

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 March 2024

Public Authority: Cabinet Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information about the awarding of a peerage to Evgeny Lebedev. The Cabinet Office refused the request, citing section 37(1)(b) (The conferring by the Crown of any honour or dignity) of FOIA.
2. The Commissioner's decision is that section 37(1)(b) of FOIA was applied correctly to withhold the requested information. However, the Commissioner found that the Cabinet Office did not complete its deliberations on the balance of the public interest within a reasonable time, which was a breach of section 17(3) of FOIA.
3. The Commissioner does not require further steps as a result of this decision.

Background

4. Lord Lebedev is a Russian-British businessman, who owns a number of media outlets. In November 2020, he was nominated for a life peerage by Boris Johnson, for philanthropy and services to the media.
5. On 29 March 2022, a 'humble address' motion was tabled in the House of Commons, seeking the disclosure of information concerning the

peerage¹. The Government responded on 12 May 2022². It provided assurances regarding the integrity of the process that had been followed, but declined to go into particular detail, saying it was satisfied that:

“Lord Lebedev is a man of good standing. His public and personal works are reflected in the citation deposited in the House today as part of the Humble Address. No complaint has been made about his personal conduct. He has been vocal in his criticism of the Putin regime. Indeed, it was the Leader of the Opposition who personally congratulated him on his appointment as a peer.”

Request and response

6. On 6 March 2022, the complainant wrote to the Cabinet Office and requested information in the following terms:

“Subject: Evgeny Lebedev peerage

...

Please can you provide me with all correspondence, memos, or any other documentation held by the department relating to the decision to award Mr Lebedev a peerage in 2020.”

7. The Cabinet Office contacted the complainant on 4 April 2022, stating that it required further time to consider the public interest relating to section 37 of FOIA. It extended the time for considering the public interest several times.
8. Following the Commissioner’s intervention, the Cabinet Office responded to the request on 27 July 2022. It said that nominations for life peerages

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https://commonsbusiness.parliament.uk/document/55868/html#_idTextAnchor006

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<https://assets.publishing.service.gov.uk/media/627d4266d3bf7f0539ff75c6/2022.05.12- Written-Ministerial-Statement -House-of-Lords-appointments.pdf> and

<https://assets.publishing.service.gov.uk/media/627d3e82d3bf7f0524abc83b/Combined-Version-2022.05.12-Government-response-to-Humble-Address-Motion-on-House-of-Lords-Appointment.docx.pdf>

are vetted by the House of Lords Appointments Commission (HOLAC), which is not part of the Cabinet Office. It believed that HOLAC would hold the majority of official information on the nomination.

9. It also referred the complainant to the information which had been placed in the public domain with the Government's statement of 12 May 2022, to which it applied section 21 (Information otherwise available) of FOIA.
10. As regards the remaining information that it held, it refused to disclose it, citing sections:
 - 23(1) (Information supplied by, or relating to, security bodies);
 - 24(1) (National security);
 - 36(2)(b)(i) & (ii) and (2)(c) (Prejudice to the conduct of public affairs);
 - 37(1)(b) (The conferring by the Crown of any honour or dignity);
 - 40(2) (Personal information); and
 - 41(1)(b) (Information provided in confidence)
11. Where applicable, it said the public interest favoured maintaining these exemptions.
12. The complainant requested an internal review on 27 July 2022. The Cabinet Office says it did not receive that request and was unaware of it until the ICO provided it with a copy, on 7 November 2022.
13. The Cabinet Office provided the internal review outcome on 28 November 2022. It upheld its decision to apply the exemptions.

Scope of the case

14. The complainant contacted the Commissioner on 19 December 2022, to complain about the way his request for information had been handled. He believed there was a clear public interest in the disclosure of the withheld information.
15. The analysis below considers the Cabinet Office's application of the cited exemptions. The Commissioner has considered the delay in responding to the request under section 17(3) of FOIA.
16. The Commissioner has viewed the withheld information.

Reasons for decision

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

17. Section 37(1)(b) states that information is exempt if it relates to the conferring by the Crown of any honour or dignity. It is a class-based exemption, meaning that if the information is of the type described in the exemption, then it is covered by that exemption. The Cabinet Office considered that section 37(1)(b) applied to all of the withheld information.
18. The withheld information is on the awarding of an honour to a named individual. Having inspected it, the Commissioner is satisfied that all of the withheld information clearly falls within the scope of the exemption at section 37(1)(b) of FOIA, as it relates to the conferring of honours. Section 37(1)(b) is, therefore, engaged.

Public interest test

19. Section 37 is subject to a public interest test under section 2(2)(b) of FOIA. This means that, even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption is stronger than the public interest in disclosing the information.

Public interest arguments in favour of disclosing the information

20. In his complaint to the Commissioner, the complainant argued there was a clear public interest in the disclosure of the information, in view of Lord Lebedev being Russian-born, the son of a former KGB officer with links to the Russian establishment, and there being reported 'unease' among the UK security services about his relationship with Boris Johnson³. He referred to the Government's statement of 12 May 2022 as a 'cover up' and said:

"The Cabinet Office argues that releasing these documents would undermine the confidentiality of those nominated and the process of giving peerages but the opposite is the case as making the process more open and transparent will increase public confidence and

³ <https://www.theguardian.com/politics/2020/jul/31/evgeny-lebedev-jo-johnson-and-ian-botham-among-36-peerage-nominations-boris>

encourage officials to think more about the public interest rather than the interests of politicians or political parties.”

21. The Cabinet Office acknowledged that:

“...there is a public interest in there being greater knowledge about the processes which are adopted for the handling of nominations for the peerage. We acknowledge further that the elevation of Lord Lebedev in particular has elicited comment in the press.”

Public interest arguments in favour of maintaining the exemptions

22. The Cabinet Office told the complainant:

“In favour of maintaining the exemption, there is a strong public interest in protecting the confidentiality of the consideration of individual nominees. It is in the public interest that individuals of high professional standing are willing to nominate themselves or be nominated. It is unlikely that individuals would be willing to put their names forward if they could not rely on the Cabinet Office’s confidentiality in handling their nomination or if they otherwise felt that their personal details or personally-identifying aspects of the Cabinet Office’s handling of their case would be put in the public domain.”

23. It expanded on these points in its arguments to the Commissioner:

“There is an established expectation that all nominations for peerages shall be dealt with in confidence. On its website, HOLAC states unambiguously that it:

‘...treats all nominations and supporting information in confidence.’⁴

The process depends to a very great extent on it being conducted in confidential circumstances.

We refer to the response of the Government made on 12 May 2022 to the Humble Address motion of the House of Commons in respect of appointments to the House of Lords. In that response, the (then) Minister for the Cabinet Office and Paymaster-General Michael Ellis said that:

⁴ <https://lordsappointments.independent.gov.uk/how-to-apply-2>

'The process by which an individual is nominated to the House of Lords is an established one. It is essential that the confidentiality of these arrangements are maintained as it is this that ensures the vetting procedures are suitably robust and command confidence, whilst also protecting the private and personal data of those individuals who have entered into the vetting process. The routine disclosure of such confidential information would undermine the Commission and Crown's ability to consider the probity of those nominated for a peerage and have long-term and damaging consequences for the peerage appointments system, and to individuals.'⁵

We consider that disclosure in this instance would serve to undermine the robustness of, and confidence in, the process for nominating life peerages. It is an assumption that has long underpinned that process that it is conducted confidentially. It has continued to characterise it since the establishment of HOLAC and its role in considering the probity of candidates. As the (then) Minister of State at the Cabinet Office, Lord True, noted in a debate in the House of Lords on recommendations for peerages:

'...it is reasonable that personal data and free and frank comment relating to an individual who is nominated should be confidential, which would not be the case if documents were laid before Parliament.'⁶

Or, it would follow, if they were disclosed in response to a request under the Act.

Such confidentiality enables recommendations to be made on the basis of full and honest information. It enables everything of relevance to be brought forth to the deliberative process as to whether an individual is suitable for a peerage or not, including information that would be considered to be personally sensitive to the person nominated (and others). Such information would be vital for properly determining a person's merits for a life peerage and would in all likelihood not be proffered if the process were conducted amidst the full glare of public attention.

⁵ <https://questions-statements.parliament.uk/written-statements/detail/2022-05-12/hcws22>

⁶ HL Deb 3 March 2022 vol 819 col 373GC

Those who participate in the deliberative process must have the assurance that their freely and honestly expressed opinions will not be put into the public domain. If those participants cannot have such assurance that their confidence would be honoured, they would be reluctant to provide their views. The result would be to impair the process for nominating candidates for life peerages and we contend that this would be strongly not in the public interest”.

