

## Freedom of Information Act Awareness Guidance No 26

### Communications with Her Majesty and the Awarding of Honours

The Freedom of Information Act 2000 (the Act) provides rights of public access to information held by public authorities. This is part of a series of guidance notes produced to help public authorities understand their obligations and to promote good practice.

Here we consider the exemption relating to communications with The Queen, other members of the Royal Family and the Royal Household and the awarding of Honours by the Crown. The exemption is set out in Section 37 of the Act.

#### A) What does the Act say?

The Act provides a right of access to information held by public authorities. Section 1 of the Act establishes this right to know by placing two related obligations on public authorities. Firstly, when an applicant (who can be anyone from anywhere in the world) requests information, a public authority has a duty to write to the applicant saying whether it holds the information. This is known as the duty to confirm or deny. Secondly, if the authority does hold the information it must communicate it to the applicant.

Section 37 is made up of two distinct parts providing an exemption from the right to know:

- Section 37(1)(a) to (ad)(as amended) covers information relating to communications with The Queen, other members of the Royal Family or the Royal Household. This is dealt with in Section B below.
- Section 37(1)(b) covers the awarding by the Crown of honours and other awards. This is dealt with in Section C below.

## B) Communications with Her Majesty, other members of the Royal Family or the Royal Household

s37(1) Information is exempt information if it relates to –

- (a) communications with the Sovereign,
  - (aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,
  - (ab) communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne,
  - (ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs), and
  - (ad) communications with the Royal Household (other than communications which fall within any of paragraphs (a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs).

Until January 2011, the whole of section 37 was a qualified exemption under the Act and therefore subject to the public interest test. However this changed with effect from 19 January 2011, by virtue of amendments made by The Constitutional Reform and Governance Act 2010. Section 37 is now an absolute exemption in respect of certain information. This means that such information is exempt without any requirement to apply the public interest test.

The absolutely exempt categories under section 37 are as follows:

- communications with the Sovereign;
- communications with the heir or second in line to the Throne; and
- communications with a person who has subsequently become heir to or second in line to the Throne.

Sections 37(1)(a) to (ad) are intended to protect from disclosure information relating to communications with The Queen, other members of the Royal Family or the Royal Household.

It is important in the context of this exemption to think about definitions of the Royal Family and the Royal Household: the Act does not define either of these. Public authorities might wish to

refer to the 'royal' website at [www.royal.gov.uk](http://www.royal.gov.uk) for additional information.

The Royal Household comprises all the households of members of the Royal Family. Each household comprises the permanent members of the relevant private office and those who from time to time assist members of the Royal Family with their private and public duties. Contractors supplying goods and services to the Royal Household, including by royal warrant, are not included in this definition.

### **a) Who can use the exemption?**

This exemption is likely to be most relevant to public authorities who have been in communication with the Queen, members of the Royal Family or the Royal Household. Central government departments, and to a lesser extent, other public authorities are likely to hold a range of information. Requests for information made to those public authorities may include details of:

- Communications between Her Majesty, or others within the Royal Family, and government ministers.
- Correspondence between the Royal Households and public authority officials, for example in relation to royal visits.
- Records or agendas of audiences (private meetings) with a member of the Royal Family.
- Material which has been shown, or will be shown, to Her Majesty for approval.
- Drafts prepared for broadcasts, speeches and messages etc sent by or on behalf of Her Majesty or another member of the Royal Family.

### **b) Practical Issues**

#### **Where information is covered by the absolute exemption under s37**

Section 37 is now an absolute exemption in respect of some information (s37(1)(a) –(ab) -see above) and so the public interest test does not apply. The public interest test does also not apply to the exclusion of the duty to confirm or deny in respect of that information.

## **Where information is covered by the qualified exemption under s37**

For the remaining information, i.e. sections 37(1)(ac) – (ad) the exemption remains qualified and the public interest test will therefore apply. The Information Commissioner has issued guidance on [the public interest test](#). This means that the public authority to which the request has been made will have to balance the public interest in disclosing the information against the public interest in withholding it. The public authority must also apply the public interest test to the exclusion from the duty to confirm or deny in respect of this category of information.

When considering whether to disclose the information, account should be taken of the overlap between public and private roles and functions. The overlap between the two is an important consideration and there is considerable media and public interest in both public and private roles and functions. Where requests for information relate to a private role, section 40 of the Act may apply – for an explanation of FOI and personal data please see The Information Commissioner’s [guidance on The Exemption for Personal Information](#). It is important to note that personal information is not exempt from disclosure where it relates to a deceased individual; and so requests for information relating to deceased members of the Royal Family will not be exempt under section 40. Section 37 may then be more relevant, and in such circumstances the public interest test should be applied, taking into account all the circumstances. Article 8 of the Human Rights Act 1998, which deals with the right to respect for family and private life, may also be relevant in this area.

It is particularly important in the context of this exemption to remember that ‘what the public is interested in’ is not necessarily the same as ‘in the public interest’ as referred to in the Act.

It is also worth emphasising at this point that, when considering the qualified subsections of section 37, public authorities should avoid basing their assessment of public interest solely on the individual’s position within the Royal Family – it is not so much their status but the nature of the information requested that should be the determinate of the public interest test.

Whilst other members of the Royal Family are not in the same constitutional position as the Queen and heir to the throne, the needs to maintain the neutrality of the Sovereign, and not to undermine diplomatic and goodwill work, are still relevant in deciding whether disclosure will be in the public interest. All members of the Royal Family may also perform public roles where

performance is dependant upon maintaining the confidentiality of their communication with public authorities. In such circumstances requests will need to be considered case by case.

