

Request for information regarding the award of a knighthood to Sir Paul Collins

Legislation	Official Information Act, sections 9(2)(a); 9(2)(f)(i); 9(2)(f)(iv); and 9(2)(g)(i)
Agency	Department of Prime Minister and Cabinet
Ombudsman	Dame Beverley Wakem
Case number(s)	399438
Date	21 September 2015

Summary

The Chief Ombudsman considered a complaint against a decision by the Department of Prime Minister and Cabinet (DPMC) to withhold certain information under the Official Information Act 1982 (OIA) relating to the award of a knighthood to Sir Paul Collins.

DPMC considered it necessary to withhold the information on multiple grounds under the OIA.

The Chief Ombudsman formed the opinion that it was necessary to withhold the information in reliance upon sections 9(2)(a); 9(2)(f)(i); 9(2)(f)(iv); and 9(2)(g)(i) of the OIA.

Although accepting that there was a clear public interest in the disclosure of information concerning the process by which nominations for Royal Honours are considered, the Chief Ombudsman considered that, in this case, this interest would be met by the agreed disclosure of summarised information, as well as by the investiture information already in the public domain. In the opinion of the Chief Ombudsman, the overall public interest would not be served by disclosing information that undermines the Royal Honours system itself.

Background

1. The requester made an Official Information Act (OIA) request to the Department of Prime Minister and Cabinet (DPMC) for:

All written material considered by the Honours Unit in relation to Sir Paul's award, including nomination letters.

All written material prepared by the Honours Unit, including recommendations, discussion points.

Minutes of any meeting of the Cabinet Appointments and Honours Committee discussing Sir Paul's knighthood.

All correspondence between relevant officials discussing the knighthood.

2. DPMC refused the request under the following provisions of the OIA:
 - a. 9(2)(a), to protect the privacy of natural persons;
 - b. 9(2)(ba)(i), to protect information which is subject to an obligation of confidence, where the making available of that information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information continue to be supplied;
 - c. 9(2)(f)(i), to maintain the constitutional conventions for the time being which protect the confidentiality of communications by or with the Sovereign or her representative;
 - d. 9(2)(f)(iv), to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials; and
 - e. 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers or officials in the course of their duty.
3. The requester complained to the Chief Ombudsman about this decision.

Investigation

4. The Chief Ombudsman notified DPMC of the complaint on 5 May 2015 and requested a copy of the information at issue. At this time, the Chief Ombudsman also enquired whether DPMC would be willing to provide some further information to the requester about the general process by which a nomination for Honours is considered.
5. DPMC responded to the complaint in a letter dated 4 June 2015. DPMC requested, given the sensitivity of the material at issue, that the Chief Ombudsman view the material in

person. DPMC also advised that it was willing to provide the requester with a summary of the Honours process.

6. The Chief Ombudsman and members of her investigating staff subsequently met with relevant officials from DPMC to review the information at issue and to discuss DPMC's reasons for refusing the request.

Information at issue

7. The information at issue in this case consisted of:
 - a. Information supplied by Sir Paul Collins;
 - b. Information supplied by the nominator and supporters, both about the nominee and about themselves; and
 - c. Records created by the Honours Unit, Cabinet Appointment and Honours Committee, as well as relevant officials.

Application of section 9(2)(a)

8. Section 9(2)(a) of the OIA will apply where withholding information is '*necessary to ... protect the privacy of natural persons, including that of deceased natural persons*'.
9. Having reviewed the information at issue, the Chief Ombudsman considered that disclosure of information supplied by Sir Paul Collins and by the people who supported his nomination would be likely to prejudice the privacy of those individuals.
10. As required by section 29B of the OIA, the Chief Ombudsman consulted with the Privacy Commissioner before forming an opinion on this aspect of the complaint. The Privacy Commissioner agreed that there was a high privacy interest in the information, from the perspective of both the nominee and nominator.
11. Pursuant to section 9(1) of the OIA, the Chief Ombudsman then went on to consider whether there was an overriding public interest favouring release of the information.
12. The Chief Ombudsman acknowledged that there was a public interest in understanding the reasons for an award. However, she considered this to have been met by the investiture information already in the public domain. The Chief Ombudsman was satisfied that the merits of the award could be fully and properly debated in public without the specific information about the nomination being released.
13. The Chief Ombudsman noted that individuals may be deterred from making nominations, or be less candid in giving reasons for doing so, if they thought they might be called upon to publicly justify their nomination. Release might also place nominees in a position where they felt morally obligated to their nominator (as they would not otherwise be aware who nominated them). The Chief Ombudsman said that, while there is a clear public interest in the disclosure of information related to Royal Honours, the overall public interest is not served by disclosing information that undermines that very system.

14. The Chief Ombudsman was therefore of the opinion that there was good reason under section 9(2)(a) of the OIA to withhold the information supplied by Sir Paul Collins and the individuals who supported his nomination.

Application of sections 9(2)(f)(i), (iv) and 9(2)(g)(i)

15. Sections 9(2)(f)(i), 9(2)(f)(iv) and 9(2)(g)(i) of the OIA apply:

... if, and only if, the withholding of the information is necessary to ...

- (f) maintain the constitutional conventions for the time being which protect ...*
 - (i) the confidentiality of communications by or with the Sovereign or her representative:*
 - (iv) the confidentiality of advice tendered by Ministers of the Crown and officials;*
- (g) maintain the effective conduct of public affairs through –*
 - (i) the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty.*

16. The Chief Ombudsman noted that the particular interest in preserving the confidentiality of the Honours process had been previously described by the (then) Clerk of the Executive Council, as follows:

Because Royal Honours are awarded by the Sovereign in an exercise of prerogative power, the process should be free as possible of litigiousness, recrimination and inappropriate comparison. The procedures and conventions should be such as to minimise debate as to whether or not any particular person should have received a Royal honour, or whether or not the kind or level of an honour actually granted was appropriate.

17. The Chief Ombudsman agreed that there is a presumption of a strong public interest in the protection of the Royal Honours process.
18. Having considered the nature and content of the remaining information at issue, the Chief Ombudsman was satisfied that it comprised advice and free and frank expressions of opinion that were tendered in confidence. She was satisfied that disclosure of the information would be likely to:
- a. undermine the constitutional conventions which protect:
 - i. the confidentiality of advice tendered by Ministers of the Crown and officials; and

- ii. the confidentiality of communications by or with the Sovereign or her representative;
 - b. inhibit Ministers or officials from expressing or recording the kinds of free and frank opinions that are necessary for the effective conduct of public affairs.
- 19. Having formed the opinion that sections 9(2)(f)(i), 9(2)(f)(iv) and 9(2)(g)(i) of the OIA applied to the remaining information at issue, the Chief Ombudsman went on to consider whether any public interest considerations favouring disclosure of this information outweighed the interests to be protected by withholding the information (see section 9(1) of the OIA).
- 20. The Chief Ombudsman was persuaded that there was a strong public interest in the provision of further information about the general process by which nominations for Honours are considered. However, this interest was met by the summary which DPMC had agreed to provide to the requester. This summary of the general process substantially addressed the public interest considerations favouring disclosure while, at the same time, properly protected the interests favouring withholding the information.
- 21. With the exception of the information included in the summary, it was the Chief Ombudsman's opinion that sections 9(2)(f)(i), 9(2)(f)(iv) and 9(2)(g)(i) of the OIA provided good reason to withhold the remaining information at issue. The Chief Ombudsman concluded that the greater public interest lay in maintaining the long-standing convention of confidentiality in relation to the processes associated with Royal Honours, which is essential to the integrity and continuation of the Royal Honours system.

Outcome

- 22. DPMC duly sent a summary of the Honours process to the requester.