

## **Freedom of Information Act 2000 (the Act)**

### **Decision notice**

**Date:** 14 January 2020

**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 regarding nominations to the Honours Committee for various individuals. The Cabinet Office disclosed some information regarding one individual but withheld the remaining information under sections 37(1)(b) and 41(1).
2. The Commissioner's decision is that the Cabinet Office is entitled to rely on section 37(1)(b) to withhold the information within the scope of request 1.
3. However, she finds that with respect to requests 2-5, section 36(2)(c) is not engaged.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the information falling within the scope of requests 2-5.
5. 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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6. On 3 September 2018, the complainant wrote to the Cabinet Office and requested information in the following terms:

*"My request relates to honours (proposed and actual) for the late entertainers – Cilla Black, Paul Daniels, Les Dawson, Sir Ken Dodd and Sir Bruce Forsyth.*

*It has been inspired by recent revelations in The Times newspaper about the role played by HMRC in the Honours process.*

*I do not believe disclosure of the relevant information will have any data protection implications. All the individuals are deceased. They are unlikely to have known about the role played by HMRC in the Honours process so can not have had any reasonable expectation of privacy with regard to this information. Indeed any expectation of privacy in this regard would have been misplaced.*

*1... In the case of each of the aforementioned individuals can you list each and every occasion when they were recommended or considered for an Honour. In the case of each individual can you identify the honour and the relevant honours list. Please do include all recommendations irrespective of whether the Honour was awarded, rejected or not proceeded with for other reasons.*

*2... In the case of each individual and each of their Honours recommendations was the HMRC/Inland Revenue consulted about the nominations. Can you please list each and every occasion when the HMRC/Inland Revenue was consulted.*

*3... In the case of each of the aforementioned individuals and each of their individual honours recommendation (s) did the HMRC/Inland Revenue provide information about the individual's tax affairs to the Prime Minister and or the various Honours Committees and or staff specifically involved in the Honours process. If the answer is yes and in the case of each individual and each honours recommendation can you provide details about the information provided. The information may have been in the form of a traffic light system of warnings as revealed by The Times Newspaper or it could have been more detailed. Did HMRC/Inland Revenue raise concerns about an individual's tax affairs and recommend the Honour was not proceeded with.*

*4... In the case of each of the aforementioned individuals and each individual honours recommendation did input provided by the HMRC/Inland Revenue lead to an Honour being refused or downgraded. Can you please provide details.*

*5... In the case of each individual can you please provide copies of any documents held by The Cabinet Office and or Downing Street and or the relevant Honours committees which show how their [sic] tax affairs of*

*the various individuals influenced decisions regarding Honours recommendations.”*

7. The Cabinet Office wrote to the complainant on 1 October 2018 and confirmed that it held information relevant to the request but required further time to consider the balance of the public interest. The Cabinet Office confirmed that it considered the requested information was exempt under section 37 of the Act.
8. On 29 October 2018, the Cabinet Office issued its refusal notice. It confirmed that in relation to question 1, it was relying on section 37(1)(b) to withhold the information. The Cabinet Office confirmed that it had considered the balance of the public interest. It acknowledged the importance of transparency in government, the public's awareness of how the Honours system works and the way in which such decisions are taken. However, it considered that the public interest in maintaining the exemption outweighed the public interest in disclosure. It considered that the importance of confidentiality with regard to individual honours cases was essential to protect the integrity of the honours system and without which the system could not function.
9. The Cabinet Office explained 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.
10. The Cabinet Office did, however, confirm that Cilla Black received an OBE on the New Years Honours List 1997, Ken Dodd received a knighthood on the New Year Honours List 2017 and Bruce Forsyth received a knighthood on the Birthday Honours List 2011. Paul Daniels and Les Dawson did not receive honours.
11. Regarding questions 2-5, the Cabinet Office explained that the information requested is subject to section 44(1)(a) of the Act, which applies when the information is prohibited from disclosure under any enactment. The Cabinet Office confirmed that the relevant enactment in this case was section 23(1) of the Commissioners for Revenue and Customs Act 2005. The Cabinet Office explained that the effect of section 23 is to prohibit the disclosure of information held in connection with its functions which would specify the identity of a person or enable the identity of the person to be deduced.

