

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2023

Public Authority: Foreign, Commonwealth & Development Office

Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested information from the Foreign, Commonwealth and Development Office (FCDO) relating to the awarding of the Queen's honours. The FCDO disclosed some information to the complainant with further information redacted on the basis of section 37(1)(b) (honours) and section 40(2) (personal data) of FOIA.
2. The Commissioner's decision is that the parts of the information to which the FCDO have applied section 37(1)(b) fall within the scope of this exemption but that the public interest in disclosing the information outweighs the public interest in maintaining the exemption. He has however concluded that section 40(2) provides a basis to withhold the information to which this exemption has been applied.
3. The Commissioner requires the FCDO to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with full and unredacted copies of the entirety of the 'internal advice' document and the entirety of the 'internal guidance' document, including all of its annexes.
 - The only redactions that can be applied are to the information which the FCDO has identified as attracting the exemption contained at section 40(2) of FOIA.

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

5. The complainant submitted the following request to the FCDO on 16 February 2022:

'Please provide any type of handbook or forms relating to the award of Queen's Honour's in the Overseas List for which the FCDO is responsible.

This should include forms which Lord Lieutenants or other departments complete to validate honours as well as staff handbook or guidance on processing of these honours.

You will note previous ICO judgements relating to the cabinet office where there is a clear public interest that documents be released relating to honours to allow transparency and confidence in the honours system.

Please also give details of the committee or individuals who sift and validate potential honours nominations which may have come directly from the public.'

6. The FCDO contacted him on 16 March 2022 and confirmed that it held information falling within the scope of the request. However, it considered this to be exempt from disclosure on the basis of section 37(1)(b) (honours) of FOIA and it needed additional time to consider the balance of the public interest test. The FCDO issued similar letters on 13 April and 18 May 2022.
7. The FCDO provided the complainant with a substantive response to his request on 17 June 2022.¹ It disclosed two documents to him, an 'internal advice' document and a ten chapter document of 'internal guidance'. The FCDO explained that some of the information within both

¹ This followed a decision notice issued by the Commissioner on 8 June 2022 which ordered the FCDO to provide a substantive response to the request. <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4020725/ic-166034-g5l7.pdf>

documents was redacted on the basis of sections 35(1)(a) (formulation or development of government policy) and 37(1)(b) and that the public interest favoured maintaining these exemptions.

8. The complainant contacted the FCDO on 18 June 2022 and asked it to conduct an internal review. He argued that the public interest clearly favoured disclosure of the information and explained that he was unhappy with the FCDO's delays in providing a substantive response.
9. The FCDO informed him of the outcome of the internal review on 18 July 2022. The review upheld the application of the exemptions cited in the refusal notice. However, the FCDO noted that the request also sought copies of particular forms and it provided him with online links to these.

Scope of the case

10. The complainant contacted the Commissioner on 2 August 2022 in order to complain about the FCDO's decision to withhold information falling within the scope of his request. He argued that the public interest clearly favoured disclosure of the withheld information. He also explained that he was unhappy with the FCDO's delays in processing his request.²
11. In response to the Commissioner's investigation of this complaint the FCDO provided a response to him on 8 December 2022. In its response, the FCDO explained that having considered its position, and given the passage of time, it no longer sought to rely on section 35(1)(a) and was prepared to disclose the information previously redacted on this basis to the complainant. The FCDO explained that it continued to redact information on the basis of section 37(1)(b) and it also considered some information to be exempt from disclosure on the basis of section 40(2). It also noted that it considered parts of the guidance document to be out of scope of the request.
12. In view of this change in position, on 21 December 2022 the FCDO provided the complainant with a revised, and less redacted version, of the 'internal guidance' document.
13. Having considered the FCDO's response of 8 December 2022, the Commissioner contacted it again on 9 February 2023 and explained that

² As the Commissioner has already issued a decision notice which found the FCDO in breach of section 17(3) of FOIA for failing to complete its public interest test considerations in a reasonable time, he has not considered the delay aspect of this complaint further in the decision notice.

he had a query regarding the information falling within the scope of the request. The Commissioner noted that the request sought 'any type of handbook' and a 'staff handbook or guidance' on the subject matter in question. The Commissioner also noted that the document located by the FCDO as meeting this description was a piece of 'internal guidance'. The Commissioner explained that in his view the entirety of that document fell within the scope of the request, as it was a piece of guidance meeting the description of the request. Therefore, the parts of this document marked as 'out of scope' were, in the Commissioner's view, in the scope of the request.

