

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 1 March 2016

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall  
London  
SW1A 2AS

#### Decision (including any steps ordered)

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1. The complainant has requested minutes of the HD Committee from the Cabinet Office. The Cabinet Office refused to provide this citing section 35(1)(a) (formulation or development of government policy) and section 37(1)(b) (honours information) as its basis for doing so. It upheld this at internal review.
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 37(1)(b) as its basis for refusing to provide the requested information.
3. No steps are required.

#### Request and response

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4. Following an exchange of correspondence regarding the campaign for a National Defence Medal, the complainant requested information of the following description on 8 April 2015.

"Perhaps you could also pass on (under the FOI Act) a request to see the minutes of the HD Committee meeting which reached this conclusion. At least we will then be able to address the perceived weaknesses in the case, and you can stop fielding the same questions."

5. On 1 May 2015, the Cabinet Office responded. It refused to provide the requested information. It cited the following exemptions as its basis for doing so:

- section 35(1)(a) (formulation or development of government policy); and
  - section 37(1)(b) (conferring by the Crown of any honour or dignity).
6. The complainant requested an internal review on 19 May 2015. The Cabinet Office sent him the outcome of its internal review on 27 May 2015. It upheld its original position.

### Scope of the case

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7. The complainant contacted the Commissioner on 5 August 2015 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Cabinet Office is entitled to rely on sections 35 and section 37 as its basis for refusing to provide the requested information.

### Reasons for decision

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### Background

9. There is an active debate around the question of a National Defence Medal. Such a medal would be for veterans who did not participate in specific conflicts but, nevertheless, stood ready to do so as members of the Armed Forces. This would include those conscripted into the Armed Forces after the Second World War. Other Commonwealth countries, e.g. New Zealand and Australia, have such a medal for service of three and four years respectively. US veterans may also be awarded an equivalent medal after three years. In the UK, however, length of service is recognised only after 15 years.<sup>1</sup>
10. The .gov.uk website explains: "The HD Committee is the permanent standing Committee which provides advice to The Sovereign on policy concerning honours, decorations and medals. The terms of reference of the Committee are:

To consider general questions relative to the Grant of Honours, Decorations and Medals; to review the scales of award, both civil and

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<sup>1</sup> <http://www.telegraph.co.uk/news/uknews/defence/11213611/Millions-of-veterans-who-never-saw-action-should-get-a-medal-MPs-to-hear.html>

military, from time to time, to consider questions of new awards, and changes in the conditions governing existing awards".<sup>2</sup>

11. The requested minutes cover more than one issue. For this reason, the Commissioner thinks that section 37 (honours information) rather than section 35 more readily covers the entirety of the requested information. He has therefore considered the application of this exemption first.

### **Section 37(1)(b) – the conferring by the Crown of any honour or dignity**

12. Section 37(1)(b) of FOIA states that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
13. Given that the request specifically seeks information concerning the Committee on the Grant of Honours, Decorations and Medals (otherwise known as the HD Committee as described in the request), the Commissioner is satisfied that the withheld information clearly falls within the scope of the exemption contained at section 37(1)(b). HM Queen would need to formally approve any decision by the HD Committee to introduce a National Defence Medal. The information is therefore exempt on the basis of section 37(1)(b).
14. However, section 37(1)(b) is a qualified exemption and therefore the Commissioner must consider the public interest test at section 2 of the 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 disclosing the withheld information

15. The Cabinet Office recognised the importance of transparency in the honours process but argued that the public interest in disclosure in this case was outweighed by the public interest in maintaining the exemption. It set out its arguments in favour of maintaining the exemption which are considered later in this notice.
16. In ongoing correspondence with the Cabinet Office, the complainant drew attention to points which, in his view, undermined the whole medal review process. He referred to a response from the Veterans Minister

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61398/Medals-Interim-Report-July-12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61398/Medals-Interim-Report-July-12.pdf)

Anna Soubry MP on the topic of the National Defence Medal where she said:

*"There is a long-standing and widely understood military tradition that medals are not awarded as a record of service but in recognition of specific campaigns and operations, acts of gallantry or outstanding service. We set up an independent review into medals and decorations, and its Chair, Sir John Holmes, specifically considered this matter and decided against such a medal. That decision received royal approval."*

17. In the complainant's view, the Veterans Minister was in error. He drew attention to the point that "there are also medals awarded by Her Majesty for service and to commemorate special occasions such as the Coronation and Jubilees". He commented that "the Veterans Minister ....should know better and [should] have been better briefed. Her statement has deeply upset many veterans".

