

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 29 November 2022

Public Authority: The Executive Office for Northern Ireland
Address: Castle Buildings
Stormont Estate
Belfast
BT4 3SR

Decision (including any steps ordered)

1. The complainant has requested information relating to an honour granted to the Chief Executive of Mid and East Antrim Borough Council. The Executive Office refused the request on the basis of section 37(1)(b) of FOIA (information relating to the conferring of honours or dignities).
2. The Commissioner's decision is that the Executive Office was entitled to refuse the request in reliance on the exemption at section 37(1)(b). No steps are required.

Request and response

3. The complainant submitted the following request to the Executive Office on 25 October 2021:

"I respectfully request all communication relevant to the recommendation and subsequent approval of an OBE for the CEO of Mid and East Antrim Borough Council Anne Donaghy, to include the identity and comments of the nominating person for same."

4. The individual named in the request was awarded an OBE (Officer of the Order of the British Empire) as part of The Queen's Birthday Honours in 2020.¹ The OBE was awarded "For services to Local Government and the community in County Antrim during Covid-19".
5. The Executive Office issued a refusal notice on 12 November 2021. It confirmed that it held information relevant to the request but stated that it was exempt from disclosure by virtue of the exemption at section 37(1)(b) of FOIA. The Executive Office further stated that the public interest lay in favour of maintaining that exemption.
6. The complainant requested an internal review on 12 November 2021 and the Executive Office provided the outcome of that review on 26 November 2021. The Executive Office maintained its refusal to disclose the requested information under section 37(1)(b), and additionally claimed reliance on the exemption at section 40(2) of FOIA (third party personal data). It also referred the complainant to information on the honours process published by the Cabinet Office.²

Scope of the case

7. The complainant contacted the Commissioner on 15 December 2021 to complain about the Executive Office's refusal to disclose the requested information.
8. The Commissioner has therefore considered whether the Executive Office was entitled to rely on the exemptions claimed.

Reasons for decision

Section 37: information relating to honours

9. Section 37(1)(b) states that information is exempt if it relates to the conferring by the Crown of any honour or dignity. Given that the request specifically seeks information about why a named individual received an honour the Commissioner is satisfied that all of the withheld information clearly falls within the scope of the exemption at section 37(1)(b). The
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¹ <https://www.gov.uk/government/publications/birthday-honours-list-2020-cabinet-office>

² <https://www.gov.uk/government/publications/how-the-honours-system-works#how>

requested information is therefore exempt on the basis of section 37(1)(b). For clarity, the Commissioner can confirm that he has inspected the information in question.

10. Section 37(1)(b) provides a qualified exemption and therefore it is subject to the public interest test set out in section 2(2)(b) of FOIA. Having accepted that the exemption is engaged the Commissioner must go on 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. If the public interest is evenly balanced then the information must be disclosed.

Arguments in favour of maintaining the exemption

11. The Executive Office emphasised that the honours process relies on a level of confidentiality in order to operate effectively and efficiently. It set out the following arguments in favour of maintaining the exemption:
 - The need to protect the personal details of those nominated for awards;
 - The need to ensure that those asked for information about candidates can provide honest information in confidence;
 - Maintaining the confidentiality of the process ensures that decisions are made on the merits and achievements of each candidate, and not on the basis of lobbying; and
 - The need to ensure that those who sit on honours or dignities assessment committees can carry out their work free from pressure from, or on behalf of candidates.
12. The Executive Office set out that disclosure of the information would risk damaging the honours system for the following reasons:
 - Future nominations may be discouraged if nominators fear that candidates' personal information would be disclosed into the public domain;
 - Individuals would feel inhibited from sharing relevant information if they believed it would be disclosed; and
 - Undue pressure would be caused to those sitting on honours of dignities assessment committees, which would also result in inhibition of their work.