14. Furthermore, the Commissioner noted that the internal guidance document referred to a number of annexes. The Commissioner explained that in his view an objective reading of an FOI request seeking a piece of guidance or a handbook would capture not only the guidance itself but also any annexes or appendices. Therefore, such information also fell within the scope of the request. The Commissioner therefore asked the FCDO to provide him with a copy of these annexes and in doing so indicate whether the FCDO was content for them to be disclosed under FOIA or whether they were considered to be exempt from disclosure. The Commissioner asked for a response within 10 working days.
15. The FCDO contacted the Commissioner on 22 February 2023 and explained that due to the amount of work involved in examining the annexes and the necessary liaison with relevant stakeholders, it was not yet in a position to respond. It asked the Commissioner for a further 20 working days to do so.
16. The Commissioner responded by agreeing to an extension of a further 10 working days, ie until 9 March 2023.
17. The FCDO contacted the Commissioner on 9 March 2023 and explained that it had been making progress in preparing its response but due to the pressures of other work and demands on resources this was not yet completed. It asked for one further extension until 29 March 2023.
18. The Commissioner contacted the FCDO on 16 March 2023 and agreed to this request.
19. The FCDO contacted the Commissioner on 29 March 2023 and explained that it had made additional further progress and that it was now in the process of liaising with stakeholders in respect of its response. Following this, it would be in a position to finalise its response and send this to the Commissioner. The FCDO asked the Commissioner to agree to a revised deadline to complete this work.

20. In view of these delays, the Commissioner served an Information Notice on the FCDO under section 51 of FOIA on 11 April 2023 which required it to provide a response to his letter of 9 February 2023 within 30 days.
21. The FCDO provided a substantive response to the Information Notice on 18 May 2023. The FCDO explained that it had revisited all of the information the Commissioner considered to be in scope of the request. It now proposed to disclose further information to the complainant from the 'internal guidance' document but remained of the view that parts of this were exempt from disclosure on the basis of section 37(1)(b) or section 40(2) or out of scope. With regard to the annexes, the FCDO indicated that it intended to disclose these to the complainant, albeit that annex 2A would be withheld in full on section 37(1)(b) as would parts of annex 6B. The FCDO also noted that:

'Some of the Annexes refer to Foreign Awards (eg Annex 7A; 8A) and so are not in scope of the FOI which asked specifically about UK honours on the overseas list. We propose to release what we can to the requester (subject to the information we feel is sensitive and should remain withheld) given that a significant amount of material on foreign awards was previously released to the requester'.
22. The FCDO also explained that it was still considering whether any additional exemptions applied to a particular part of the document.
23. The Commissioner contacted the FCDO on 9 June 2023 and asked it to provide the complainant with a further revised version of the guidance document containing the additional information which the FCDO was now prepared to disclose and copies of the various annexes which the FCDO was now prepared to disclose. The Commissioner asked the FCDO to make these disclosures by 19 June. The Commissioner also asked the FCDO to clarify what further exemption(s) it may be seeking to apply within the same timeframe.
24. To date the FCDO has not made these disclosures to the complainant. Nor has the Commissioner been provided with any further clarification on any additional exemptions.
25. In view of the above, the Commissioner has only considered the FCDO's application of section 37(1)(b) and 40(2). For any such information which the Commissioner has found is not exempt from disclosure, this notice includes a step for the FCDO to disclose such information.
26. The Commissioner is conscious that the FCDO has not yet provided the complainant with the parts of the information which it is also, as per its response of 18 May 2023, now prepared to disclose to the complainant.

Therefore, this notice also requires the FCDO to disclose this information to the complainant.

27. For the avoidance of any doubt, for the reasons set out above, the Commissioner's view is that the information falling within the scope of the request consists of the entirety of the 'internal advice' document and the entirety of the 'internal guidance' document, including all of its annexes.

Reasons for decision

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

28. Section 37(1)(b) states that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
29. The request specifically seeks information regarding the awarding of honours. As such the Commissioner is satisfied that the information withheld on the basis of section 37(1)(b) falls within the scope of this exemption.

Public interest test

30. 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.

