

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 2 August 2022

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information concerning the honours nomination and assessment process. The Cabinet Office provided some information and withheld other information under section 37(1)(b) of the FOIA – (the conferring by the crown of any honour or dignity).
1. The Commissioner's decision is that the Cabinet Office was not entitled to rely on the exemption at 37(1)(b). The Commissioner also finds that the Cabinet Office breached section 10(1) of the FOIA in its handling of the request.
2. The Commissioner requires the Cabinet Office to take the following step to ensure compliance with the legislation.
 - Disclose the withheld information – guidance provided to HM Lieutenancies.
3. 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 3 February 2021, the complainant wrote to Cabinet Office and requested information in the following terms:

"I write regarding some of the honours citation/nomination forms used, specifically I understand from government departments.

On these forms there are some boxes not available on the public forms, namely 'Rating' and 'Priority Rating'.

Please can you explain what are the use of these boxes, how a rating is produced, who completes this box and what values are available to put into these boxes.

If they are only used by certain departments, please also explain which nominations have a rating or priority rating option.

I am also specifically interested in what other ratings/comments and categorisation the cabinet office may apply to nominations other than the general information set out in your documents in the public domain. Is there any other way you rate applications/please give details of any grading systems used to internally grade applications. I asked a brief question on my previous FOI request related to this, but consider this a new request for purposes of FOI time budgeting."

5. The complainant submitted a second linked request on 3 February 2021 and requested information in the following terms:

" I refer to the Honours Citation Form listed here

<https://www.local.gov.uk/sites/default/f...>

There is a section on recommendation from lord lieutenants giving 7 options.

Please supply

1. Exactly what information is provided to lord lieutenants to assess the honour. Is a full copy of the entire case bundle including update letters and supporters letters provided.
2. Does this bundle also include comments or ratings from the cabinet office, and if so on what.
3. Is any documentation or information provided (and if so please enclose in response) to the lord lieutenants as to how to classify an application, whether it be outstanding, highly deserving or deserving to ensure consistency across opinions given by the lieutenant
4. Can you please supply any information or documents or template forms which a lord lieutenant must use to provide their opinions

5. Can you supply any information or documents provided to the lieutenancies which explain what 'local' checks should be made for public nominations - and what the lieutenancy should do if they are not personally aware of the individual.
6. What is the difference between OBE and OBEX on the form referred to above".
6. The Cabinet Office wrote to the complainant on 3 March 2021 and confirmed that it held information relevant to the requests, but that it would need to extend the time taken to complete its public interest test considerations in respect of the exemption under section 37 of the FOIA.
7. The Cabinet Office responded to the requests on 25 March 2021 and provided all information relating to request 1 and parts 1, 2 and 6 of request 2. The Cabinet Office also confirmed that information relating to parts 3, 4 and 5 of request 2 was considered exempt under section 37(1)(b) of the FOIA.
8. On 25 March 2021 the complainant wrote back to the Cabinet office and requested an internal review of its application of section 37(1)(b) to parts 3, 4 and 5 of request 2 concerning information provided to Lord Lieutenants.
9. On 25 March 2021 the complainant submitted a follow up request in the following terms:

"Further to my internal review request, I note that you responded in relation to the question as to what documentation is provided to lord lieutenants is that it 'may vary'. Could you please clarify what essential elements are provided, and where the request may vary, what additional types of documents may be provided to account for the variance".
10. On 4 May 2021 the complainant wrote to the Cabinet Office again with further information supporting their view that the information requested was not exempt, as detailed below:

"I wish to add further information to this internal review request. I note on the FOI release response to me dated today, that some of the information I had requested in this release, which was refused, was provided previously in 2017 in another FOI release. As such, there is precedent for releasing documentation and information relating to the lieutenancy and therefor [sic] my request should not have been initially refused and any updated documentation or additional information requested should be provided".
11. The Cabinet Office provided the outcome of its internal review on 23 July 2021 and upheld its decision that section 37(1)(b) was properly applied.

