

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 November 2016

Public Authority: The Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the Cabinet Office for copies of correspondence relating to the decision to award Grenville Janner a life peerage in 1997. The Cabinet Office disclosed a small amount of information but sought to withhold the remainder on the basis of the following sections of FOIA: 37(1)(b) (honours information); 40(2) (personal data) and 41(1) (information provided in confidence). The Cabinet Office also refused to confirm or deny on the basis of section 23(5) whether it held any information from a section 23(3) body falling within the scope of this request.
2. The Commissioner accepts that all of the withheld information falls within the scope of the section 37(1)(b), however in respect of the information concerning Lord Janner, she has decided that the public interest favours disclosure of this information. With regard to the remaining information contained in the correspondence which specifically refers to the nominations of other applicants, the Commissioner is satisfied that the public interest favours maintaining this exemption. In respect of the information concerning Lord Janner, the Commissioner is satisfied that sections 40 and 41 do not provide a basis to redact any information with the exception of a very small amount of information which she is satisfied is exempt from disclosure on the basis of section 40(2). Finally, the Commissioner agrees with the Cabinet Office's reliance on section 23(5) in this case.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with copies of the information falling within the scope of his request. The only redactions which can be

applied to this information are on the basis of sections 37(1)(b) and 40(2) to the information which is identified in the confidential annex, a copy which has been provided to the Cabinet Office only.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. Greville Janner was MP for Leicester West from February 1974 to 1 May 1997. He was recommended for a life peerage in the Working Life Peers list 1997 by Tony Blair. As the time of his nomination, the duty to vet nominations for life peers nominated by the UK political parties rested with the Political Honours Scrutiny Committee (PHSC), the secretariat for which was provided by the Cabinet Office. The PHSC comprised of three senior Privy Counsellors who were not members of Government, and they were required to consider (a) whether the names submitted to them were fit and proper persons to be recommended; and (b) whether they were satisfied from information supplied that no payment or expectation of payment to a Party or political fund was directly or indirectly associated with the recommendation.
6. In April 2015 the Director of Public Prosecutions (DPP) stated that Lord Janner would have been charged with sex offences against children, but it was not in the public interest to do so because he had been diagnosed with dementia. This decision was overturned and in June 2015 the DPP confirmed that criminal proceedings would be brought against Lord Janner, albeit that it was acknowledged that he would be found unfit to plead and would be likely therefore to face a 'trial of the facts'. Lord Janner was found unfit to plead in December 2015. He died on 19 December 2015 without any 'trial of the facts' taking place.
7. An independent review commissioned by the Crown Prosecution Service (CPS) was published on 19 January 2016. It concluded that charges in relation to sex offences against children should have been brought by the CPS against Lord Janner in 1991 and 2007. The review also found

that in 2002, allegations against Lord Janner were not supplied by the police to the CPS and accordingly no prosecution was possible.¹

Request and response

8. The complainant submitted the following request to the Cabinet Office on 5 January 2016:

'My request relates to the issue of Honours (awarded and or recommended and or refused and or abandoned) for the late Lord Janner...

1...Can you please supply copies of all correspondence between the Cabinet Office/Downing street and Lord Janner which in any way relates to the issues of honours or titles. The correspondence could relate to an honour (s) or title (s) which was actually awarded or it could relate to honours and titles which either refused and or not awarded.

2...Can you please supply copies of all correspondence between the Cabinet Office/Downing Street and any representative of employee of Lord which relates to the issues of honours and titles. This correspondence could relate to an honour (s) or title (s) which was actually awarded or it could relate to honours and titles which either refused and or not awarded.

3...Can you please identify a list of occasions when Lord Janner was nominated and or recommended and or suggested and or nominated for an honour. In the case of each particular year and or Honours List can you provide details of the relevant honour. In the case of each honour or list can you stated whether the honour was actually made and or rejected and or refused. In the case of each honour can you specify whether the recommendation was made by the honours committee and or an honours sub-committee and or the Prime Minister of the day and or a serving Cabinet Minister and or a Government department. Alternatively was it made by an outside body or individual? Please do not name any members of the public but please do identify any organisations which may have nominated Lord Janner for an Honour. In the case of each year or list can you please provide all relevant documentation held by the Cabinet Office which relates to

¹ http://www.cps.gov.uk/news/latest_news/henriques_report/

the honours. This documentation will include but will not be limited to any nomination forms and papers, any citations and any written advice offered by and or to Ministers and or civil servants and or honours committees and or third parties. It will also include but will not be limited to correspondence and communications to and from the Prime Minister of the day and their private office.

