

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2018

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 information on honours nominations concerning David Beckham. The Cabinet Office confirmed that it held information falling within the first part of the request but sought to withhold this on the basis of section 37(1)(b) (honours) and section 40(2) (personal data) of FOIA. In relation to the second and third parts of the request the Cabinet Office refused to confirm or deny whether it held information on the basis of section 37(2) of FOIA. The Commissioner has concluded that the Cabinet Office can rely on section 37(1)(a) and section 37(2) in the manner in which it has.

Request and response

2. The complainant submitted the following request to the Cabinet Office on 2 April 2017:

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

...My request concerns the subject of honours for the football star David Beckham (born 2 May 1975)

It might be useful if I explain the rationale for the request.

It has been inspired by the leak of emails earlier this year which shed light on Mr Beckham's so far unsuccessful attempts to lobby for honours including a Knighthood.

You will be aware that the emails - which received extensive press coverage around the world - sparked a great deal of concern about the operation of the Honours System.

In particular there was criticism of the apparent close links between Mr Beckham's camp and officials responsible for the operation of the Honours System.

In the light of this concern I believe there are strong public interest grounds for releasing the information and that the integrity of the Honours system is best served by disclosure rather than continued secrecy.

Disclosure will help highlight/confirm any existing failings and will provide an incentive to put right those areas of concern.

The widespread publication of the emails has effectively undermined the need for continued secrecy.

Mr Beckham has publicly confirmed that the emails are genuine.

As a result the public knows not only that he and his team lobbied for an Honour but that they were refused because of concerns raised by HMRC.

Please note that I am only interested in information which relates to the period 1 January 2012 to the present day.

Please note that the reference to Downing Street should be taken to mean Downing Street, the Cabinet Office, the Prime Minister's office as well as the relevant Honours committee (s) and those civil servants and or representatives who specifically deal/dealt with the issue of an honour for Mr Beckham.

1....During the aforementioned period how many times was Mr Beckham's name put forward for inclusion on any Honours List. In each case can you provide details of the Honour and the Honours List. In each case can you state whether the recommendation was made by the Prime Minister and or any member of the Government and or a government department and or the Honours Committee. Can you please identify any Ministers and departments where relevant. In each case can you indicate whether the award was given and or rejected and or refused.

2...During the aforementioned period did Mr Beckham and or his management team and or his PR company and or anyone specifically acting on his behalf exchange correspondence with Downing Street

which in any way related to the subject of an Honour for Beckham. I am interested in all information irrespective of whether the honour was awarded or not. If the answer is yes can you please provide copies of all of this correspondence and communications including emails. Please note that I am interested in receiving both sides of the correspondence. It might be helpful if I point out that Mr Beckham is represented by Simon Oliveira and the company Doyen Global.

3...Does Downing Street hold other written material which relates to the much publicised leak of the aforementioned emails and or the content of the emails and or the implications of the leak for the Honours system. This material will have been generated since 1 February 2017. If the answer is yes can you please provide copies of this documentation including correspondence with third parties and internal communications.'

3. The Cabinet Office responded on 28 April 2017. It confirmed that it held information falling within the scope of request 1 but it considered this to be exempt from disclosure on the basis of section 37(1)(b) and section 40(2) of FOIA. In relation to requests 2 and 3 the Cabinet Office refused to confirm or deny whether it held any information falling within the scope of these requests on the basis of section 37(2) of FOIA.
4. The complainant contacted the Cabinet Office on 30 April 2017 in order to ask for an internal review of this decision. Having failed to receive a response, he contacted the Cabinet Office on 1 June 2017 and chased up the lack of a response to his request for an internal review.¹

¹ During the course of the Commissioner's investigation the Cabinet Office explained that the internal review was not completed due to an administrative error.

Scope of the case

5. The complainant contacted the Commissioner on 4 July 2017 to complain about the Cabinet Office's refusal of requests 1 to 3.

Reasons for decision

Request 1

6. 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.
7. The Cabinet Office explained that as request 1 seeks any information regarding Mr Beckham's nominations for an honour the information sought by this request would clearly fall within the scope of the exemption contained at section 37(1)(b). The Commissioner agrees with this assessment and is satisfied that the information falling within the scope of request 1 is therefore exempt on the basis of section 37(1)(b).
8. 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 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

9. The complainant argued that there were strong public interest grounds for releasing the information given the well-publicised concerns that not only did Mr Beckham actively lobby for an honour, but that civil servants and representatives involved in the honours decision making process may have advised him on the best way forward. The complainant suggested that this advice reportedly included, but was not limited to, advice about his tax affairs.
10. The complainant emphasised that section 37(1)(b) is not an absolute exemption and therefore the Cabinet Office's default position that it is not in the public interest for the general public to be made aware of individual honours is unsustainable. Rather, the very nature of the public interest test means that each individual request must be judged on its individual merits rather than be the subject of a blanket ban. The complainant maintained that on this occasion disclosure of the information he had requested, rather than continued secrecy, is the best way of protecting the integrity of the honours system. Furthermore, the

complainant suggested that if the Cabinet Office was concerned to protect the identity of individuals involved in the honours system it could simply redact their names from any disclosure.

Public interest arguments in favour of maintaining the exemption

11. 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. It also explained that it appreciated the importance of transparency and the public interest in the workings of the honours system.
12. However, the Cabinet Office explained that in many cases involving honours and appointments it did not consider the public interest to favour disclosure of information relating to specific honours cases. This is because of the importance of confidentiality to individual honours cases which is essential to protect the integrity of the honours system without which the system could not function. The Cabinet Office argued that withholding information relating to individual honours 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.
13. In the particular circumstances of this case, the Cabinet Office noted that it was a matter of public record that David Beckham had been nominated for an honour; there have been numerous public/media calls for, and further speculation about, his further recognition. (This is why the Cabinet Office concluded that the public interest favoured confirming that it held information falling within the scope of request 1 in contrast to its application of section 37(2) in relation to requests 2 and 3). However, the Cabinet Office argued that release of the information falling within the scope of request 1 would have an adverse effect on the handling of future cases because it may raise expectations that particular details will be released in any given honours case and may to some extent dictate the process based on public opinion. The Cabinet Office explained that it also took into account that the information in question is relatively recent and that the individuals involved in the process took part on the understanding that their contribution was confidential and would remain so for a period time after the process was completed. The Cabinet Office emphasised that section 37(1)(b) does not expire until 60 years after the date of the information in question.
14. Furthermore, the Cabinet Office noted that in his request for an internal review the complainant suggested that there are '*strong public interest grounds for releasing the information given the well-publicised concerns that not only did Mr Beckham actively lobby for an honour but that civil servants and representatives involved in the Honours decision making*

process may have advised him on the best way forward. This advice reportedly included but was not limited to advice about his tax affairs'. The Cabinet Office explained that it did not recognise the complainant's account of the information available in the public domain which provides no indication of who provided advice to Mr Beckham or his advisers or in what form. Consequently, the Cabinet Office argued it did not accept that the leaked information generated the kind of concern about the integrity of the honours system as the complainant suggested, and this did not add to the public interest in disclosure of the information. Moreover, the Cabinet Office explained that it was its policy not to comment on leaked material.

Balance of the public interest arguments

15. 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 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, which would not be in the public interest.
16. In terms of the specific circumstances of his case, it is clear that the publication of details of Mr Beckham's honours nominations were as a result of leaked emails rather than as a result of an official disclosure by the Cabinet Office, or indeed as a result of a voluntary or sanctioned disclosure of information by Mr Beckham. Furthermore, the Commissioner acknowledges that the Cabinet Office (along with other government departments) does not comment on leaked material. As a result, whilst there is some information in the public domain in respect of the information sought by request 1, given that such information was only in the public domain as a result of a leak, the Commissioner is persuaded that there remains some need to protect the confidentiality of the honours system by not disclosing information, under FOIA, about the details of Mr Beckham's nominations for honours. In the Commissioner's view this argument attracts additional and indeed significant further weight given the recent age of the material in question.
17. Furthermore, having examined the various press reports around the publication of the emails in question, the Commissioner also shares the Cabinet Office's reservations about the complainant's suggestion that the leaked material confirms that Mr Beckham was provided with advice

by civil servants about how to potentially secure a knighthood. Rather, although the leaked information and surrounding reporting alleges that such advice was given, no details of this or any supporting evidence would appear to be included to support such a claim. Consequently, whilst the leaked information is arguably illuminating about some aspects of Mr Beckham's personal position, the Commissioner agrees with the Cabinet Office that it does not cast doubt on the integrity of the honours system in the manner suggested by the complainant.

18. The Commissioner does not doubt that the public would be interested in examining the information falling within the scope of request 1. However, having had the benefit of examining the information itself she is not persuaded that its disclosure would serve any particular or specific public interest albeit it would obviously serve the general interest in transparency in relation to how the Cabinet Office's processes individual honours cases. Consequently, given the significant weight that the Commissioner believes should be given to the public interest in maintaining the exemption, she has concluded that the public interest in maintaining the exemption contained at section 37(1)(b) outweighs the public interest in disclosing the information.
19. In light of this finding the Commissioner has not considered whether the information falling within the scope of request 1 is also exempt from disclosure on the basis of section 40(2) of FOIA.

Requests 2 and 3

20. Section 37(2) states that:

'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).'

21. In the circumstances of this request, the Cabinet Office has argued that it can rely on section 37(2) to refuse to confirm or deny whether it holds any information falling within the scope of requests 2 and 3 because such information, if it were held, would be exempt from disclosure on the basis of section 37(1)(b) of FOIA.
22. The Commissioner is satisfied that such information, if held, would clearly fall within the scope of section 37(1)(b) of FOIA and section 37(2) is therefore engaged.
23. However, as explained above, section 37(1)(b) is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining section 37(2) outweighs the public interest in confirming whether or not the information is held.

Public interest arguments in favour of confirming whether information sought by requests 2 and 3 is held

24. The complainant's submissions in respect of the public interest in confirming whether information falling in the scope of requests 2 and 3 is held mirror the points made above in respect of the public interest in disclosing the information falling within the scope of request 1.

Public interest arguments in favour maintaining the exclusion to confirm or deny whether any information is held

25. The Cabinet Office's arguments to support its reliance on section 37(2) regarding requests 2 and 3 built upon the rationale of its use of section 37(1)(b) to withhold the information falling within the scope of request 1. Namely, the public interest in preserving the confidentiality of the honours system in order to ensure the effective operation of the honours process and the Cabinet Office's view that despite the complainant's suggestion, the leaked material did not provide evidence to support the argument that there were some questions over the integrity of the honours process.
26. More specifically, the Cabinet Office argued that confirming whether or not it held the information sought by requests 2 and 3 would reveal whether or not it held personal and confidential information which may not or would not otherwise be in the public domain. The Cabinet Office acknowledged that some information on this case is now in the public domain, but again it emphasised that this information was not provided voluntarily by Mr Beckham. Furthermore, the Cabinet Office argued that it did not accept that the very fact that some limited information is available is in itself a strong enough argument to justify undermining the key principle of confidentiality within the honours system. Indeed, the Cabinet Office suggested that confirming whether information of this nature is held, under FOIA, in direct response to a leak could encourage further attempts to leak similar information. In addition, the Cabinet Office explained it did not consider that confirming or denying that information is held is necessary for the purposes of informing the public debate, neither does it further anyone's legitimate interests, given the clear expectations of confidentiality in the system.

Balance of the public interest arguments

27. As discussed above the Commissioner accepts the rationale of the Cabinet Office's argument that for the honours system to operate effectively there needs to be a level of confidentiality for those involved in it. Furthermore, the Commissioner reiterates the points she made above that whilst there is some information in the public domain about Mr Beckham's nominations, she accepts that given the provenance of this material the Commissioner is persuaded that there remains some need to protect the confidentiality of the honours system by not revealing, under FOIA, the details of discussions Mr Beckham, or others, may have had about any nominations for honours. The Commissioner accepts that confirming whether the Cabinet Office holds information falling within the scope of requests 2 and 3, would impact on this confidentiality.
28. That said, in terms of request 2, in the Commissioner's opinion the extent to which the confidentiality of the honours process would be encroached if the Cabinet Office confirmed whether or not it held information falling within the scope of that request is arguably limited. This is because the Cabinet Office has already confirmed that for the five year period in question Mr Beckham was considered for an honour. If the Cabinet Office confirmed whether it held any information falling within the scope of request 2 it would be only confirming whether or not Mr Beckham, or his representatives, had been in correspondence with the Cabinet Office about these nominations. In terms of the public interest in the Cabinet Office confirming whether information is held in respect of request 2, this would clearly serve the general interest in transparency in relation to how the Cabinet Office's processes individual honours cases. With regard to request 3, given the particular circumstances of this case and the leak of material, the Commissioner accepts that there is genuine public interest in confirming whether or not the Cabinet Office holds any information post-dating February 2017 concerning the leak, ie the information sought by request 3.
29. However, on balance, and by a relatively narrow margin, the Commissioner has concluded that the public interest favours maintaining the exclusion to confirm or deny contained at section 37(2) in relation to information falling within the scope of requests 2 and 3.

Right of appeal

30. 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

31. 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.
32. 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

Jonathan Slee
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