#### Public interest arguments in favour of maintaining the exemption

18. The Cabinet Office set out the following arguments in favour of maintaining the exemption:
- Decisions about honours and awards are best made on the basis of full and honest information and those who offer opinions as part of the process must be allowed to do so freely and honestly "on the understanding that their confidence will be honoured".
  - The honours process in relation to proposed new medals should be kept confidential.
19. It also drew attention to a previous decision of the Commissioner which had supported its position in relation to honours information.<sup>3</sup>
20. Finally, it drew the Commissioner's attention to the fact that Parliament recognised the particular sensitivity of releasing information relating to honours - even when relatively old- by expressly providing that the exemption relating to honours information does not expire after 30

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<sup>3</sup> [https://ico.org.uk/media/action-weve-taken/decision-notice/2011/581854/fs\\_50302265.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2011/581854/fs_50302265.pdf)

years but instead remains applicable for 60 years after the date of its creation.<sup>4</sup>

### Balance of the public interest arguments

21. With regard to the weight that should be attributed to maintaining the section 37(1)(b) exemption, as a general principle 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 the process. Furthermore, the Commissioner accepts that if views and opinions, provided in confidence, were subsequently disclosed then it is likely that those asked to make similar contributions in the future may be reluctant to do so or would make a less candid contribution. Moreover, the Commissioner also 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.
22. The Commissioner agrees that the public interest in maintaining the exemption in relation to that information which does not relate to the issue of the National Defence Medal is compelling. There is a particularly strong public interest in protecting the safe space in which the Committee considers honours related matters. This outweighs the public interest in transparency in this case.
23. With that in mind, he has considered whether the section of the minutes which deals with the National Defence Medal should be disclosed in isolation.
24. The Commissioner notes that the decision not to issue a National Defence Medal appears to be in contrast to the approach taken by other Commonwealth nations. Disclosure of the minutes which cover the current position not to issue such a medal would serve the public interest in transparency on this issue. There is a strong public interest in understanding more about why the UK has an approach which differs from other Commonwealth nations. Disclosure would provide further information about the honours process with respect to the creation of such a medal.

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<sup>4</sup> Section 63 FOIA explains that a number of exemptions cannot apply to information which is contained in a 'historical record', ie information which is more than 30 years old. However, section 63(3) has the effect of extending this 30 year period to 60 years for information which falls within the scope of section 37(1)(b).

25. The Commissioner considers that this point is finely balanced. However, he has concluded that, by a narrow margin, the public interest favours maintaining the exemption with respect to this section of the minutes. In reaching this view, the Commissioner has given weight to the importance of protecting the space in which proposals for new medals are discussed.
26. The decision not to issue a National Defence Medal was equivocal. The Cabinet Office said:

“A written Ministerial Statement in July 2014 announced that, in relation to the National Defence Medal, the Committee on the Grant, Honours and Medals (HD Committee) was ‘not persuaded that a strong enough case can be made at this time but has advised that this issue might usefully be reconsidered in the future’. That policy as it stands is in the public domain. The case for a possible introduction of a National Defence Medal was reviewed as recently as February 2015”.
27. Although a decision was made against the creation of a National Defence Medal in July 2014 and reiterated in February 2015, the Commissioner is not aware of any statement that updates the equivocal position and that rules out categorically the creation of a National Defence Medal.
28. The complainant would argue, the Commissioner surmises, that this, of itself, is a strong argument in favour of disclosure. The position is equivocal but, he has asserted, there is insufficient information to explain that equivocation.
29. However, the Commissioner is satisfied that the public interest in protecting the confidential space in which proposals for new medals are discussed outweighs the public interest in disclosure. While the government’s position remains unchanged at the last reported review, the equivocation in its explanation of the review process indicates to the Commissioner that it is not a completed matter. As such, this adds weight to the public interest in protecting the safe space in which it is discussed.
30. In light of his decision the Commissioner did not consider the public authority’s reliance on the exemption at section 35(1)(b).

## Right of appeal

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31. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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** .....

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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