4...Did the Cabinet Office and or Downing Street ever talk to the police following and or in relation to an honours recommendation for Lord Janner. If the answer is yes can you please provide copies of all written correspondence and communications including emails.'

9. The Cabinet Office contacted the complainant on 2 February 2016 and explained that it held information falling within the scope of his request but it considered this to be exempt from disclosure on the basis of section 41 of FOIA. The Cabinet Office explained that section 41 is subject to a public interest test and it had not yet reached a decision as to the balance of the public interest.² Therefore, it was relying on section 10(3) of FOIA to extend the time it needed to consider the balance of the public interest test. The Cabinet Office sent a similar letter to the complainant on 1 March. The Cabinet Office wrote to the complainant again on 29 March 2016 and explained that the information in question was exempt from disclosure under section 37 but it needed further to consider the balance of the public interest under this exemption.
10. The Cabinet Office provided the complainant with a substantive response to his request on 1 April 2016. The response explained that the Cabinet Office had concluded that the information it held was exempt from disclosure on the basis of the following sections of FOIA: 37(1)(b) (information the awarding of honours), 40(2) (personal data) and 41(1) (information provided in confidence). The Cabinet Office also refused to confirm or deny on the basis of section 23(5) whether it held any information from a section 23(3) (security bodies) body falling within the scope of this request. The only exception of this finding was a copy of the citation which the Cabinet Office disclosed to the complainant albeit in redacted form.

² Section 41 is not in fact subject to the public interest test contained at section 2 of FOIA, albeit that the law of confidence contains its own built in public interest test with one defence to an action being that disclosure is in the public interest. This is discussed further in the Commissioner's analysis of section 41 below.

11. The complainant contacted the Cabinet Office on 1 April 2016 and asked it to conduct an internal review into its refusal.
12. The Cabinet Office informed him of the outcome of the internal review on 4 May 2016. The review upheld the application of the various exemptions cited in the refusal notice.

Scope of the case

13. The complainant contacted the Commissioner on 4 May 2016 in order to complain about the Cabinet Office's decision to withhold the information falling within the scope of his request. He was also dissatisfied with the time it took the Cabinet Office to provide him with a substantive response to his request.
14. It is important to note at this stage that information falling within the scope of this request includes information relating to Lord Janner **and** information which relates to other individuals who were nominated, or being considered for a peerage in the 1997 working peers list. This is because of the way the complainant's request is phrased, namely seeking copies of all correspondence in relation to Lord Janner being nominated for a peerage. Consequently, complete copies of any correspondence in which Lord Janner's nomination is mentioned therefore falls within the scope of the request and such correspondence also includes references to the nominations of other individuals.

Reasons for decision

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

15. The Cabinet Office argued that all of the withheld information was exempt from disclosure on the basis of section 37(1)(b) of FOIA. This provides that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
16. Given the nature of the withheld information, the Commissioner is satisfied that it clearly falls within this description and thus is exempt from disclosure on the basis of section 37(1)(b) of FOIA.

Public interest test

17. 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 disclosing the withheld information

18. The Cabinet Office acknowledged that there was a general public interest in openness in government to enable the public to understand the way in which important decisions are reached. The Cabinet Office also explained that it appreciated the importance of transparency wherever possible and understood the public interest in the workings of the honours system. The Cabinet Office also acknowledged that transparency improves government accountability and simultaneously encourages informed and constructive public engagement with important topical issues, while increasing public confidence and trust. More specifically, the Cabinet Office recognised the public interest in relation to the honour received by Lord Janner, and the consequent particular interest in relation to the honours process that has ensued and therefore it had concluded that the redacted version of the citation should be disclosed at the internal review stage.
19. The complainant argued that there was a public interest in the disclosure of the remaining information falling within the scope of his request. He emphasised that in the months leading up to his death Lord Janner was accused of historic allegations of child abuse and noted that the failure to prosecute Lord Janner while he was in good health sparked a great deal of public concern and led to allegations of a cover up. Consequently the complainant argued that the public has a right to know whether those involved in the honours process were ever warned about Lord Janner's private life and/or his alleged crimes.

Public interest arguments in favour of maintaining the exemption

20. The Cabinet Office argued that the principle of confidentiality is central to the functioning of the appointments system and that it did not believe that there was a public interest in the disclosure of information which would damage the integrity of the system. The Cabinet Office argued that those involved in discussions about individual cases require a safe space to discuss and deliberate on cases. Such a safe space allows those involved in a case to engage in frank discussions without external comment, speculation or enquiries. The Cabinet Office suggested that pressure or hindrance arising from such external speculation and comment may distort the integrity of the process and divert resources from the task in hand. Furthermore, the Cabinet Office argued that disclosure of information relating to specific appointments cases would have a negative impact on future discussions because those participating in the appointments process might be reluctant to do so if

they thought that their views, given in confidence, were likely to be published.

21. The Cabinet Office explained that it took into account the age of the withheld information falling within the scope of the request, however it concluded that the public interest in withholding the remaining information outweighed the public interest in releasing it. The Cabinet Office emphasised that the people who were involved in the process took part on the understanding that their contribution was confidential and would be treated as such. It argued that it is essential that all those involved in the honours system are given the courtesy of confidentiality for a period of time after a particular case has closed. Moreover, the Cabinet Office argued that it believed that it had a responsibility to respect the confidentiality of the process and system, as well as the confidentiality that the individuals involved would have undoubtedly expected at the time.

Balance of the public interest test

22. 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 nominations. Furthermore, the Commissioner accepts the premise of the Cabinet Office's argument 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. Consequently the Commissioner accepts that the disclosure of the withheld information in this case would risk undermining the confidentiality of the honours system and moreover risks creating a chilling effect on the candour of future contributions by those involved in the honours system. That said, to some extent the Commissioner believes that the risk of this effect is mitigated by the fact that the information in question is nearly twenty years old.
23. Furthermore, in the Commissioner's opinion far greater weight should be attributed to the public interest in disclosure of the information concerning Lord Janner's nomination than that given to it by the Cabinet Office. In the Cabinet Office's view, the public interest balance necessitated the disclosure of a redacted version of the citation. In the Commissioner's opinion the balance of the public interest falls in favour

of disclosing all of the information that the Cabinet Office holds concerning Lord Janner, the only exception being his residential address. The Commissioner has set out in a confidential annex, a copy of which will be provided to the Cabinet Office only, why she has reached this decision. However, in reaching this decision the Commissioner's wishes to emphasise that she accepts that there are genuine public interest arguments for withholding the information, it is simply that in the particular circumstances of this case they did not outweigh the significant public interest in disclosure of the parts of the withheld information that relate to Lord Janner.

24. As noted above, given the way in which this request is phrased, the withheld information encompasses discussions not simply about Lord Janner's nomination for a peerage in 1997 but also includes considerable information about other specific nominees. In the Commissioner's opinion the public interest favours maintaining the exemption contained at section 37(1)(b) in respect of any information which specifically discusses candidates other than Lord Janner.

Section 41 – information provided in confidence

25. The Cabinet Office also argued that some of the information falling within the scope of the request was exempt from disclosure on the basis of section 41.
26. The Commissioner has considered whether this exemption provides a basis to withhold the information which she has concluded is not exempt by virtue of section 37(1)(b). That is to say, the Commissioner has not considered the Cabinet Office's reliance on section 41(1) in respect of any specific comments about nominees other than Lord Janner as she has already concluded that this information is exempt from disclosure on the basis of section 37(1)(b).
27. Section 41(1) of FOIA states that:

'(1) 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.'

28. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party and the disclosure of that information has to constitute an actionable breach of confidence.

29. With regard to whether disclosure would constitute an actionable breach of confidence the Commissioner follows the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:

- Whether the information had the necessary quality of confidence;
- Whether the information was imparted in circumstances importing an obligation of confidence; and
- Whether an unauthorised use of the information would result in detriment to the confider.

30. However, further case law has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure.

Was the information obtained from a third party?

31. The Cabinet Office argued that the withheld information included the views of individuals on the merits of the nominations in question. The Commissioner has reviewed the withheld information in question and accepts that this is an accurate description of it. Section 41(1)(a) is therefore met as the Cabinet Office clearly received this information from a third party.

Does the information have the necessary quality of confidence?

32. The Commissioner considers that information will have the necessary quality of confidence if it is not otherwise accessible and if it is more than trivial; information which is of importance to the confider should not be considered trivial.

33. The Cabinet Office acknowledged that although the withheld information may not be highly sensitive, it is not trivial and relates to personal matters which the confider would consider important and which is not readily available by other means.

34. The Commissioner is satisfied that the information is clearly not otherwise accessible and moreover given its content, focusing as it does on merits of peerage nominations, is clearly more than trivial.

Was the information obtained in circumstances importing an obligation of confidence?

35. The Cabinet Office argued that notwithstanding the age of the information, those involved would have a clear expectation that their

views would be kept confidential. In support of this position, the Cabinet Office emphasised that the award of honours is done on a confidential basis and that those involved would have clearly understood this at the time. Taking this into account, the Commissioner is satisfied that this criterion is met.

Would disclosure be detrimental to the confider?

36. The Cabinet Office argued that disclosure of the withheld information would cause a specific detriment to the either the party who provided it (if they were living) or any other party (or their personal representatives, if they are not living). The Commissioner accepts that given the nature of withheld information, namely comments on the nominees for the peerage, it is possibly that some detriment to those who provided the information could arise if the information was disclosed. However, the Commissioner notes that the information which she is considering is, as the Cabinet Office notes, not highly sensitive. Moreover, the information was provided to the Cabinet Office by the individuals in question in a professional rather than a personal capacity. In the Commissioner's opinion both of these factors mean that the level of detriment if the information was disclosed is arguably limited.

Public interest defence

37. However, although section 41 is an absolute exemption, the law of confidence contains its own built in public interest test with one defence to an action being that disclosure is in the public interest.
38. The Cabinet Office emphasised that courts have taken the view that the duty of confidence should not be overridden lightly on the basis of a public interest in disclosure. In the circumstances of this case the Cabinet Office argued that an assurance of confidentiality was important because those individuals would have been reluctant to participate in the honours process; and individual confidences need to be respected to maintain trust in the process as a whole.
39. The Cabinet Office explained that it accepted that the duty of confidence does not last forever; it will last until the public interest in disclosure comes to outweigh the public interest in maintaining the confidence. Although there can be no definitive time period when information no longer retains its confidence, or when the public interest in maintaining the confidence no longer outweighs the public interest in release, the Cabinet Office argued that it did not believe a sufficient time had elapsed. Furthermore, the Cabinet Office argued that it did not consider that there is any overriding public interest in disclosure. On the contrary, it argued that disclosing the specific information would not advance the public interest as it would not inform the public debate or

advance any legitimate interests, particularly not when set aside the clear expectations of confidentiality that surround the withheld information.

40. In the Commissioner's opinion the public interest in maintaining the confidence in respect of the information that she has concluded is not exempt from disclosure on the basis of section 37(1)(b) is relatively limited. Whilst the Commissioner would accept that there is a general public interest in maintaining any confidence, in the particular circumstances of this case she believes that such information could be disclosed without significant harm to the confider. As the Commissioner has noted above, in her view the detriment that would be caused to the confider is relatively limited. Moreover, and in contrast to the Cabinet Office, the Commissioner believes that there is a compelling public interest in the disclosure of information which relates to the decision to award Lord Janner a peerage. Her basis for this mirrors the points made in the confidential annex which explain why she concluded that the public interest under section 37(1)(b) favours disclosure of the same information. Consequently, the Commissioner has concluded that there is greater public interest in disclosing the withheld information than there is in maintaining the confidence in respect of the information which concerns the decision to award Lord Janner a peerage.

Section 40 – personal data

41. The Cabinet Office has argued that some of withheld information is exempt from disclosure on the basis of section 40(2), namely the personal data of the individuals named in the information.
42. However, as indicated above, the Commissioner has already concluded that the names of all other nominees, along with any information specific to their individual nominations, is exempt from disclosure on the basis of section 37(1)(b) of FOIA. Furthermore, as the Cabinet Office has acknowledged itself, Lord Janner is deceased and therefore any information relating to him could not be considered to be his 'personal data' as defined by the Data Protection Act (DPA) as he is not a living individual.
43. Consequently, in the Commissioner's opinion the only remaining information contained within the withheld information which constitutes personal data comprises the names of various officials and civil servants who commented on the nominations in question.
44. The Cabinet Office argued that the disclosure of such information would breach the first data protection principle the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

45. In the circumstances of this case the only relevant condition in schedule 2 of the DPA is the sixth which states that:

'The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms of legitimate interests of the data subject'.

46. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;

- o if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
47. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
48. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, ie it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
49. The Cabinet Office argued that the individuals in question would have had a reasonable expectation that their names and any comments they gave were given in confidence and would be treated as such. The Cabinet Office emphasised that because of the confidential nature of the honours system, the information was obtained in circumstances where there was an expectation of discretion. The Cabinet Office acknowledged that although there may be may be a legitimate public interest in understanding who provided opinions on Lord Janner, it do not consider the disclosure of this personal data to satisfy the test of necessity. In any event, the Cabinet office argued that even if the necessity test in were met, disclosure would unduly prejudice the privacy to which the data subjects are entitled, and in its opinion, this would not be warranted.
50. With regard to the expectations of the individuals who provided their opinions and the expectations of those involved in assessing the nominations, the Commissioner does not dispute the Cabinet Office's argument that given the confidential nature of the honours system the individuals would have had a reasonable – and indeed weighty – expectation that such information would not be made public. However, to some degree the Commissioner believes that it is reasonable to expect this expectation to shift with the passage of time, ie those who made contributions cannot necessarily expect their contributions to be withheld in perpetuity. Moreover, the Commissioner notes that the individuals whose views and opinions are recorded are senior in nature and in her opinion this means that in terms of their expectations they must, even in the days prior to the enactment of FOIA, have had some

level of greater expectation that they would be publically accountable for their involvement in decision making³.

51. Furthermore, it would appear to the Commissioner that the opinions offered about Lord Janner by the various individuals do not appear to be the personal views of these individuals. Rather they would appear to simply be objective views which have been expressed on behalf of a government department or organisation.
52. Therefore, despite the expectations of the individuals as to whether the personal data would be disclosed, in the Commissioner's opinion it is still fair to disclose the information withheld on the basis of section 40(2).
53. With regard to the sixth condition, as noted above the Commissioner believes that there is a compelling public interest in the disclosure of information concerning the decision to award Lord Janner with a peerage. Although the Commissioner acknowledges that disclosure simply of the names of the various individuals who offered their, or their organisation's views, would perhaps add little to the public's understanding, she is firmly of the view that there is always a legitimate interest in disclosing information in order to disclose the 'full picture' behind a particular decision in order to serve the purposes of general transparency and accountability. As a result the Commissioner believes that it is necessary to disclose this information, the sixth condition in schedule 2 of the DPA is therefore met and thus section 40(2) does not apply.
54. The only exception to this finding is in respect of the names of the three junior officials. Although the information dates from prior to FOIA's enactment, it is current practice for government departments to generally redact names of junior officials from any disclosures made under FOIA. In light with this approach the Commissioner accepts that disclosure names of the three junior officials would be unfair and thus breach the first data protection principle. This particular information is therefore exempt from disclosure on the basis of section 40(2) of FOIA.

Section 23(3) – security bodies

55. The Cabinet Office also explained that it was relying on section 23(5) of FOIA as a basis to refuse to confirm or deny whether it held information from a section 23(3) body which fell within the scope of the case.

³ The only exception to this are the names of three junior officials whose names can be redacted on the basis of section 40(2) of the reasons set out later in this notice.

Section 23(5) excludes the duty of a public authority to confirm or deny whether it holds information which, if held, would be exempt under section 23(1) respectively.

56. Information relating to security bodies specified in section 23(3) is exempt information by virtue of section 23(1).
57. By virtue of section 23(5) the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3).
58. The test as to whether a disclosure would relate to a security body is decided on the normal standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.
59. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. This is consistent with the scheme of FOIA because the security bodies themselves are not subject to its provisions. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
60. The Commissioner finds that on the balance of probabilities, further information about the award of a peerage to Lord Janner, if held, could be related to one or more bodies identified in section 23(3).

Section 10 and section 17

61. Section 10(1) of FOIA requires public authorities to respond to a request promptly and in any event within 20 working days of receipt.
62. Section 17(1) of FOIA explains that if a public authority intends to refuse to comply with a request it must provide the requestor with a refusal notice stating that fact within the time for compliance required by section 10(1). Section 17(3) allows a public authority to extend its consideration of the public interest for a reasonable period of time if necessary. The Commissioner believes that this should normally be no more than an extra 20 working days, which is 40 working days in total to deal with the request. Any extension beyond this time should be exceptional and the public authority must be able to justify it.

63. In this case the complainant submitted his request on 5 January 2016. The Cabinet Office responded on 2 February 2016 and explained that it needed additional time to consider the balance of the public interest test. The Cabinet Office provided the complainant with a substantive response to his request on 1 April 2016, some 62 working days later. The Cabinet Office outlined to the Commissioner the various internal factors which mean that in its view the period of time taken to complete its public interest test considerations was not unreasonable. Having taken into account these factors, and taking into consideration the circumstances of this case and the subject matter, the Commissioner is persuaded, by a narrow margin, that the time the Cabinet Office took to complete the public interest test was reasonable.

Right of appeal

64. 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

65. 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.
66. 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

Steve Wood
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