

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2020

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 seeking information relating to the awarding of an honour to Vijay Patel, the CEO of Waymade Healthcare. The Cabinet Office confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of sections 37(1)(b) (honours) and 41(1) (information provided in confidence) of FOIA.
2. The Commissioner has concluded that all of the withheld information falls within the scope of section 37(1)(b) of FOIA. For the majority of this information the Commissioner has concluded that the public interest favours maintaining the exemption. However, the Commissioner has concluded that for some of this information the public interest in disclosure outweighs the public interest in maintaining the exemption.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with the information which the Commissioner has identified in the confidential annex.
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 Cabinet Office on 9 January 2019:

*'All information held within the Honours and Appointments Secretariat relating to the awarding of an honour to Vijay Patel, the CEO of Waymade Healthcare.'*¹

6. The Cabinet Office responded on 29 January 2019 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of sections 37(1)(b) (honours) and 41(1) (information provided in confidence) of FOIA.
7. The complainant contacted the Cabinet Office on 11 February 2019 and asked it to conduct an internal review of this response.
8. The Cabinet Office informed him of the outcome of the internal review on 11 March 2019. The review upheld the application of the exemptions cited in the refusal notice.

Scope of the case

9. The complainant contacted the Commissioner on 18 March 2019 in order to complain about the Cabinet Office's decision to withhold the information falling within the scope of his request.
10. In its submissions to the Commissioner the Cabinet Office explained that it considered all of the information falling within the scope of the request to be exempt from disclosure on the basis of section 37(1)(b) and that some of this information was also exempt from disclosure on the basis of section 41(1). The only exception to this was a small portion of information which the Cabinet Office explained to the Commissioner that it now considered to be exempt on the basis of section 21(1) (information reasonably accessible to the requester).

¹ Vijay Patel was awarded an OBE in the New Years Honours list in 2019.

Reasons for decision

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

11. 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.
12. Given that the request specifically seeks information about the awarding of an OBE to Vijay Patel, the Commissioner is satisfied that the withheld information clearly falls within the scope of the exemption at section 37(1)(b). The information is therefore exempt on the basis of section 37(1)(b).
13. 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

14. The complainant argued that the Cabinet Office had failed to conduct the public interest test properly and that in his view the public interest favoured disclosure of the information falling within the scope of this request.
15. He acknowledged that there is a general public interest in the confidentiality of the honours process in most cases. However, he suggested that this was an unusual case in which the public interest in disclosure is greater, because of the substantial doubts raised as to whether the awarding of an OBE is appropriate, which in turn raises important questions about the process involved.
16. In support of this position the complainant noted that Mr Patel has been the subject of public controversy because of the pricing policies adopted by his company when supplying medicines to the NHS. The complainant explained that his company had been accused of exploiting loopholes to demand 'extortionate' price rises which have consumed large quantities of public money that could have been spent on medical services. The complainant noted that this had been the subject of media reporting.²

² <https://www.thetimes.co.uk/edition/news/extortionate-prices-add-260m-to-nhs-drug-bill-8mwtttdk>

The complainant argued that this raised questions as to whether Mr Patel has a record of acting to the benefit of the broad community or otherwise.

17. The complainant argued that the awarding of an OBE to Mr Patel had resulted in considerable public concern. This included:

- An editorial in *The Times* newspaper headlined 'Unworthy honour' which described the OBE award as 'perverse'³;
- Jon Trickett, the Labour MP and shadow minister for the Cabinet Office, who remarked: 'It is an outrage that someone can be honoured for business and philanthropy when they have allegedly taken money out of our NHS through loopholes in the rules';
- Andrew Hill, an academic expert on drug pricing and senior research fellow at the University of Liverpool, who commented: 'At a time of acute shortages in the NHS, why are we rewarding the owner of a company which overcharged the NHS by millions of pounds?'
- Ben Merriman, a community pharmacist in Barrow-in-Furness, Cumbria, who has highlighted drug price rises, and has said that Mr Patel was a completely inappropriate recipient.

18. The complainant also argued that doubts had been raised as to the decision-making process in this case and whether normal procedures were followed. He noted that it had been reported that the Lord Lieutenant of Essex, where Mr Patel lives, was not consulted.⁴

19. Furthermore the complainant argued that the Cabinet Office's public interest test was generic and formulaic and had been applied in a blanket way. He suggested that the Cabinet Office appeared not to have taken proper account of the serious ethical questions regarding Mr Patel and the pricing of medicines purchased by the NHS, and the consequent issues about whether his OBE is appropriate.

