

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 January 2023

Public Authority: Foreign, Commonwealth & Development Office (FCDO)

Address: King Charles Street
London
SW1A 2AH

Complainant: Martin Rosenbaum

Address: rosenbauminbox@gmail.com

Decision

1. The Commissioner's decision is that FCDO is entitled to rely on section 31(1)(b) of FOIA to withhold the majority of the requested information about an investigation into the awarding of an honour to Mahfouz Marei Mubarak bin Mahfouz. Disclosing this information would prejudice the apprehension or prosecution of offenders. The remaining information is exempt under section 37(1)(b) (communications with His Majesty, etc. and honours) and the public interest favours maintaining this exemption.
2. The Commissioner does not require FCDO to take any steps.

Request and response

3. The complainant made the following information request to FCDO on 14 October 2021:

"All information held relating to the awarding of an honorary honour to Mahfouz Marei Mubarak Bin Mahfouz."
4. FCDO's final position in its correspondence with the complainant was to withhold the requested information under section 37(1)(b), section 40(2) (personal data) and section 41(1) of FOIA (information provided in confidence).

5. FCDO has subsequently confirmed to the Commissioner that it also wishes to rely on section 31(1)(b) with regard to the majority of the information in scope of the request.

Reasons for decision

6. This reasoning covers FCDO's application of sections 31(1)(b) and 37(1)(b) to the information the complainant has requested.
7. By way of background, complaints have been made to the Metropolitan Police over allegations that Mahfouz Marei Mubarak bin Mahfouz was offered help to secure an honour and British citizenship after donating to charities of the former Prince of Wales.

Section 31 – law enforcement

8. In its submission to the Commissioner, FCDO explained that at the time of the initial request and original response, it had no information about any investigation other than what had been reported in the media. At that time, therefore, it had no reason to think that disclosing the requested information would prejudice a police investigation.
9. FCDO now says that any disclosure to the public of the requested information "would" prejudice the Metropolitan Police and Crown Prosecution Service's investigations, particularly the apprehension of offenders.
10. FCDO has confirmed that, due to the ongoing Metropolitan Police investigation tangentially related to this request, the Metropolitan Police Central Specialist Crime Unit - Special Enquiry Team has confirmed that using section 31 would be appropriate. FCDO provided further relevant information in its submission (including in its section 37 submission) but the Commissioner has only included in this notice that which he considers to be necessary to support his decision.
11. The material to which FCDO has applied section 31 comprises emails, letters, forms, notes, briefing and Committee documents. It has provided this information to the Commissioner.
12. Under section 31(1)(b) of FOIA, information is exempt if its disclosure would or would be likely to prejudice the apprehension or prosecution of offenders.
13. In the majority of cases, the Commissioner will consider the situation as it was at the time of the request and up to the point at which the public authority should have provided a response. As FCDO has noted, at the

time of the request and its response, it had limited information about any associated investigation. On the face of it, it could be argued that section 31 could not therefore have been engaged at that point.

14. However, there are very rare cases when the Commissioner finds that information that was not exempt under a particular exemption at the time of the request, has since become sensitive due to the passage of time and changes in circumstances.
15. The Commissioner is aware that it had been reported that the matter of Mahfouz Marei Mubarak bin Mahfouz's honour had been referred to the Metropolitan Police prior to the complainant submitting their request to FCDO¹.
16. In light of this, FCDO's rationale for applying section 31 of FOIA would appear to be relevant to the circumstances at the time of the request (as opposed to a scenario where the Police's consideration of this matter only began some time after the request was submitted. That would make the potential relevance of section 31, at the time of the request arguable.)
17. The Commissioner therefore finds that FCDO is entitled to rely on section 31(1)(b) of FOIA to withhold the majority of the information in scope of the request. He agrees that disclosure would prejudice the apprehension or prosecution of offenders. The Commissioner has gone on to consider the public interest.
18. FCDO has acknowledged that there is a public interest in how the honours system works, and the way in which decisions are made.
19. In their request for an internal review, albeit discussing the section 37(1)(b) exemption, the complainant argued that the public interest favoured disclosure. This was because of the extent of controversy and puzzlement over the appropriateness of the honour and the widely reported doubts about the process for awarding it.
20. The complainant noted that the Prince's Foundation had reported finding "...evidence that communication and co-ordination took place between the CEO at the time and so-called 'fixers' regarding honorary

¹ <https://www.theguardian.com/uk-news/2021/sep/06/norman-baker-urges-police-investigation-mahfouz-prince-charles>

nominations for a donor between 2014-18.” In the complainant’s view, this raised important and disturbing questions over the proper workings of the honours system. The need for transparency, accountability and public reassurance required full public disclosure in this case.