12. The Cabinet Office provided a link to the Memorandum of Understanding which provided the legal basis for the exchange of tax risk ratings between HMRC and the Cabinet Office<sup>1</sup>.
13. The complainant contacted the Cabinet Office on 31 October 2018 and requested an internal review of the handling of his request for information. The complainant disputed that nominations should be withheld for deceased individuals. He considered that it is a matter of public record that an individuals' tax affairs are taken into account when they are considered for an Honour and that the general public would agree that this is good practice. However, he considered that the public can only be confident that the information about an individual's tax affairs is being considered and acted upon properly if they are given examples of how the system works in practice.
14. The complaint accepted that there may be an argument for non-disclosure in favour of living individuals, however, he did not think this level of protection should apply to those who are deceased. He also considers that greater transparency could boost public confidence in the honours system. Disclosure of relevant examples might persuade individuals who are keen to be considered for an honour to ensure that their tax affairs are in order.
15. The Cabinet Office provided the outcome of its internal review on 10 December 2018. It upheld its reliance on section 37(1)(b) of the Act for question 1 with the exception of the information relating to Les Dawson. The Cabinet Office confirmed that it considered the balance of the public interest lay in disclosure and provided the relevant information.
16. The Cabinet Office withdrew its reliance on section 44(1)(a) with regards to questions 2-5 and introduced the application of section 41(1)(b) on the basis that disclosure would constitute an actionable breach of confidence, in relation to the existing Memorandum of Understanding with HMRC.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/738463/MemorandumOfUnderstand\\_HMRC-Cabinet\\_Office\\_2017\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/738463/MemorandumOfUnderstand_HMRC-Cabinet_Office_2017_.pdf)

## Scope of the case

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17. The complainant contacted the Commissioner on 14 December 2018 to complain about the way his request for information had been handled. Specifically, he considered that the public interest lay in disclosure of the withheld information. As set out above, the Cabinet Office disclosed information relating to one individual.
18. The Commissioner wrote to the Cabinet Office and requested confirmation that it did not wish to rely on section 37(1)(b) for all five requests on the basis that questions 2-5 are, at least in part, dependent on the response to question 1.
19. The Cabinet Office confirmed that it wished to amend its position. It confirmed that it was relying on section 37(1)(b) and section 41(1)(b) in relation to the first request only. Regarding requests 2-5, it confirmed that it wished to withdraw its reliance on section 41(1)(b) and was now relying on section 36(2)(c) to withhold the information.
20. The Commissioner therefore considers the scope of this investigation is to determine whether the Cabinet Office is entitled to rely sections 37(1)(b) and 41(1)(b) in relation to question 1 and section 36(2)(c) in relation to questions 2-5.

## Reasons for decision

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### **Section 37(1)(b): The conferring by the Crown of any honour or dignity**

21. Section 37(1)(b) of the Act states that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
22. Given that the request specifically seeks information about the awarding, "*proposed and actual*", of honours to the named individuals, the Commissioner is satisfied that the withheld information clearly falls within the scope of the exemption at section 37(1)(b). The information itself does not need to be sensitive or its disclosure prejudicial to any party to engage the exemption, it simply needs to be within the class of information set out in the exemption.
23. 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 Act. The Commissioner will therefore consider 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 in disclosure**

24. The complainant provided the Commissioner with his arguments in favour of disclosure. He referred the Commissioner to the comments made in his request for internal review.
25. The complainant believes that the public has a right to know if the rules regarding tax affairs and the awarding of honours are applied in each and every case. The complainant stated that he is only seeking information relating to deceased individuals and information relating to the tax and financial affairs of deceased individuals have been made public before via the Act and the National Archives. The complainant also provided the Commissioner with two news stories that he believed were relevant to the complaint<sup>2</sup>.

### **Public interest in maintaining the exemption**

26. The Cabinet Office acknowledged the complainant's argument that the subjects of the information request are now deceased and that the Commissioner has previously taken the view that the balance of the public interest test under section 37(1)(b) may sometimes favour disclosure when a distance of time has passed since an individual's death. However, the Cabinet Office takes the view that those involved in the honours system require the freedom to be able to discuss and deliberate honours cases with the freedom to express their views frankly. Those involved in the discussions require a safe space to consider and deliberate both at the time of the discussion and for some time following.
27. The Cabinet Office confirmed that at internal review it had determined that the balance of the public interest favoured release in the case of Les Dawson, in recognition that he had passed away over 25 years ago in 1993. In respect of the other individuals, whose passing occurred more recently, the Cabinet Office remains of the opinion that those involved in the honours system have a continued right to such judgements remaining confidential. This approach accords with the

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<sup>2</sup> <https://www.dailymail.co.uk/news/article-2863881/How-Treasury-chiefs-helped-Beatles-hide-thousands-pounds-unlawful-payments-taxman.html>

<https://www.telegraph.co.uk/news/uknews/1337170/How-the-Oliviers-blackmailed-the-Bank.html>

Cabinet Office's continued approach to releasing information about deceased nominees who have refused honours, where the Cabinet Office's judgement has been that at least ten years after death should have passed before the balance of the public interest will generally favour disclosure. The Cabinet Office set out that this approach is based on the Commissioner's decision in FS50370643<sup>3</sup> (13 December 2013) which cited ten years as an appropriate, if necessarily arbitrary, bar for the disclosure of basic information, such as the time of a nomination, about an individual nominee.

