

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 December 2017

**Public Authority:** Cabinet Office

**Address:** 70 Whitehall

London

SW1A 2AS

### Decision (including any steps ordered)

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1. The complainant has requested information on the attendance of members at specific Honours, Decorations and Medals committee meetings.
2. The Commissioner's decision is that the Cabinet Office is not entitled to rely on the exemptions at FOIA sections 35(1)(a) (Formulation of government policy) and 37(1)(b) (Communications with Her Majesty) to refuse the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with the requested information.
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.

### Request and response

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5. On 16 February 2017 the complainant wrote to and requested information in the following terms:

"Please forward to me details of which of the eight members (includes the Chairman) of the Honours, Decorations and Medals Committee DID

NOT attend the HD Committee meetings which dealt with the military medals review in January 2014; July 2014; and February 2015.”

6. The Cabinet Office responded on 17 March 2017. It stated that it was withholding the requested information in reliance of sections 35(1)(a) and 37(1)(b) and considered that the public interest favoured maintaining both exemptions.
7. Following an internal review the Cabinet Office wrote to the complainant on 13 April 2017 upholding its initial response.

### Scope of the case

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8. The complainant contacted the Commissioner on 18 April 2017 to complain about the way his request for information had been handled. The complainant explained that he considered that he had not requested any information relating to the formulation or development of government policy or information relating to the conferring by the Crown of any honour or dignity. He added:

“I did however request details of which members including the Chair of the Committee **did not attend** three specific meetings with the Honours, Decorations and Medals Committee. I do not seek the reasons why they did not attend or where they were at the time of the meetings.”

9. The Commissioner considers the scope of her investigation is to determine whether the Cabinet Office is entitled to rely on the cited exemptions to refuse the complainant’s request.

### Reasons for decision

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10. Section 35(1)(a) states:

“Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

- (a) The formulation or development of government policy.”

11. In providing its submission to the Commissioner the Cabinet Office explained that government policy in relation to the National Defence Medal was at the time of the request a ‘live issue’.

12. The Commissioner notes that the complainant made no mention of the National Defence Medal or any policy concerning the medal in his request for information.

13. The Cabinet Office focussed its submission on consideration of the public interest in disclosing or withholding the requested information.
14. It explained that the Cabinet Office accepts the general public interest in openness in government to enable the public to understand the way in which important decisions are reached. It acknowledged that transparency improves government accountability and encourages informed and constructive public engagement with important topics.
15. However, the Cabinet Office went on to explain that it considered greater weight should be attributed to maintaining the exemption in order to:

“...preserve the ‘safe space’ required by those involved to formulate and develop policy in this area. This argument applies equally to the position at the time the request was made. It is in the public interest that such policy discussions are kept confidential for this live period in order that ministers and senior officials may conduct a full and frank discussions [sic] of the issues at hand, in the knowledge that their discussions will remain confidential during that period and will not be subject to premature disclosure.”
16. The Commissioner does not disagree in principle with the reasoning provided by the Cabinet Office in paragraph 15. However, she finds difficulty applying this reasoning to the specific request in this case. As the complainant explained, the request is not concerned with government policy, it is not a request for information on the National Defence Medal, it is a simple request for the committee members not in attendance at three committee meetings.
17. The Commissioner specifically discussed this point with the Cabinet Office. The Cabinet Office related its reasoning to the convention of collective decision making. It explained that for the process of determining government policy to be effective, “the need for collective responsibility is imperative”. Furthermore it asserts that to disclose which individuals did not attend particular meetings would undermine the collective decision making process.
18. In explaining its concern that disclosure of who did not attend a meeting could be used to infer any lack of rigour or questionable decision making the Cabinet Office also pointed out that:

“...regardless of whether the individuals are physically at the meeting, their views are represented in writing or through a senior representative.”
19. The Commissioner would remind the Cabinet Office that the FOIA does not make provision for creating an exemption to disclosure of

information in case the public may make assumptions from the release of that information. The FOIA is both motive and applicant blind.

20. The Commissioner considers that the Cabinet Office has focussed on the content of discussion at the meetings rather than the specific request for information.
21. The Commissioner is clearly aware of the Cabinet Office's desire to protect the convention of collective responsibility. However, she does not agree that in the circumstances of this case disclosure of the requested information would result in any significant prejudice to the convention.
22. The Commissioner's decision is that the exemption at section 35(1)(a) is not engaged and she has therefore not given consideration to the balance of the public interest.

### **Section 37(1)(b)**

23. Section 37(1) states:

"Information is exempt information if it relates to –

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

24. The function of this exemption is to help preserve the integrity and robustness of the honours system in order to ensure that awards continue to be conferred solely on merit.
25. The Cabinet Office provided the Commissioner with its view that the requested information falls within the scope of this exemption. It explained the reason for this as follows:

"...given it is on the subject of the introduction of a new medal to be conferred on many individuals by Her Majesty The Queen."
26. The Cabinet Office explained to the Commissioner that it considers its application of the exemption relates both to decisions on individuals' eligibility for honours or medals and formulation of policy in relation to honours and medals.
27. The Cabinet Office acknowledged the need for transparency and openness whilst determining that the need to respect and protect confidences and discretion within the honours policy making has greater weight. It explained:

"We fully appreciate the importance of transparency wherever possible and understand the public interest in the workings of the honours system but the content of the process needs to remain confidential in order to maintain the integrity of the honours system and to ensure that

decisions about honours and awards may continue to be taken on the basis of full and honest information and that those who offer opinions may do so freely and honestly, in confidence, on the understanding that their confidence will be honoured."

28. In support of its submission to the Commissioner the Cabinet Office referenced one of the Commissioner's decision notices from January 2011 (DN FS50302265) which acknowledged the need for confidentiality in the honours system to enable free and frank discussions.
29. The Commissioner is aware of her decision in that case, however, she does not consider this to be relevant to the request in this case. The Commissioner notes that her guidance on section 37(1)(b) advises that the exemption will be engaged when the requested information 'relates' to the conferring by the Crown of any honour or dignity. She is cognisant of the potential for a broad interpretation of 'relates', nevertheless, she is not convinced that a list of those not attending committee meetings can be considered as relating to the conferring of an honour.
30. Her guidance provides clear direction in the broad interpretation of 'relates' and includes:
  - lists of nominees;
  - discussions around the merits and achievements of nominees;
  - third party submissions regarding the suitability of candidates;
  - the reasoning behind the decision to confer/not to confer an honour or award;
  - discussions surrounding the forfeiture of an honour or award;
  - records relating to deceased nominees or award holders; and
  - the policies and procedures that underpin the process (for example the qualifying conditions for a particular honour).
31. The Commissioner accepts that the content of the committee meetings could comprise information relating to the conferring of honours, however, she considers that the requested information (a list of those not attending the meetings) in this case is too far removed from her definition of 'relates'.
32. Consequently the Commissioner's decision is that the exemption at section 37(1)(b) is not engaged and she has therefore not considered the application of the public interest.

## Right of appeal

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33. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.

35. 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** .....

**Gerrard Tracey**  
**Principal Advisor**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**Cheshire**  
**SK9 5AF**