

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2016

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant submitted a request to the public authority for documents and correspondence relating to the award of honours to the late British artist David Bowie by Her Majesty The Queen. The public authority disclosed most of the information in scope at the time of the request and withheld a small amount of information on the basis of the exemptions at sections 37(1)(b) (the conferring by the Crown of any honour or dignity), 40(2) (personal data) and 41(1) (information provided in confidence) FOIA.
2. The Commissioner's decision is that the public authority was entitled to rely on the exemption at section 37(1)(b) to withhold all of the remaining information that has not been disclosed to the complainant.
3. No steps are required.

Request and response

4. The complainant submitted a request for information to the public authority on 12 January 2016 in the following terms:

"I would like to request the following information under the Freedom of Information Act.....

My request relates to the issue of Honours (awarded and or recommended and or refused and or suggested and or abandoned) for David Bowie, the singer, actor and performer whose death was

announced on 11 January 2016. David was also known by his birth name David Jones.

Please note that the reference to the Cabinet Office/Downing Street should be taken to include The Cabinet Office and or Downing Street (including the Prime Minister's office) and or any relevant honours committee.

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

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

3... Can you please supply copies of all correspondence sent by and or on behalf of a Prime Minister and or Cabinet Minister and or a Government department which in any way relates to the subject of honours and or titles for the aforementioned individual. This document will include but will not be limited to correspondence with the honours committee as well as correspondence with civil servants.

4... Can you please supply copies of any Cabinet Office and or Downing Street documentation which outlines the case for an honour or award for the aforementioned individual. This will include but will not be limited to advice given by individual civil servants and or relevant honours committees to the Prime Minister of the day.

5... As far as the aforementioned individual is concerned can you please supply copies of any Cabinet Office and or Downing Street documentation which details responses (both internal and external) to the idea of an honour or title."

5. The public authority wrote to the complainant on 24 February 2016 and informed him that it held information relevant to his request which it had withheld on the basis of the exemption at section 37(1)(b) FOIA. Relying on the provision in section 10(3) FOIA, it additionally explained to the complainant that it needed more time to reach a decision on whether the balance of the public interest was in favour of disclosing the withheld information.

6. The public authority issued a substantive response to the request on 9 March 2016. It concluded that all of the withheld information was exempt from disclosure on the basis of section 37(1)(b), and that some of the withheld information was additionally exempt on the basis of sections 40(2) and 41(1) FOIA.
7. The complainant requested an internal review on 15 March 2016.
8. The public authority wrote back to the complainant on 12 May 2016 with details of the outcome of the internal review. The review concluded that the public interest was in favour of disclosing most of the withheld information given its age and nature. The information was subsequently supplied to the complainant. It upheld the application of the exemptions at sections 37(1)(b), 40(2) and 41(1) to the remaining information.

Scope of the case

9. The complainant contacted the Commissioner on 23 May 2016 in order to complain about the public authority's decision to withhold the remaining information within the scope of his request. He provided the Commissioner with submissions to support his view that the requested information was not exempt from disclosure under FOIA and the Commissioner has referred to these submissions at the relevant parts of her analysis below.
10. During the course of the investigation the public authority wrote to the complainant and clarified that it did not hold any information within the scope of parts 1 and 2 of his request. The information held falls within the scope of parts 3 to 5 of his request. The complainant has not disputed that the public authority does not hold information relevant to parts 1 and 2 of his request.
11. The Commissioner has therefore considered whether the public authority was entitled to rely on the exemptions at sections 37(1)(b), 40(2) and 41(1) to withhold the remaining information in scope.

Reasons for decision

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 relevant part of the request specifically seeks all documentation and correspondence relating to the awards of honours to the individual in question, the Commissioner is satisfied that the withheld information clearly falls within the scope of the exemption at section 37(1)(b). 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 subject to the public interest test set out in section 2(2)(b) of the FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest arguments in favour of disclosing the withheld information

15. The public authority acknowledged that it was in the public interest to ensure that the awarding of honours and dignities is accountable and transparent.
16. He argued that the public had a right to know on what basis individual honours are recommended and or accepted and or refused.

Public interest arguments in favour of maintaining the exemption

17. The public authority has argued that the public interest in ensuring transparency and accountability in the honours system must be weighed against the importance of confidentiality with regard to individual honours cases which is essential to protect the integrity of the honours system and without which the system could not function.
18. It argued that non-disclosure of information relating to individual cases ensures that those involved in the honours system can take part on the understanding that their confidence will be honoured and that decisions about honours are taken on the basis of full and honest information about the individual concerned.
19. The public authority explained it has always been the case in the honours system that those involved in the process required the freedom to be able to discuss and deliberate individual honour cases in a safe space. Otherwise, it argued, those participating in the process would be reluctant to do so if they thought that their views, given in confidence, were likely to be published and this would undoubtedly have a prejudicial effect on the integrity of the honours system.
20. The public authority however stressed it was not treating the exemption as absolute and that it recognised the public interest in disclosing the

withheld information. It clarified that it had disclosed most of the information in scope in light of Mr Bowie's public comments concerning his refusal of an honour and the time period that had passed since he was considered. It therefore concluded that there was very little public interest in withholding the disclosed information. However, it considered that disclosure of the small amount of information that had been withheld would seriously undermine the honours process and would not advance any significant or specific public interest in the circumstances of this case.

21. 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 years but instead remains applicable for 60 years after the date of its creation.¹
22. The public authority therefore concluded that the public interest inherent in the protection and preservation of the integrity and robustness of the honours system outweighs the public interest in disclosing the withheld information.

Balance of the public interest arguments

23. 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 public authority'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 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.

¹ 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).

24. The Commissioner notes that withheld information which is quite small is not particularly revealing. Nonetheless she is satisfied that as the information relates to individual nominations, disclosure of such information would significantly undermine the confidentiality of the honours system. The Commissioner agrees that there is a clear public interest in ensuring that the honours system is accountable and transparent in order to ensure public confidence in the system. She accepts that there is a public interest in knowing the basis on which individual honours are recommended. However, she does not consider the withheld information particularly revealing in that regard. In any event, given the risk of a chilling effect on future honours nominations and discussions on the merits of individual nominations, the Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
25. Having concluded that the information in scope was correctly withheld on the basis of the exemption at section 37(1)(a), the Commissioner has not considered the remaining exemptions relied on by the public authority.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

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