Arguments in favour of disclosure

13. The Executive Office acknowledged a “general presumption of public interest in disclosure”. It also recognised that disclosure of the requested information may improve public understanding of the honours process and how honours were awarded.
14. The complainant also provided arguments in favour of disclosure. They pointed out that the recipient of the honour was a public figure who occupied a senior post in the public sector. They suggested that:

“Strenuous efforts have been made by a number of politicians to hide matters directly associated to controversial decisions by the individual in question.”
15. The complainant referred to the fact that a police investigation into Mid and East Antrim Council was ongoing at the time of the request.³ A month after the complainant received the outcome of the internal review, the recipient of the honour was suspended from her position as Chief Executive of the Council.⁴
16. The complainant was of the opinion that, in order to maintain public confidence in the honours system, the public must be assured that the recipient of the honour had not been nominated by any person connected to her in respect of the above controversy.

Balance of the public interest

17. With regard to the weight that should be attributed to maintaining the exemption at section 37(1)(b), as a general principle the Commissioner accepts 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 receive and discuss nominations freely and frankly.
18. 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. The Commissioner also accepts that disclosure of information that would erode this

³ <https://www.irishnews.com/news/council/2021/10/21/news/ian-paisley-and-sammy-wilson-issue-staunch-defence-of-council-boss-anne-donaghy-2485478/> and <https://www.bbc.co.uk/news/uk-northern-ireland-59480141>

⁴ <https://www.bbc.co.uk/news/uk-northern-ireland-59511673>

confidentiality, and thus damage the effectiveness of the system, would not be in the public interest.

19. The Commissioner is mindful that individuals and organisations nominating an individual for an honour are assured by the Cabinet Office that 'we will always ensure that your information is held confidentially and accessed only by those people involved in processing the nomination'.⁵ The Commissioner considers that this assurance of confidentiality equally applies to information received by the Executive Office and then passed to the Cabinet Office. The Commissioner further accepts that the disclosure of information that would erode this confidentiality, and thus damage the effectiveness of the honours system, would not be in the public interest.
20. The Commissioner has given due consideration to the complainant's arguments in favour of disclosure. The Commissioner observes that honours are awarded to a significant number of people every year and it is not entirely unexpected that some awards may be controversial. The Commissioner has considered several complaints regarding requests for information relating to the award of honours to individuals. In many cases the requests have been made because the awarding of the honour to the individual in question is perceived to be controversial. However, this in itself is rarely sufficient to outweigh the public interest in maintaining the exemption at section 37(1)(b).
21. The Commissioner is mindful that in one previous case he did order the disclosure of information about the decision to award Harvey Weinstein an honorary CBE.⁶ This was an exceptional case and the Commissioner's decision was informed by the profile of Mr Weinstein and the nature of the allegations of wrongdoing on his part. The Commissioner further notes that even in that case he found that the public interest was finely balanced, which demonstrates the substantial weight attached to the importance of not undermining the honours process.

⁵ <https://www.gov.uk/government/publications/privacy-information-relating-to-honours-nominations/privacy-information-relating-to-honours-nominations>

⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2614073/fs50757813.pdf>

22. The Commissioner has inspected the requested information in this case but is unable to describe it in detail since to do so would itself disclose exempt information. The Commissioner is of the opinion that the content of the requested information, in the context of the arguments set out above, does not offer a compelling public interest in favour of disclosure.
23. The Commissioner acknowledges the general public interest in transparency regarding the honours system, which he considers is largely met by the information published by the Cabinet Office. The Executive Office provided the complainant with clear links to this information, which the Commissioner welcomes as an example of advice and assistance.
24. On balancing the public interest factors the Commissioner has concluded that the public interest favours maintaining the exemption in all the circumstances of this case. He has reached this conclusion given his view that disclosure of the requested information would undermine the confidentiality of the honours process. As set out above the Commissioner considers there to be a strong public interest in protecting the effective operation of the honours process. Accordingly, the Commissioner finds that the Executive Office was entitled to refuse the request in reliance on the exemption at section 37(1)(b). He has not therefore gone on to consider the Executive Office's application of section 40(2).

Right of appeal

25. 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

26. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
27. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
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SK9 5AF