20. Finally, the complainant argued that the awarding of an OBE is an important public mark of distinction made on behalf of the state and the community as a whole, and it is crucial that such awards are appropriate

³ <https://www.thetimes.co.uk/article/the-times-views-on-vijay-patel-s-obe-unworthy-honour-jw8mw82qn>

⁴ <https://www.thetimes.co.uk/article/royal-adviser-left-in-dark-on-obe-for-drug-company-boss-vijay-patel-8hn92v03w>

and seen to be appropriate in public eyes. It is an important matter of public interest as to whether honours are given only to individuals who have truly acted to the benefit of society rather than in the pursuit of their individual interests. The complainant argued that the information requested should be placed in the public domain, so that the decisions and processes involved are subject to proper scrutiny and accountability and for the sake of public reassurance in the appropriate working of the honours system.

21. The Cabinet Office acknowledged that there is a need for transparency in the honours process and it accepted that people may be interested in knowing the process behind a decision to award an honour to someone in the public eye.

Public interest in favour of maintaining the exemption

22. The Cabinet Office explained that in its view it was essential that all those involved in the honours system are given the courtesy of confidentiality for a period of time after their case has closed and it emphasised that the exemption relating to honours information does not expire until sixty years after the date of its creation. It argued that the public interest inherent in section 37(1)(b) is the protection and preservation of the integrity and robustness of the honours system. Furthermore, the Cabinet Office argued that disclosure of the withheld information would undermine the confidentiality of the information, which is ongoing, and disclosure may affect the future behaviour of those nominating, those nominated and those whose opinions are sought as part of the process.
23. The Cabinet Office acknowledged that section 37(1)(b) is not an absolute exemption and it did not impose this exemption without considering the merits of each case. However, given the content of the information and taking into account the fact that the honours case was ongoing at the time of the request, the complainant argued that the public interest clearly favoured withholding the information in the scope of the request.

Balance of the public interest test

24. 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.

25. With regard to the specific circumstances of this request, the Commissioner accepts that the information in question relates to an honour that was only very recently awarded, and moreover, notes that the Cabinet Office has suggested that the honours case was still considered to be live. The Commissioner also accepts that the withheld information contains discussions that can be correctly categorised as free and frank. In the Commissioner's view such factors add considerable to the public interest in favour of maintaining the exemption contained at section 37(1)(b).
26. However, the Commissioner has carefully considered the arguments advanced by the complainant. Having done so, she accepts that there is real concern, and indeed a lack of understanding, as to why this particular honour was awarded. The Commissioner therefore agrees that there is a very significant public interest in disclosing the withheld information so that the public can better understand the decisions and procedures in respect of this particular award.
27. On balance, having considered these competing arguments carefully, and having analysed the withheld information, the Commissioner has reached the conclusion that the public interest does not favour disclosure of *all* of the withheld information. In the Commissioner's view to do so would result in too great an infringement into the safe space needed in respect of this particular honours case and would result in too great a chilling effect risk in respect of discussions in future cases. However, the Commissioner has concluded that the public interest tips in favour of disclosing one piece of the withheld information. In the Commissioner's view disclosure of this piece of information will go some considerable way to meeting the public interests identified in favour of disclosure, whilst at the same time largely maintaining the confidential space needed for the honours process.
28. The Commissioner has therefore concluded that the public interest favours maintaining the exemption contained at section 37(1)(b) in respect of the withheld information, with the exception of one piece of information in relation to which the Commissioner has concluded that the public interest in favour of disclosure exceeds the public interest in maintaining the exemption.
29. The Commissioner has identified the information which she requires the Cabinet Office to disclose in a confidential annex, a copy of which will be provided to the Cabinet Office only.

30. The information which the Commissioner has ordered the Cabinet Office to disclose has not been withheld on the basis of section 41(1) of FOIA and therefore the Commissioner has not considered the application of that exemption in this decision notice.

Section 21 – information reasonably accessible to the applicant

31. Section 21 of FOIA states that:

'Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.'

32. The Cabinet Office did not cite section 21 in its responses to the complainant. Only in its submissions to the Commissioner did the Cabinet office explain that it considered this to apply to two pieces of information, its rationale being that this information was in the public domain at the time of the request. The information in question consists of two articles which appeared in The Times newspaper. One of these the complainant had cited in his submissions to the Commissioner, ie the article at footnote 3 above, and the other was the following article <https://www.thetimes.co.uk/article/millionaire-rip-off-drugs-businessman-vijay-patel-given-obe-hkzr5b00p>.
33. The Commissioner accepts that these articles were in the public domain at the time of the request. However, in order for the Cabinet Office to have correctly relied on section 21 to withhold this information, she would have expected it to explain to the complainant *what* information it was seeking to withhold on the basis of this exemption and *where* it could be located.

Right of appeal

34. 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

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

35. 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.
36. 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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