21. Finally the complainant noted an Upper Tribunal decision in a separate case² involving the awarding of an honour in controversial circumstances. The Upper Tribunal found that the public interest in that case favoured disclosure of a small amount of related information.
22. In their complaint to the Commissioner, also in respect of FCDO’s application of section 37, the complainant argued that the circumstances of Mahfouz Marei Mubarak bin Mahfouz’s CBE raise:

“...important and disturbing questions over the proper functioning of the honours system. This system represents an important method for recognising distinction and public service, on behalf of the British public as a whole. It is greatly in the public interest that it operates on a well-founded and appropriate basis, so that the recipients are fully deserving. It is also in the public interest for this to be subject to scrutiny, so that the system’s workings can be checked and any flaws can be corrected. The public are entitled to know and understand what the process was in this case and whether it was entirely suitable, given awards of this kind are made as a mark of appreciation from the nation. The need for transparency and accountability and indeed also public reassurance requires full public disclosure in this case.”

23. FCDO considers there is greater public interest in this case in not prejudicing the potential apprehension of offenders.
24. The Commissioner acknowledges that there is a strong public interest in the decision making associated with the awarding of an honour in what have been alleged to be controversial circumstances. However, he agrees with FCDO that disclosing the information would jeopardise a live Metropolitan Police investigation. The Commissioner considers that there is a stronger public interest in ensuring that when a potential offence is alleged, it is appropriately investigated. The public interest in the awarding of the honour in question will be addressed through the outcome of the Metropolitan Police investigation.

² https://www.bailii.org/uk/cases/UKFTT/GRC/2021/2020_0050.html

Section 37 - communications with His Majesty, etc. and honours

25. Under section 37(1)(b) information is exempt information if it relates to the conferring by the Crown of any honour or dignity. Section 37(1)(b) is subject to the public interest test.
26. FCDO has applied this exemption to emails between FCDO officers sent between 5 and 6 September 2021. FCDO deemed this correspondence within scope of the request.
27. The Commissioner is satisfied that this information concerns matters associated with the awarding of an honour to Mahfouz Marei Mubarak bin Mahfouz and that it therefore engages the exemption under section 37(1)(b). He has gone on to consider the public interest test.
28. FCDO's public interest argument for disclosure is as above, ie transparency about the workings of the honours system. The complainant's public interest arguments have also been noted above.
29. Against disclosure, FCDO has argued that handling individual honours cases confidentiality is essential to protect the integrity of the honours and without confidentiality the system could not function.
30. Withholding information about individual cases ensures that those involved in the honours system can take part on the understanding that their confidence will be honoured and that decisions about honours are taken on the basis of full and honest information about the individual concerned. FCDO considers that disclosure could lead to a loss of frankness which could result in poorer quality debate and decision-making. The detrimental effect of this would be to make the nomination process less robust.
31. The material being withheld under section 37 is email correspondence between FCDO staff in early September 2021, about matters associated with the awarding of an honour to Mahfouz Marei Mubarak bin Mahfouz.
32. The Commissioner has reviewed his decision in [FS50830858](#) and the related Upper Tribunal decision to which the complainant has referred. He has also reviewed the information that the Commissioner considered should be disclosed in that case.
33. The circumstances of that case are similar to this case but they are not the same. Neither is the information being withheld exactly the same. As in his earlier decision, the Commissioner accepts that concern has emerged about why this particular honour was awarded. The Commissioner therefore again agrees that there is a 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.

34. However, on balance, and having considered the competing arguments, the withheld information and the circumstances of this case and the earlier case, the Commissioner has decided that the public interest does not favour disclosing the withheld information in the current case. 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. It would also result in too great a chilling effect risk in respect of discussions in future cases.
35. Because the Commissioner has found that FCDO has correctly applied sections 31 and 37 of FOIA, he does not consider it necessary to consider FCDO's application of section 40(2) and 41(1).

Other Matters

36. Provision of an internal review is not a requirement under FOIA but is a matter of good practice. The FOIA Code of Practice advises that an internal review should be provided within 20 working days of a request for a review and, in exceptional circumstances only, within no longer than 40 working days.
37. In this case the complainant requested an internal review on 9 December 2021 and FCDO did not provide one until 5 July 2022, following the Commissioner's intervention. FCDO did regularly communicate with the complainant about the delay but clearly, a five month delay is not acceptable.

Right of appeal

38. 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

39. 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.
40. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF