

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 August 2016

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant asked the public authority to reveal whether a named company had ever submitted an application to the authority for permission to use the title "Royal", a protected Royal title granted by the Sovereign acting on the advice of Her Ministers. The public authority decided that it was excluded from its duty to confirm or deny whether it held any information within the scope of the request by virtue of the exclusion contained at section 37(2) FOIA.
2. The Commissioner has concluded that the public authority was entitled to rely on the exclusion contained at section 37(2) FOIA.
3. No steps are required.

Request and response

4. The complainant wrote to the public authority on 31 July 2015 and submitted a request for information in the following terms:

"I would very much appreciate it if you can tell me if the Carlyle Group, which is an American global asset management firm, has ever made an application to you for permission to use the word "Royal", implied or otherwise, in any of their subsidiaries operating as a company within the United Kingdom."

5. An official on the Royal Names Team initially dealt with the request outside the FOIA on 4 August 2015. The official explained to the complainant that permission to use the title Royal and other protected

names is granted by the Sovereign, acting on the advice of Her Ministers. Therefore, as a matter dealt with under the Royal Prerogative, the public authority could not comment on individual cases of use of the title Royal by companies or institutions.

6. The complainant responded on the same day and asked for the information to be provided under the FOIA.
7. The public authority responded under the FOIA on 28 August 2015. It relied on the exclusion at section 37(2) FOIA to neither confirm nor deny whether it held the information requested.
8. The Commissioner understands that the complainant requested an internal review of the public authority's decision on 3 September 2015.
9. The public authority wrote back to the complainant on 9 October 2015 with details of the outcome of the internal review. Although the review erroneously cited section 31(1)(b), it clearly upheld the original decision to neither confirm nor deny whether the public authority held the information requested in reliance on the exclusion contained at section 37(2).

Scope of the case

10. The complainant contacted the Commissioner on 18 March 2016 in order to complain about the public authority's decision to neither confirm nor deny whether it held the information requested.
11. The scope of the Commissioner's investigation therefore was to determine whether the public authority was entitled to rely on the exclusion contained at section 37(2).

Reasons for decision

Section 37 – the conferring by the Crown of any honour or dignity

12. Section 37 FOIA states:

" 1. Information is exempt information if it relates to—

(a) communications with the Sovereign,

(aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,

(ab) communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne,

(ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs), and

(ad) communications with the Royal Household (other than communications which fall within any of paragraphs (a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs), or

(b) the conferring by the Crown of any honour or dignity.

(2) 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)."

13. Section 37(1)(b) applies to information which relates to the conferring by the Crown of any honour or dignity. A public authority may, by virtue of section 37(2), neither confirm nor deny whether it holds information which is or if it were held would be exempt from disclosure by virtue of section 37(1)(b).
14. The public authority explained that permission to use protected Royal titles is granted by Her Majesty. It pointed out that the process for applying for a Royal name is detailed on the Companies House website¹ and guidance concerning when a Royal name is granted is also available on the Royal Household's website². It therefore determined that the information requested by the complainant relates to the conferring by the Crown of any honour or dignity.
15. The Commissioner has concluded that the information requested relates to the conferring by the Crown of any honour or dignity, and therefore if it was held by the public authority would be exempt from disclosure on the basis of section 37(1)(b).

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/533348/GP_1_Incorporation_and_Names_June_2016_v6.0-ver0.25.pdf

²

https://www.royal.uk/sites/default/files/media/guidance_applications_for_the_title_royal.pdf

16. The public authority considers that it is excluded by virtue of section 37(2) from confirming or denying whether it holds the information requested. It considers that to confirm whether or not the Carlyle Group has ever submitted an application to use the title Royal would reveal information which is exempt from disclosure on the basis of section 37(1)(b).