Timing may be an important consideration when considering whether to disclose the information such as with a request for details of a royal visit. The public interest in protecting information about royal visits will generally be at its greatest if the visit hasn't occurred at the time of the request.

Additionally when considering a request for information relating to a royal visit (or any other royal public duty) it may be appropriate to also consider sections 23 and 24 (the national security exemptions) and also section 38 which relates to endangering the safety of any individual.

### **c) Historical records**

With effect from 19 January 2011, the Constitutional Reform and Governance Act has also amended section 63 of the Act so that information covered by sections 37(1)(a) to (ad) cannot be exempt after five years from the "relevant death", or 20 years from the creation of the record containing the information (whichever is the later). The "relevant death" here means:

- for the purposes of sections 37(1)(a) to (ac), the death of the person referred to in the section concerned; or
- for the purposes of section 37(1)(ad), the death of the Sovereign reigning when the record containing the information was created.

### **d) Further information on the Royal Household**

Public authorities might wish to refer to the 'royal' website at [www.royal.gov.uk](http://www.royal.gov.uk) for additional information.

## **C) Honours and dignities conferred by the Crown**

Section 37(1)(b) also provides an exemption to public authorities in dealing with requests for information relating to honours and dignities conferred by the Crown. Again there is no legal definition

of either honour or dignity; however the following examples will help in identifying the range of honours and dignities to which this exemption may apply:

- Honours comprising the various Orders of Knighthood
- Appointment of Knights Bachelor
- Military medals and declarations
- Gallantry awards
- Other medals and decorations conferred by the Queen
- Other awards granted by the Queen
- Foreign or international awards where the Queen's permission is required or sought to accept and wear them
- Creation of line peers
- Creation of hereditary titles
- Appointment as lords and Vice Lords Lieutenant
- Appointment of Governor-Generals, Governors and Lieutenant-Governors
- Appointments to the Privy Council

Section 37(1)(b) is intended to protect from disclosure information that relates to the conferring by the Crown of any honour or dignity. It is worth noting at this point that only honours conferred by the Crown are included within the exemption; honours awarded by local authorities or institutions are not covered.

Traditionally the honours system has remained a highly secretive process from the point of nomination through to the announcements of the names and brief details of those receiving an honour. Two independent reviews of the honours system have acknowledged a general concern regarding transparency and accountability of the system itself. Independently both reviews have recommended measures to improve the transparency of the process and procedures. Whilst neither review was specifically concerned with freedom of information, if implemented the recommendations identified in both reviews would have some impact on the openness of the process and therefore the form and range of information routinely available. It is worth remembering that a public authority is not obliged to confirm or deny that it holds the information requested.

Under section 63(3) information relating to honours and dignities remains exempt for a period of 60 years after which the public authority is no longer entitled to refuse to communicate

information. The provisions of the Data Protection Act are however likely to be relevant in respect of personal data where information relates to a living individual and disclosure would cause damage or distress; in such circumstances information of this nature would not necessarily be disclosed.

### **Dealing with a request under Section 37(1)(b)**

Section 37(1)(b) is a qualified exemption. Therefore when considering a request for information to which section 37(1)(b) may be relevant, a public authority will need to apply the public interest test and balance the public interest in disclosing the requested information against that in withholding it. The public interest test should be applied in all the circumstances of the case, thus requiring a case by case objective analysis. It is likely that the range of requested information most frequently to come within the exception will take the form of information relating to individual candidates for or the recipients of awards, information about the process itself including, for example, details of the assessment committees, information about the policy behind the honour or dignity including, for example, qualifying conditions, and proposals for new awards.

Public authorities will need to take account of section 40 (personal information) when considering a request for information concerning an individual nominee. A more detailed discussion of the issues surrounding requests for personal information can be found in the Information Commissioner's [guidance on The Exemption for Personal Information](#). This section will also be relevant in dealing with requests for information concerning those involved in the assessment process itself.

Section 41 (information provided in confidence) should also be considered in relation to a request for information regarding that provided by third parties about candidates. Again, full guidance on the application of section 41 can be found in [Awareness Guidance no 2:Information provided in confidence](#).

The Information Commissioner encourages public authorities, when applying the public interest test, to recognise the considerable need for public confidence in the integrity of the honours system. Specifically, if the system and the individual honours and dignities themselves are to be valued and respected, the public will wish to know that the process for awarding them is objective, accountable and transparent. In particular, where the requests for information concern the process of and policy behind the awarding of honours and dignities, authorities are encouraged to take a positive

approach in their application of the public interest test and disclose the maximum information possible.

In circumstances where the age of the material requested is a factor, the Information Commissioner would recommend that the information be released. A public authority will however need to consider each request on a case by case basis, applying the public interest test to all the circumstances of the case.

## D) Summary

- Certain information relating to the Sovereign and to the heir and second in line to the throne is absolutely exempt under section 37.
- Information relating to other members of the Royal Family and to the Royal Household is subject to a qualified exemption under section 37. The public interest test applies.
- Section 37 is broad in its definition, encompassing information **relating to** communications with Her Majesty, other members of the Royal Family or the Royal Household.
- The exemption also covers information **relating to** the conferring by the Crown of any honour or dignity.
- Information may be withheld if it relates to information which is central to the Queen's constitutional position.
- The public interest test, where appropriate, should be interpreted narrowly in relation to requests for information concerning the honours process, procedure and policy, and on a case by case basis.

## More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual

cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

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