

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2012

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the Honours nomination process. The Department for Education (DfE) refused to provide the requested information under section 37(1)(b), 40(2) and 40(4) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the DfE has correctly applied section 37(1)(b) in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 2 April 2012, the complainant wrote to the DfE and requested information in the following terms about the nomination of an award to [named person]:

"Owing to the passage of time, I am now hereby resubmitting my original request for your reconsideration. I therefore, under the terms of the 2000 Act require the following:

- any information held on the above nomination, including the judgement criteria and reasons for its failure;
 - the identity of any other Government department you believe might hold details on this nomination. "
5. The DfE responded on 19 April 2012. It refused to provide the requested information under section 37(1)(b), 40(2) and 40(4) FOIA.

6. Following an internal review the DfE wrote to the complainant on 21 May 2012. It upheld its original decision.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the DfE was correct to withhold the requested information under any of the exemptions cited.

Reasons for decision

Section 37(1)(b)

9. 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.
10. Section 37(1)(b) provides a specific exemption for information that relates to the conferring by the Crown of any honour or dignity.
11. The Commissioner is satisfied that all of the withheld information clearly relates to the conferring by the Crown of honours and thus the information falls within the scope of section 37(1)(b).
12. 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 FOIA 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 disclosure

13. The DfE recognised that there is a general public interest in openness and transparency, and that release of this information could have the effect of maintaining public confidence in the Honours system.
14. The complainant has argued that in one instance he considers that the nomination process, available on the Direct.gov website, was not followed as a nomination was not sent to the Honours team. After reviewing the nomination process on the Direct.gov website, the Commissioner notes that nominations are sifted and checked by the

Nominations Team and sometimes government departments for consideration before being moved onto the next stage. The Commissioner therefore does not consider that because a nomination is not considered by the Honours Team that this demonstrates that the proper process was not followed. Furthermore due to the number of nominations received he considers that it is reasonable that there is a sifting stage to the process. The Commissioner has not therefore given any significant weight to this argument.

Public interest arguments in favour of maintaining the exemption

15. The DfE explained that there is a strong public interest in maintaining confidentiality in making nominations for and assessing honours. It said that such nominations by their nature must focus on free and frank details of an individual's merits and achievements. It said that those making nominations do so in the knowledge that they are able to do so in confidence, and the details that they supply about an individual will be treated in confidence. It said that if the information about either an individual, or the details of the person making the nomination, were to be routinely made public, people could be deterred from putting people forward.
16. The DfE said that the release of the requested information could lead to future nominations and discussions being more guarded, and therefore undermining the decision-making process. It is likely that if such nominations were to be routinely exposed to public scrutiny, those involved in the Honours system would be less frank in discussing the merits of a specific individual. Since the award of honours is based on a judgement about the merits of particular individuals, and there are only a limited number available, a lack of specific information could mean that honours were not bestowed on the most deserving candidates. It argued that this would not be in the public interest;
17. The DfE explained that the honours system should be operated in such a way that there is no likelihood that pressure could be brought to bear either in favour of, or against particular nominations. Maintaining the confidentiality of the process ensures that decisions are made on the merits and achievements of each candidate, and not on the basis of lobbying. Nominations are not currently attributable and thus there is no advantage to one individual putting another forward for public recognition. It said that this could cease to be the case if this information were to be released which would not be in the public interest.
18. The DfE said that release of the information would serve no public benefit because there is no right of appeal where a nomination is unsuccessful. It could be harmful to the Honours system if we were to

inform unsuccessful nominees of the reasons for failure. It would set a precedent which would be likely to undermine the effectiveness of the system.

19. Finally the DfE referred to a previous Decision Notice (FS50184282) in which the Commissioner has upheld public authorities' decisions to withhold information such as that contained on the honours form:

"Moreover, 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.

Furthermore, the Commissioner is conscious of the significant numbers of nominations that the honours system has to process. The Commissioner understands that the Honours and Appointments Secretariat at the Cabinet Office receives on average 3,500 nominations each year. In the three year period 2006 to 2008 these resulted in 181 Dames/Knights and 2 Companions of Honour. There were also 647 CBEs, 1392 OBEs and 3499 MBEs awarded.

Given the significant number of nominations that are assessed and honours that are awarded, the Commissioner believes that the likelihood of the process being harmed by a loss of frankness and candour could be said to be relatively high. Therefore even if the disclosure of this information would only lead to a relatively minor, though still prejudicial loss of candour on the part of the officials involved, given the number of nominations that are assessed the effect on the process could still be significantly adverse" (FS50184282)

Balance of the public interest

20. The Commissioner considers that there is a public interest in openness and transparency and in the public having confidence in the Honours process.
21. However the Commissioner also considers that there is a strong public interest in individuals not being deterred from making nominations which may occur if they believed that a nomination, successful or otherwise, could be disclosed into the public domain.

22. The Commissioner also considers that there is a strong public interest in discussions between the Honours team being open and candid when determining which nominations should be successful. However the complainant has argued that disclosing nominations which do not pass further than the sifting stage would not have this affect as they are not subject to such discussions. The Commissioner accepts that this public interest argument would have less of an impact in relation to disclosure of information relating to nominations which were not subject to such discussions between the Honours team.
23. The Commissioner considers that there is a strong public interest in the Honours system not being subject to undue pressure or lobbying.
24. The Commissioner considers that on balance, in this case, the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.
25. As the Commissioner considers that section 37(1)(b) FOIA was correctly engaged in this case, he has not gone on to consider the DfE's application of section 40(2) or 40(4) FOIA any further.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

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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Wycliffe House
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SK9 5AF**