

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2012

Public Authority: Department for Education
Address: Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Decision

1. The complainant made a freedom of information request to the Department for Education (DfE) for information regarding the award of a MBE to a named individual. The request was refused under the section 37(1)(b) (Honours) exemption and the section 40(2) (Personal information) exemption.
2. The Commissioner's decision is that the information is exempt under section 37(1)(b) and the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner requires no steps to be taken.

Request and response

3. On 11 June 2011 the complainant made a request to the Department of Education (DfE) for information regarding the award of an honour to a named individual. The request read as follows:
 - *Full information from the Department on the above nomination, including how this recommendation came about;*
 - *Which individuals (by name and position) were responsible, and the full circumstances on why the Department believed [named individual] was suitably qualified for such an honour.*
4. The DfE responded to the request on 21 June 2011 when it confirmed that the individual had been nominated by officials within the

Department and provided a brief explanation of the reasons for his nomination. However it said that any further information including the name and position of the official who nominated him was exempt from disclosure under the exemption in section 37(1)(b) of FOIA. The Department said that it had decided that the public interest in maintaining this exemption outweighed the public interest in disclosure and set out the factors it had taken into account when reaching this view.

5. The DfE also said that it considered the information to be additionally exempt under section 40(2) on the grounds that the information constitutes the personal data of someone other than the applicant and disclosure would contravene the first data protection principle which requires that personal data be processed fairly and lawfully. Section 40(2) additionally prevents disclosure because, the DfE said, the information would be exempt from the subject access provisions under the exemption in paragraph 3 of schedule 7 of the Data Protection Act 1998 (DPA).
6. The complainant subsequently asked the DfE to carry out an internal review of its handling of his request and the DfE presented its findings on 7 October 2011. At this point it upheld the decision to refuse the request under the exemptions in section 37(1)(a) and 40(2).

Scope of the case

7. The complainant was not satisfied with the DfE's response to his request and on 2 November 2011 asked the Commissioner to investigate. In particular the complainant said that he did not accept that the information was exempt under section 37(1)(b) and that the public interest favoured maintaining the exemption.
8. During the course of his investigation the Commissioner found that the DfE held additional information falling within the scope of the request which it had failed to identify in its responses to the complainant. This was a collection of emails relating to references received in support of the nomination.

Reasons for decision

Section 37(1)(b) – Conferring by the Crown of any honour or dignity

9. The Commissioner has first considered the application of section 37(1)(b) which provides that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
10. Section 37(1)(b) is what is known as a class based exemption. This means that in order to engage the exemption it is not necessary for disclosure to result in any harm or prejudice, only that the information falls within the particular class of information identified in the exemption. In this case, all of the information relates to the decision to award the individual his honour and therefore the exemption is engaged. However, section 37(1)(b) is also a qualified exemption and therefore the Commissioner has gone on to carry out a public interest test, balancing the public interest in maintaining the exemption against the public interest in disclosure.
11. The Commissioner has summarised below the DfE's reasons for finding that the public interest in maintaining the exemption outweighs the public interest in disclosure.
 - Nominations must focus on free and frank details of an individual's merits and achievements. Those making a nomination do so in confidence and if the information they supply were routinely made public this could deter people from putting people forward for an honour.
 - Disclosure could lead to discussions on future nominations being more guarded which would undermine the decision making process. Those involved in the honours process would be less frank in discussing the merits of a particular individual which could mean that the most deserving candidates are not awarded an honour.
 - Maintaining the confidentiality of the honours system ensures that decisions are made on the merits of each candidate. Since nominations are not attributable there is no advantage in one individual putting another forward for public recognition.
 - There is no right of appeal (over the decision to award or not award an honour) and so release of the information would serve no public benefit. The reason for the award has already been made public in the short citation.

12. As regards the public interest in disclosure, the complainant argued that the public interest would be served by greater transparency on the reasons for the award. The complainant also rejected claims that disclosure of any of the withheld information would undermine the integrity of the honours system.
13. The Commissioner has considered the arguments in favour of maintaining the exemption and is aware that the whole honours system is dependent on a high degree of confidentiality and this could be undermined if it was felt that the background information relating to a nomination could potentially be made public. In the Commissioner's view disclosure of this information could discourage future nominations or lead to a situation, as the DfE suggest, where there is an advantage to be gained from making a nomination which could undermine the principle that honours are awarded solely on merit. The Commissioner has found that these arguments weigh strongly in favour of maintaining the exemption.
14. In general the Commissioner would accept that there is a need for a safe space whilst the nomination process is ongoing, prior to the announcement of an award. Once the award has been made though a safe space is no longer required and therefore the Commissioner has not attributed any weight to arguments around providing a confidential space in which to debate the merits of this particular award.
15. However, the Commissioner has taken into account the DfE's suggestion that disclosure may have a 'chilling effect' on the candour of those contributing to future discussions as part of the honours process. The Commissioner is mindful of the fact that the honours process is based on an expectation of confidentiality and on a particular need for candour. Whilst he accepts that any chilling effect is likely to be greater where disclosure happens whilst the nomination process is still live, releasing the information may still affect the future behaviour of those nominating, those nominated and those whose opinions are sought as part of the process. Therefore the Commissioner has attached certain degree of weight to this factor when balancing the public interest.
16. The Commissioner has always taken the view that an important element in maintaining the integrity and robustness of the honours process is that those contributing to it are willing to provide information and discuss the merits, or otherwise, of a nomination in a truthful and free and frank manner. This is achieved by allowing the nomination process to be, and be seen to be, conducted in a confidential manner.
17. The Commissioner finds that there is a clear public interest in withholding the information because confidentiality is so important to

the honours system. On the other hand, he has found that, despite concerns expressed by the complainant around the decision to award this honour, there is nothing to suggest a pressing need for transparency in this particular case. Whilst he would accept that disclosure would increase transparency and promote understanding of the honours system these essentially general arguments are not sufficient in this case to tip the balance in favour of disclosure. Therefore, the Commissioner has found that in all the circumstances of the case the public interest in maintaining the section 37(1)(b) exemption outweighs the public interest in disclosure.

Other exemptions

18. The Commissioner has not considered the DfE's application of section 40(2) as he is satisfied that all of the information is exempt on the basis of section 37(1)(b) and the public interest favours maintaining the exemption.

Right of appeal

19. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
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