



Foreign &
Commonwealth
Office

Protocol Directorate
Foreign and Commonwealth Office
King Charles Street
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Website: <https://www.gov.uk>

Mr John Roberts
request-545390-4d667268@whatdotheyknow.com

10 May 2019

Dear Mr Roberts

FREEDOM OF INFORMATION ACT 2000 REQUEST REF: 0077-19

Thank you for your email of 16 January 2019, asking for information under the Freedom of Information Act (FOIA) 2000. You asked:

The Information Commissioner in Decision Notice FS50757813 requires you to release certain information in respect of the alleged sex criminal Harvey Weinstein and his CBE award:

Please provide me with the same information.

I can confirm that the Foreign and Commonwealth Office (FCO) does hold information relevant to your request.

Please find attached a copy of the press release announcing Mr Weinstein's honorary CBE award and a redacted copy of the invitation to an event where Mr Weinstein was presented with the award. This information was released in response to the original request.

However, the Foreign and Commonwealth Office has lodged an appeal to the First Tier Tribunal against the Information Commissioner's decision notice requiring us to release any further information. Pending the outcome of the appeal, the FCO is not releasing any further information at this stage. The decision in the appeal will be available on the Tribunal's website in due course.

Further, in our view, most, if not all, information requested is personal data relating to Mr Weinstein, the disclosure of which would contravene data protection principles. In such circumstances the exemption under section 40(2) of the Freedom of Information Act 2000 ('the FOIA') applies. We believe that disclosure would breach the first data protection principle, thereby satisfying the first condition under section 40(2). This states that personal data should be processed fairly and lawfully. It is the fairness aspect of this principle, which

would be breached by disclosure. We consider that it is unfair to disclose the data where Mr Weinstein has not agreed to the disclosure, he did not choose to apply for an honour but was nominated, he could have had no expectation that the FCO might disclose his personal data at the time when he agreed to have the honour conferred upon him and he would not have been able to obtain the same data if he had asked for it. In such circumstances, section 40 confers an absolute exemption on disclosure. There is, therefore, no public interest test to apply.

The third condition under section 40(2) is also met, as if Mr Weinstein had requested the same information under the DPA 2018 he would have been refused by reason of paragraph 15 of Schedule 2 to the DPA 2018. We have applied the public interest test in looking at this exemption and come to the view that the public interest favours maintaining the exemption for the reasons as set out below.

In addition, information within scope of the request falls within the exemption at section 37(1)(b) of the FOIA (information related to the conferring by the Crown of any honour or dignity). The ICO's decision notice correctly notes that this exemption was engaged and that disclosure would "directly impact on the confidentiality of the honours' system". Section 37(1)(b) is also subject to the public interest test.

We have weighed up whether the public interest test is better served by the release of this information or withholding it. We appreciate the importance of transparency in government and the need for public awareness of how the honours system works, and the way in which decisions over the award of honours are taken.

Against these considerations, however, it is important to weigh the public interest in favour of maintaining the relevant exemptions to ensure the necessary confidentiality with regard to individual honours cases. This is essential to protect the integrity of the honours system and without it the system could not function. Indeed, there is a general public interest in ensuring that those involved in administering the honours system and assessing individual merit can discuss merit and make decisions on the basis of full and honest information about the individual concerned. We believe a loss of frankness could result in poorer quality debate and decision-making, and have a detrimental effect on the robustness of the nomination process.

We consider that the public interest in maintaining the s.40(2)/(4A) exemption is very strong – it is unfair and contrary to the public interest to require disclosure under FOIA of personal data which would not be disclosed to the data subject under the DPA. There are no exceptional circumstances in this case to justify departure from this general rule.

Having considered all the circumstances of this case, we believe that the public interest weighs in favour of withholding the information under Section 40 Personal Data.

Once an FOI request is answered, it is considered to be in the public domain. To promote transparency, we may now publish the response and any material released on [gov.uk](https://www.gov.uk) in the [FOI releases](#) section. All personal information in the letter will be removed before publishing.

If you would like a review of our decision, or if you wish to make a complaint, please write to the Central FOI Unit, Foreign and Commonwealth Office, Room WH2.177, King Charles

Street, London, SW1A 2AH. E-mail: foi-dpa.pmcs@fco.gov.uk. You have 40 working days to do so from the date of this letter.

You can apply directly to the Information Commissioner. However, the Information Commissioner will not normally make a decision unless you have first exhausted the complaints procedure provided by the FCO. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely,

Protocol Directorate



We keep and use information in line with the Data Protection Act 1998. We may release this personal information to other UK government departments and public authorities.