Public interest in maintaining the exemption

31. In its refusal notice the FCDO argued that it is in the public interest to maintain the integrity of the honours system. It argued that non-disclosure of information relating to individual nominations ensures those invited to offer information about a candidate can do so freely and honestly, in confidence, and on the understanding that their confidence will be honoured. It also ensures that decisions about honours continue to be taken on the basis of full and honest information about the person concerned and their achievements. The confidentiality of the proceedings also permits those who assess nominations to carry out their work free from pressure on behalf of potential or actual candidates.
32. In its internal review response the FCDO argued that it did not consider it to be in the wider public interest to release further information about the honours system in relation to the list for which the FCDO is

responsible, such as details of the committee or individuals who sift and validate potential honours nominations which may have come directly from the public.

33. In submissions to the Commissioner the FCDO explained that for the reasons set out in its responses to the complainant it considered that the public interest favoured maintaining this exemption to protect the integrity of the honours system.

Public interest in disclosing the information

34. The complainant argued that there is a significant public interest in a clear and transparent honours system and that publishing information in the public domain only serves to increase public trust and transparency in the process. He argued that it is important to have a deep understanding of who vets applications prior to them going to the honours committees as numerous public servants are involved in this. In the complainant's view the public should be able to make a decision or opinion as to whether they are free from lobbying or influence or not and that the criteria and manual for assessing honours should be totally transparent. The complainant emphasised that he has not requested individual personal data; rather he had requested information on the manual relating to how requests are processed and assessed. In his view putting this information in the public domain only would seek to increase confidence and public trust in the system.
35. In his submissions to the Commissioner the complainant noted that he had previously made two complaints concerning requests made to the Cabinet Office for information about how honours are processed.³ In both cases the complainant explained that Cabinet office had withheld some information but the Commissioner fully upheld both of his complaints.

Balance of the public interest arguments

36. With regard to the FCDO's position that disclosure risks undermining the confidentiality of the honours process in respect of individual nominations, the Commissioner notes that none of the withheld information actually concerns individual honours. Furthermore, the Commissioner notes that there are details contained in the withheld

³ IC-119699-B5Y0 and IC-111465-J9K5
<https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4021337/ico-119699-b5y0.pdf> and <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4021336/ico-111465-j9k5.pdf>

information about procedural processes and essentially administrative aspects of the honours system. In line with his position in the Cabinet Office decision notices cited by the complainant, the Commissioner is of the view that such information could be disclosed without any real infringement into the confidentiality or integrity of the honours system.

37. The Commissioner does accept that parts of the redacted information concern details of how the honours system operates that go beyond simply matters of process, and that such details do not appear to already be in the public domain. However, based on the FCDO's submissions, the Commissioner is not clear how disclosure of such information would actually undermine the integrity of the honours system. It is not for the Commissioner to speculate or assume how such harm may occur; rather it is for a public authority to provide cogent arguments and evidence to support such a position. The Commissioner also notes that there is arguably a range of different types of information which go beyond simply matters of process. As a result any potential impact on the integrity of the honours system following the disclosure of such information could occur in different ways, but again how and why this could occur is not clear from the FCDO's submissions.
38. With regard to the public interest arguments in favour of disclosure, the Commissioner accepts there is a general public interest in the disclosure of information which would provide the public with a greater understanding of how the honours system operates. Disclosure of the information redacted under this exemption could contribute directly to that aim, and in the Commissioner's view could improve public trust and transparency in the honours process.
39. Taking the above into account, in particular the fact that the Commissioner does not consider the FCDO has clearly set out why disclosure of the information would be likely to undermine the integrity of the honours system, he has concluded that the public interest in disclosing the information redacted on the basis of section 37(1)(b) outweighs the public interest in maintaining the exemption.

Section 40 – personal data

40. The FCDO redacted the names of junior officials contained in the withheld information on the basis of section 40(2) of FOIA.
41. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
42. In this case the relevant condition is contained in section 40(3A)(a).⁴ This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
43. It is common practice for a public authority to argue that the names of junior officials are exempt from disclosure under FOIA on the basis of section 40(2) as disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that the names of junior officials are exempt from disclosure on the basis of section 40(2) of FOIA. This is in line with the approach taken in the Commissioner's section 40 guidance.⁵ Therefore, in this case the Commissioner adopts the reasoning set out in these previous decision notices which found that the names of junior officials were exempt from disclosure on the basis of section 40(2) of FOIA.⁶

⁴ As amended by Schedule 19 Paragraph 58(3) DPA.

⁵ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf see page 12

⁶ IC-114449-B7P7 - <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022310/ic-114449-b7p7.pdf> Paragraphs 49-71 and IC-110922-T9R1 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> paragraphs 39-62.

Right of appeal

44. 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

45. 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.
46. 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

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