### **The Commissioner's position**

28. The Commissioner acknowledges that the public has a legitimate interest in being informed about the honours system and what information is considered when deciding to award or reject an individual's honour. She notes that the Cabinet Office and other public authorities publish a range of information on the nomination process and the Memorandum of Understanding with HMRC regarding the information obtained during this process. The Commissioner appreciates, however, that the complainant is seeking to confirm that this procedure is followed in all cases.
29. With regard to the weight that should be attributed to maintaining the section 37(1)(b) exemption, as a general principal 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.
30. 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 less candid contributions. The Commissioner acknowledges that the request is for high-level information regarding whether the named individuals were awarded or rejected for an honour, however, this information will ultimately have been based on these discussions.
31. The Commissioner accepts that disclosure of this information would erode this confidentiality, and thus damage the effectiveness of the system, which would not be in the public interest.

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<sup>3</sup> [https://ico.org.uk/media/679142/fs\\_50370643.pdf](https://ico.org.uk/media/679142/fs_50370643.pdf)

32. In the specific circumstances of this case, the Commissioner notes that the Cabinet Office did disclose information on an individual who had passed away more than 25 years ago, accepting that the public interest in maintaining the exemption had decreased sufficiently to no longer override the public interest in disclosure.
33. The remaining individuals passed away within the last five years and information relating to their honours is therefore more recent and disclosure is likely to inhibit current and future nominations discussions.
34. The Commissioner is mindful that Parliament chose to designate section 37(1)(b) as a qualified exemption. It follows that there will be some cases where the public interest in maintaining the exemption does not in fact outweigh the public interest in disclosure. This underlines the importance of considering the circumstances of each particular case. However, in this case the Commissioner is not persuaded that there is a strong public interest in disclosure, over and above the general public interest in transparency acknowledged above. In the Commissioner's opinion the public interest in maintaining the exemption is considerably stronger.
35. 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 considers 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.
36. 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 41(1)(b) of FOIA.

**Section 36(2)(c): effective conduct of public affairs**

37. Section 36(2)(c) of the Act states:

*Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—*

*(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.*



38. Subsection (5) of this exemption defines the Qualified Person for the various types of public authorities.
39. The Cabinet Office confirmed that it had obtained the opinion of Jim Harra, Tax Assurance Commissioner, Deputy Chief Executive and Second Permanent Secretary at HMRC.
40. The Cabinet Office considers that Mr Harra is identified in the Act as a qualified person at section 36(5)(c).
41. The Commissioner contacted the Cabinet Office on 20 September 2019 to confirm that she was not persuaded that a Commissioner for HMRC could act as the Qualified Person for the Cabinet Office and provided her reasons for this. The Cabinet Office confirmed verbally that it considered that due to the nature of the shared information, the Cabinet Office can use HMRC's Qualified Person to provide a reasonable opinion for the Cabinet Office. It also set out that it did not believe that Parliament intended for the same information to require multiple reasonable opinions by different departments' Qualified Persons.
42. The Commissioner contacted the Cabinet Office again on 21 October 2019 by email to ask for confirmation that it was satisfied that HMRC's Qualified Person could act as the Cabinet Office Qualified Person. The Commissioner again confirmed her reasoning.
43. To date, no response has been received from the Cabinet Office and the Commissioner must therefore proceed on the basis of the Cabinet Office's position as at 20 September 2019.
44. Section 36(5)<sup>4</sup> states that the Qualified Person:
  - (a) *in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown*
  - (b) ...
  - (c) *in relation to information held by any other government department, means the commissioners or other person in charge of that department"*
45. The Cabinet Office is a government department in the charge of a Minister of the Crown and therefore the reasonable opinion must be

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2000/36/section/36>

obtained from a Minister of the Crown. As set out in paragraph 38, Mr Harra is not a Minister of the Crown, he is a senior civil servant and Commissioner of HMRC. The Commissioner therefore considers that Mr Harra cannot act as a Qualified Person for the Cabinet Office.

46. The Commissioner also notes that section 36(5)(c) states that for other government departments which are not in the charge of a minister, such as HMRC, the commissioners of **that** department may act as a qualified person. As Mr Harra is not a Commissioner for the Cabinet Office, he cannot be the Cabinet Office's qualified person even if section 36(5)(c) was the relevant provision.
47. As the Commissioner has decided that Mr Harra cannot act as the Cabinet Office's qualified person, her decision in this case must be that the Cabinet Office cannot rely on section 36(2)(c) as it has not obtained the reasonable opinion of a qualified person.
48. The Commissioner acknowledges that the disclosure of the information within the scope of requests 2-5 may undermine that withheld in request 1. However, as set out in the scope of the case section of this notice, the Cabinet Office was offered the opportunity to review its position regarding section 37(1)(b) and it confirmed that it did not consider section 37(1)(b) to be engaged in relation to requests 2-5 and that it was also withdrawing its reliance on section 41(1).
49. As the Commissioner has determined that section 36(2)(c) is not engaged, she requires the Cabinet Office to disclose the information within the scope of requests 2-5.

## Right of appeal

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50. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

51. 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.
52. 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**  
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