24. The Cabinet Office provided examples to illustrate its arguments, explaining how and why disclosure would be likely to have a chilling effect on the candour with which, in future, views were expressed. It concluded that the disclosure of the information would serve to discourage people from contributing to the nomination process and would lead to decisions about nominations being made on the basis of less complete information than would otherwise be the case, which would not be in the public interest.

Balance of the public interest

25. In general, where disclosure would help to further public debate around the criteria for conferring awards, the arguments in favour of disclosure are likely to carry additional weight. In this case, the withheld information would shed light on the deliberations which took place regarding a peerage which, for the reasons set out in paragraphs 4 and 20, above, has been the subject of significant public and media scrutiny. The Commissioner therefore acknowledges that there is public interest in the disclosure of the information on the grounds that it would increase transparency surrounding the decision to award the peerage in question. The Commissioner considers this a public interest factor in favour of disclosure of some weight.
26. Turning to those factors concerning the honours system in general, the Commissioner accepts that there is a general public interest in having an honours system that is objective, accountable and transparent, so that the public can understand how and why decisions are made.
27. If the public can see how the process works, they are more likely to have confidence that honours are conferred on merit, and not on the basis of other factors (such as a candidate’s connections or political views). It also helps reassure the public that the relevant decision-makers are not subject to any form of undue influence and that the vetting process is appropriately thorough.
28. Disclosure of the withheld information in this case, would further the transparency and accountability of the honours system. The Commissioner considers this to be another public interest factor in favour of disclosure, of some weight.

29. However, the Commissioner accepts that, in order for the honours system to operate effectively and efficiently, it is important that those involved in the process feel they can freely and frankly discuss nominations. The Commissioner also accepts that if views, opinions and commentary about nominations that are provided in confidence, are subsequently released into the public domain, it would be likely to result in individuals being less willing to make similar contributions in the future and/or provide less candid comments and input. This position was acknowledged by the First-tier Tribunal when it considered a request of a similar nature, and it found that the public interest fell "decisively in favour of non-disclosure"⁷.
30. 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, even if there is public debate regarding the appropriateness of an honour. Furthermore, there must be a genuine robustness to the understanding that confidences will be honoured.
31. The Commissioner has also factored into his considerations, the age of the withheld information. It is still relatively recent and this adds weight to chilling effect arguments regarding participants' expectations of confidentiality. The Commissioner considers that the 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.
32. For these reasons, the Commissioner disagrees with the complainant that the public interest in transparency is greater than that in confidentiality in this case.
33. Mindful that the public interest inherent in the exemption at section 37(1)(b) is the protection and preservation of the robustness and integrity of the honours system, and also of the information on the matter that the Government placed in the public domain on 12 May 2022, the Commissioner finds in this case that the public interest in maintaining the exemption is stronger than the public interest in disclosure. He has reached this conclusion in light of his view that disclosure would undermine the confidentiality of the honours process; he considers there to be a stronger public interest in protecting the

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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2688/Foreign%20&%20Commonwealth%20Office%20%20EA-2019-0031%20\(04.02.20\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2688/Foreign%20&%20Commonwealth%20Office%20%20EA-2019-0031%20(04.02.20).pdf)

effective operation of the honours process. Accordingly, the Commissioner finds that the Cabinet Office was entitled to rely on section 37(1)(b) of FOIA to withhold the requested information.

34. As section 37(1)(b) has been correctly applied to all of the withheld information, the Commissioner has not found it necessary to consider the Cabinet Office's application of the other sections it cited, to the same information.

Procedural matters

Time taken to consider public interest and respond to request

35. Section 10(1) of FOIA states that on receipt of a request for information a public authority must respond promptly, and within 20 working days.
36. However, where a qualified exemption is being considered, under section 17(3) a public authority can have a 'reasonable' extension of time to consider whether the balance of the public interest favours maintaining the exemption or disclosing the information. While FOIA does not define what might constitute a 'reasonable' extension of time, the Commissioner considers that a public authority should normally take no more than an additional 20 working days to consider the public interest, meaning that the total time spent dealing with the request should not exceed 40 working days⁸.
37. While the Cabinet Office did tell the complainant it needed further time to consider the public interest test, in all, it took 97 working days to provide its response to the request.
38. The Commissioner considers that the Cabinet Office breached section 17(3) of FOIA as it did not complete its deliberations on the public interest test within a reasonable time.
39. The Commissioner has made a record of this breach for monitoring purposes.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.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.

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