However, in relation to parts 3 and 4 of request 2 the Cabinet office disclosed a copy of the blank form used by Lord Lieutenants to complete when validating an honours nomination.

Scope of the case

12. The complainant initially contacted the Commissioner on 23 June 2021 to complain about the delay in receiving the outcome of the internal review.
13. The complainant contacted the Commissioner again on 26 July 2021 following receipt of the internal review response to express their continued dissatisfaction with the Cabinet Office's handling of the request. The complainant asked the Commissioner to consider whether the Cabinet Office had correctly applied section 37 to the request and to consider the delays in the Cabinet Office dealing with the request.
14. The scope of the Commissioner's investigation into this complaint is to determine whether the Cabinet Office correctly applied section 37(1)(b) to the information held relevant to part 5 of request 2, namely part 3 of the 'Honours Guidance for Lieutenancies' handbook. The Commissioner will also be considering procedural matters associated with the Cabinet Office's handling of the requests.

Reasons for decision

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

15. Section 37(1)(b) states that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
16. The request specifically seeks information regarding the role of lieutenancies in the validation of honours nominations. As such the Commissioner is satisfied that the withheld information falls within the scope of the exemption at section 37(1)(b) as it relates to the conferring of honours, therefore section 37(1)(b) is engaged.
17. 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 to 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.

The public interest test

The Cabinet Office's submission

18. The Cabinet Office's representations in this case are very similar to those provided in IC-111466-J9K5. The Commissioner therefore repeats his understanding of that reasoning here.

19. The Cabinet office acknowledges the importance of transparency in government workings and the public interest in understanding how the honours system operates. However, it considers that:

"the content of the process in relation to Lord Lieutenants needs to remain confidential in order to maintain the integrity of the honours system and to ensure that assessment of nominations may continue to be taken on the basis of full and honest information. We believe it is crucial that those who offer opinions may do so freely and honestly, in confidence, on the understanding that their confidence will be honoured. We believe that it is essential to the integrity of the honours system that the means by which the Lord Lieutenants inform their validation assessment is kept confidential. It has always been the case that those involved in the system require the freedom to be able to discuss and deliberate individual honours cases in a safe space. The Commissioner has recognised 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 do so in a safe space away from external influence".

20. The Cabinet Office also referred to the fact that Parliament recognised the sensitivity of disclosure of information relating to honours 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 creation¹. The Cabinet Office considers that the public interest inherent in the section 37(1)(b) exemption is the protection and preservation of the robustness and integrity of the honours system.

21. The Cabinet Office is of the view that, in this case, the public interest favours maintaining the exemption as "the confidentiality of the information remains". It considers that disclosure may affect the behaviour of persons nominating others, those who are nominated and persons whose opinions are sought as part of the process.

¹ Section 63(3) FOIA

22. The Cabinet Office does not consider that disclosure is necessary to inform public debate or for any legitimate interests in light of "the clear expectations of confidentiality that surround the withheld information". It would not be in the public interest to disclose information "around the safe space in which the honours process needs to take place".

The complainant's submission

23. The complainant considers that there is an overriding public interest in disclosure of information which will enable the public to further understand, and have confidence in, the honours award processes. Disclosure would increase public confidence that honours are being awarded in a fair way.
24. The complainant considers that there is a general public interest in ensuring that the honours process is 'demystified' which would include any mechanisms and guidance relating to lieutenancy ratings of cabinet office nominees. They referred to similar guidance in the public domain relating to how committees rate nominations. The complainant does not consider that information relating to how lord lieutenants evaluate candidates to be any different to the publicly available HMRC memorandum of understanding outlining what probity checks are carried out.
25. The complainant pointed out that the evaluation and validation of applications is not just carried out by the relevant committees and there is clear evidence that civil servants, lieutenants and others are involved in the process. The complainant stated that in a recent webinar relating to honours, a committee member stated that committees generally accept recommendations made to them, with the exception of discussions on the level of award. The complainant believes that this shows that the decision making behind an award is conducted by civil servants, lieutenants and other parties such as government departments. In light of this, the complainant considers that disclosure is essential for transparency purposes to allow the public to see who is providing commentary to inform decisions and how the cabinet office ensures consistency in the ratings provided by lieutenants.
26. The complainant also stated that disclosure of the withheld information would add to the wider understanding as to how individuals can submit better applications which get evaluated by the lieutenancy. In addition to increased transparency, disclosure may encourage individuals to consider any local evidence in support of any application that is provided.
27. The complainant stated that in recent reviews of the honours system which have been carried out, reference is made to the fact that there needs to be more transparency in this process. The complainant pointed

out that there should be no confidential or personal data in the information requested and the request has been made to understand more about how the honours system operates and who is involved in the process.

The Commissioner's view

28. In accordance with the test set out in section 2(2)(b) FOIA, the Commissioner has 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.
29. The Commissioner considers that there is a strong public interest in openness and transparency about matters relating to the nature and extent of the vetting process in relation to the conferring of an honour or dignity. The withheld information in this case would enhance public understanding of the involvement of lord lieutenants in the honour system and the approaches taken in relation to the validation of honours nominations.
30. The Commissioner accepts that, in order for the honours system to operate effectively and efficiently it is important that there is a degree of confidentiality and a safe space for those involved in the process to freely and frankly discuss nominations. The Commissioner also accepts that if views, opinions and commentary about nominations that are provided in confidence, were later disclosed into the public domain it would be likely to result in individuals in the future being less willing to make similar contributions in the future and/or provide less candid comments and input. The Commissioner considers that disclosure of information that may adversely impact on this confidentiality, and in turn harm the effectiveness of the honours system would not be in the public interest.
31. In the circumstances of this case, however, the Commissioner considers that these principles carry little or no weight. The withheld information in this case relates solely to the process that lord lieutenants follow in respect of validation of honours nominations. It is clear from the withheld information that the document represents guidance as opposed to strict instructions on how to carry out the validation process. The Commissioner is not persuaded that disclosure of the withheld information would change the way in which lord lieutenancies validate nominations in the future. He does not consider that disclosure would result in lord lieutenancies being less candid or honest in their opinions or submissions in the future. This is because the withheld information does not refer to any individuals or any specific honour nor does it contain any information which has been provided in confidence by lord lieutenancies about nominations.

32. Based on the above, and for the reasons set out above, in all the circumstances of this case the Commissioner considers that the public interest in disclosing the withheld information outweighs the public interest in maintaining the exemption.

Section 10 – time for compliance

33. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.
34. In this case the request was submitted on 3 February 2021. The Cabinet Office provided some information with its initial response dated 25 March 2021 and disclosed some additional information with its internal review response dated 23 July 2021. As the Cabinet Office failed to comply with section 1(1)(b) within the required timescale it breached section 10(1) of the FOIA.

Other matters

Section 45 – Internal review

35. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
36. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases
37. In this case the complainant requested an internal review on 25 March 2021 and the Cabinet Office provided the outcome of its review on 23 July 2021. The Cabinet office explained to the Commissioner that in the period between receiving the internal review request and issuing the

response, it received around 1,000 FOIA requests. This is considerably in excess of the numbers it received in the same period in 2020 (771) and 2019 (501). As a result of this and a staff resource issue, FOI team members who had been dealing with internal reviews were diverted to dealing with FOI casework during the difficult period.

38. Whilst he notes the explanations about the delay in sending out the internal review response in this case, the Cabinet Office failed to complete its internal review within the Commissioner's guidance. The Commissioner expects the Cabinet Office to ensure that internal reviews it handles in the future adhere to the timescales he has set out in his guidance.
39. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"² strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"³.

² <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

40. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

41. 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.
42. 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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