, in connection with his nomination and/or appointment of any assurances or undertakings as to nationality, domicile or residence;</p>	Neither confirm nor deny on basis of s37(2).
<p>(2) Any suggestion, agreement or discussion as to the provision of any such assurances or undertakings?</p>	Neither confirm nor deny on basis of s37(2).
<p>15. LORD GRENFELL</p>	
<p>(1) The provision by him, in connection with his nomination and/or appointment of any assurances or undertakings as to nationality, domicile or residence;</p>	Neither confirm nor deny on basis of s37(2).
<p>(2) Any suggestion, agreement or discussion as to the provision of any such assurances or undertakings?</p>	Neither confirm nor deny on basis of s37(2).
<p>15. LORD PAREKH</p>	
<p>(1) The provision by him, in connection with his nomination and/or appointment of any assurances or undertakings as to nationality, domicile or residence;</p>	Neither confirm nor deny on basis of s37(2).
<p>(2) Any suggestion, agreement or discussion as to the</p>	Neither confirm nor deny on basis of s37(2).

provision of any such assurances or undertakings?	
15. LORD BLACK	
(1) The provision by him, in connection with his nomination and/or appointment of any assurances or undertakings as to nationality, domicile or residence;	Neither confirm nor deny on basis of s37(2).
(2) Any suggestion, agreement or discussion as to the provision of any such assurances or undertakings?	Neither confirm nor deny on basis of s37(2).
16. If the Cabinet Office does hold any such record as is referred to in question 15 above, what form does that record take?	Neither confirm nor deny on basis of s37(2).

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

Section 1(2) provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

Effect of Exemptions

Section 2(1) provides that –

"Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that either –

(a) the provision confers absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information

section 1(1)(a) does not apply."

Section 2(2) provides that –

"In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"

Time for Compliance

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

Communications with Her Majesty and conferring of honours

Section 37(1) provides that –

"Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
- (b) the conferring by the Crown of any honour or dignity."

Section 37(2) provides 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)."

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Information provided in confidence.

Section 41(1) provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and

- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."