Section 1 – the duty to confirm or deny

17. Section 1(1) FOIA provides two rights to applicants. They are:
 - a) The right to be informed in writing by the public authority whether or not it holds the information requested by an applicant, and
 - b) If so, the right to have the information communicated.
18. Both these rights are subject to other provisions in the FOIA including exemptions. The right in section 1(1)(a) is commonly referred to as a public authority's "duty to confirm or deny" whether it holds information. Section 37(2) is one of a number of provisions in the FOIA that a public authority may rely on to exclude itself from its duty to confirm or deny whether it holds information requested by an applicant.
19. The Commissioner has concluded that the public authority was entitled to rely on the exclusion at section 37(2) because to either confirm or deny whether it holds the information requested would reveal information exempt from disclosure on the basis of section 37(1)(b). In other words, it would reveal whether or not the Carlyle Group has ever submitted an application to use the title Royal, and that information would clearly be exempt on the basis of section 37(1)(b).
20. The exclusion at section 37(2) is however subject to the public interest set out in section 2(1)(b) FOIA where it has been applied by a public authority on the basis that complying with the duty to confirm or deny would reveal information exempt from disclosure on the basis of section 37(1)(b).
21. The Commissioner has therefore also considered whether 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 complying with the duty to confirm or deny whether the information requested is held.

Public interest arguments in favour of confirming or denying whether the information requested is held

22. The complainant has argued that it is in the public interest to know whether or not the Carlyle Group has ever submitted an application to

use the title Royal because this would make it less likely for companies to misrepresent themselves and therefore less likely for unsuspecting customers to fall victims to such companies.

23. He has also argued that since the public authority publishes lists of individual honours it is disingenuous not to publish a list of companies that are entitled to use protected Royal titles.
24. The public authority recognised that there is a general public interest in openness in government and issuing a confirmation or denial in this case would enhance that public interest.

Public interest arguments in favour of maintaining the exclusion

25. The public authority reiterated that applications for protected Royal titles are dealt with under the Royal Prerogative. It explained that they are sparingly granted and strict standards are applied. Information about any criteria which may exist and the reasons for the grant or refusal of an application are not disclosed. This principle of non-disclosure is necessary to protect the consideration of applications and to also protect the interests of organisations which have had their applications turned down. Therefore, organisations that apply for the use of a protected Royal title do so with the reasonable expectation that their application will be treated in confidence.
26. The public authority therefore argued that it would have to be consistent in responding to similar requests about other organisations should it confirm or deny whether it holds the information requested and pointed out that this would inevitably reveal unsuccessful applications. The public authority however considers that revealing unsuccessful applications would imply an unfavourable judgement or disapproval of those applications when that is emphatically not the case. It explained that this is because the use of the title Royal is granted only as an exceptional honour and is often refused. The title is not a right which can be claimed by a body fulfilling certain conditions.
27. The public authority therefore concluded that on balance the public interest in maintaining the exclusion of the duty to confirm or deny strongly outweighs the public interest in confirming or denying whether the information requested is held.

Balance of the public interest arguments

28. With regard to the weight that should be attributed to maintaining the exclusion contained at 37(2), as a general principle the Commissioner accepts the fundamental argument that for the honours system to operate efficiently and effectively there needs to be a level of confidentiality. Whilst not a factor directly inherent in this exclusion, it is

worth mentioning that revealing an organisation has applied unsuccessfully to use a protected Royal title could cause unwarranted reputational damage and consequently prejudice its commercial interests.

29. The Commissioner shares the view that there is a public interest in revealing information which would make it less likely for companies to be able to misrepresent themselves. There is therefore a public interest in publishing a list of companies entitled to use protected Royal titles. She notes however that a company's details could be searched through the Companies House website.
30. In any event, the request was not for a list of companies entitled to use protected Royal titles. The complainant has specifically asked the public authority whether a named company has ever submitted an application to use a protected Royal title. The Commissioner considers that there is a public interest in not confirming or denying whether the information is held because to do otherwise would undermine the confidentiality of the process for considering such applications. It is clear that organisations who apply to use protected names do so with the reasonable expectation that their applications will be treated in confidence.
31. Furthermore, revealing details of unsuccessful applications would undermine the confidentiality of the process and could cause reputational damage to organisations whose applications have been unsuccessful and this would have negative implications for the honours system.
32. Members of the public who have reasonable grounds to suspect a company or group of companies of serious misconduct can complain to Companies House, The Insolvency Service or the Serious Fraud Office. Given the likely wider negative effect of complying with his request, the Commissioner does not consider that disclosure under the FOIA is the most effective way to address the complainant's concerns.
33. She has therefore concluded that on balance, in all the circumstances of this case, the public interest in maintaining the exclusion contained at section 37(2) outweighs the public interest in confirming or denying whether the information requested is held.

Right of appeal

34. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

35. 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.
36. 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

Terna Waya
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF