

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 2018

Public Authority: The National Archives
Address: Ruskin Avenue
Kew
Richmond
Surrey
TW9 4DU

Decision (including any steps ordered)

1. The complainant has requested information relating to closed file FCO 57/875 "Soundings of Candidates for New Year and the Queen's Birthday Honours, on behalf of the Prime Minister's Office".
2. The Commissioner's decision is that The National Archives (TNA) has correctly applied section 37(1)(b) of the FOIA (Communications with Her Majesty, etc. and honours) to the requested information.
3. The Commissioner does not require the public authority to take the following steps to ensure compliance with the legislation.

Request and response

4. On 31 July 2017, the complainant wrote to TNA and requested information in the following terms:

"I would like to request access to the contents of the following closed file

FCO 57/875 "Soundings of Candidates for New Year and the Queen's Birthday Honours, on behalf of the Prime Minister's Office.

In the interests of clarity can you please provide copies of the contents in isolation.

Please do not add the contents to a file which is already open to the public.

I note the contents of the file are already more than thirty years old and ideally I would like to get full and uncensored access to the contents of the file.

But I would be happy to reconsider redactions if this made the process of disclosure easier."

5. TNA wrote to the complainant on 13 September 2017 and advised it was required to carry out a public interest test, as it considered all the information was exempt by virtue of section 37(1)(b) of the FOIA. On 10 October 2017 TNA provided its substantive response and refused to provide the requested information. It cited sections 37(1)(b), 40(2) and 41(1) as its basis for doing so.
6. Following an internal review TNA wrote to the complainant on 12 October 2017 and maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 1 December 2017 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if TNA has correctly applied any of the exemptions it has cited.

Reasons for decision

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

9. Section 37(1)(b) of the FOIA states that information is exempt if it relates to the conferring of the Crown of any honour or dignity. It is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of the FOIA.
10. As part of the application of this exemption, TNA consulted with both the Cabinet Office (Honours Department) and the Foreign and Commonwealth Office. A copy of the file was sent to the Cabinet Office, who confirmed that section 37(1)(b) was engaged and recommended continued closure. Following this advice, a public interest test was compiled in consultation with the Foreign and Commonwealth Office, considering arguments both for and against the release of this information.

11. TNA explained that all exemptions that require a Public Interest Test (PIT) are submitted to the Advisory Council on National Record and Archives (ACNRA) for their opinion in regards to the public interest of releasing the information. Following advice and opinions on the outcome of the PIT from all relevant government departments and the independent ACNRA, TNA determined that the whole file engaged section 37(1)(b).
12. Having viewed the withheld information, the Commissioner is satisfied that all the information that was withheld relates to the conferring of honours and therefore the exemption at section 37(1)(b) has been correctly engaged.
13. There is no need for the information to be sensitive in any way for the exemption to apply. It is sufficient that the information falls within the class of information described by the exemption. The Commissioner finds that the information is exempt by virtue of section 37(1)(b).
14. As the Commissioner has found that the section 37(1)(b) is engaged she has next 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 test

15. TNA referred to the ICO decision (case reference FS50197502) involving the Cabinet Office and Lord Ashcroft and his undertaking¹ which highlighted the important principle within the exemption – ‘the expectation of confidentiality’ – and how far the honours systems relies heavily on the provision of personal and confidential information regarding nominees.
16. TNA explained that the correspondence in this file has been generated in accordance with nominations and allows for the proposed awards to be challenged, which is part of the honours process. Without trust in this system, which expects the strictest confidence, such information may not continue to be supplied. The maintenance of this confidentiality is what underpins this exemption and therefore to release such correspondence would erode the confidentiality of the honours process, thus damaging the effectiveness of the system, which would not be in the public interest.

¹ https://ico.org.uk/media/action-weve-taken/decision-notice/2010/521584/FS_50197502.pdf

17. Furthermore, in the previously mentioned case the Commissioner, in their analysis of this exemption and the decision of parliament to make it a qualified exemption, explain that, *'In most cases, awards of honours or dignities are not controversial and there will be a greater likelihood that where this exemption is applied it will be strongly engaged.'* Having consulted with both the FCO and Cabinet Office, it is both these departments' and The National Archives' position that this case is one where this exemption is strongly engaged due to the expectation of confidence the individuals had when providing their opinions on the proposed awards mentioned in this file.
18. TNA explained that it considered the following factors in favour of disclosing the withheld information:
 - the importance of transparency and accountability of the award of honours and dignities, which encourages public confidence in the honours system - and in government decision making;
 - public interest in being able to understand and evaluate the workings of government.
19. TNA explained that it considered the following factors in favour of maintaining the exemption:
 - the importance of confidentiality with regard to individual honours cases, which is essential to protect the integrity of the honours system and without which it could not function.
 - 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 respected and that decisions about honours and awards are taken on the basis of full, frank, open and honest information about the individuals concerned
 - it is important that individuals who are recommended for honours, but to whom they are not granted, do not learn of this which adds to the overall importance of the confidentiality of the honours system.
20. The complainant argued that those individuals who accepted an Honour should be subject to greater scrutiny. Furthermore, it is likely that many of the individuals, living or not, will be well known.
21. The Commissioner has reviewed the withheld information and is satisfied that the exemption at section 37(1)(b) has been correctly applied. With regard to the weight that should be attributed to maintaining the section 37(1)(b) exemption, as a general principle the Commissioner accepts TNA'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.

22. 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.
23. Therefore, the Commissioner is satisfied that the public interest lies in withholding the information.

Right of appeal

24. 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

25. 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.
26. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF