

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 April 2024

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested from the Cabinet Office information related to honours for an actor and director Sir John Gielgud generated prior to 31 December 1962. The Cabinet Office initially refused the request citing section 14 (Vexatious requests) but following the internal review, it disclosed the information. The complainant contended that certain references in the information provided by the Cabinet Office made him believe that there might be more information within the scope of the request held by the public authority.
2. The Commissioner's decision is that, on the balance of probabilities, the Cabinet Office does not hold any more information within the scope of the request, or did hold at the time the request was made, and therefore it has complied with section 1(1) of FOIA.
3. The Commissioner does not require the Cabinet Office to take any further steps in relation to this complaint.

Request and response

4. On 29 May 2023 the complainant made the following request for information under FOIA for:

"I would like to submit a new request for information relating to honours for the late John Gielgud (aka Sir Arthur John Gielgud). Sir John who was born on 14 April 1904 was a celebrated actor and director who died on 21 May 2000.

You will recall that I submitted a previous request about Sir John back in 2021

I have drafted this new request taking into account the guidance and comments provided by both the Cabinet Office and the Information Commissioner (IC-135121-M9P8) in relation to that previous request.

In particular I have tried to ensure the request is more focussed and I have also provided some context why I am seeking the information.

I am trying to obtain any documents held by the Cabinet Office which deal with the issue of honours for John Gielgud. I am only interested in those documents which predate 31 December 1962, and which highlight and or in any way refer to Mr Gielgud's sexuality and or his private life and or his arrest for importuning on 20 October 1953. I am interested in whether politicians and or civil servants and or other figures involved in the honours process as well as third parties consulted as part of that process allowed matters related to John Gielgud's private life and or sexuality and or arrest impact on their decision making in any way.

My reference to The Cabinet Office in the questions below should be taken to mean The Cabinet Office, the relevant Honours committee (s), the Prime Minister's private office and any individual (s) known to have had any involvement with the processing of Honours recommendations for John Gielgud.

Please note that I am interested in information about all Honours for John Gielgud including those Honours which were rejected by Mr Gielgud and those which were suggested or recommended for Mr Gielgud but which for whatever reason were not proceeded with.

Please note that the documentation will include but not be limited to actual written recommendations for honours, records of previous honours recommendations, internal communications and external correspondence and communication with outside bodies and agencies including but not limited to the Home Office and the police.

Please note that I am only interested in information generated prior 31 December 1962.

1...Does the Cabinet Office hold a file or similar which contains information relating to Honours for John Gielgud.

If the answer is yes, can you provide copies of any documents within this file which predate 31 December 1962 and which highlight and or which in any way refers to his sexuality and or his private life and or his arrest on 20 October 1953.

2...Irrespective whether the Cabinet Office holds a file or not can it provide copies of any documentation held which relate to the issue of honours for John Gielgud. Please note that I am only interested in that documentation which predates 31 December 1962 and which mentions and or which in any way relates to his sexuality and or his private life and or his arrest on 20 October 1953."

5. The Cabinet Office responded on 26 June 2023 and refused to provide the requested information citing section 14(1) (Vexatious requests) of FOIA.
6. The complainant requested an internal review on 28 June 2023 disputing that his request was vexatious.
7. Following several requests from the complainant for updates about the internal review response, and subsequent complaint to the Commissioner on 28 October 2023, the Cabinet Office provided its internal review response on 19 December 2023.
8. In it the Cabinet Office revised its position. It decided that the request was not vexatious and provided information within the scope of the request.

Scope of the case

9. The complainant confirmed to the Commissioner that he remains dissatisfied with the way the Cabinet Office handled his request. Specifically, the complainant is dissatisfied with the length of time taken by the Cabinet Office to respond to his internal review request. He also believes that the Cabinet Office holds more information within the scope of his request than that already disclosed.
10. The Commissioner considers that the scope of his investigation is to decide whether, on the balance of probabilities, the Cabinet Office holds further recorded information within scope of the complainant's request, beyond that previously located and disclosed to him, and therefore whether it has complied with section 1(1) of FOIA.

Reasons for decision

Section 1 of FOIA – Information held / not held

11. Section 1 of FOIA states that:

- 'Any person making a request for information to a public authority is entitled –
- a. to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - b. if that is the case, to have that information communicated to him.'

14. The public authority is not obliged to create or acquire information in order to satisfy a request.

15. The Commissioner's role when determining whether a public authority has or has not complied with section 1(1) of FOIA, is limited to determining whether it is more likely than not that the public authority has provided all the recorded information it holds. The Commissioner is not required to challenge the accuracy or the adequacy of the recorded information a public authority does (or, in some cases, does not) hold. This is because the terms of FOIA only relate to the provision of information as it is recorded, regardless of its accuracy or validity.

16. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, and the civil standard of proof based on the balance of probabilities, must decide whether the public authority holds any information which falls within the scope of the request (or was held at the time the request was made). Or in the circumstances of this case, whether on the balance of probabilities the Cabinet Office has located all of the recorded information falling within the scope of this request.

The complainant's position

17. The complainant contended that the information he received from the Cabinet Office contained references which led him to believe that there might be more information within the scope of his request.

18. He specifically pointed to two documents with added hand-written annotations which could suggest that further relevant information did exist.

19. In relation to the first document, the complainant explained: "a document relating to the Birthday List of 1977 states: "was [John

Gielgud] the subject of special enquiries in 1949 and 1952. These proved positive". He then referred to the second document saying: "A separate document which relates to the decision to award him [John Gielgud] a Knighthood in the Queen's Coronation honours list refers to him being more discreet than (I can't read the next word) but still notorious".

20. The complainant explained that: "Those references underline the fact that Sir John's homosexuality and his private life were taken into consideration when honours were discussed."
21. He also added that the fact that the Cabinet Office initially branded his request vexatious, made him believe that there might be some further information that the Cabinet Office did not want to disclose.

The Cabinet Office's position

22. Following an internal review of its initial response, the Cabinet Office revised its position and decided that section 14 of FOIA was not engaged by this particular request and the information held within the scope was releasable to the complainant and, as a result, three documents were provided to him.
23. In response to the Commissioner's investigation about the searches conducted to determine whether any further information was held, the Cabinet Office explained that the Cabinet Office Honours and Appointments Team carried out electronic searches, which revealed some relevant information, namely the three documents referred to in the above paragraph, in a file related to an earlier FOI request submitted by the complainant 2012, which resulted in information being disclosed to him.
24. The Cabinet Office also explained that the Honours and Appointments Team also conducted checks of paper records for any retained information within the scope of the request, however, no information had been found.
25. In its submissions to the Commissioner, the Cabinet Office drew his attention to the fact that the annotations on the documents disclosed to the complainant state that the paper records were destroyed in line with the retention and disposal policy of the Cabinet Office.
26. The Cabinet Office further clarified that the information disclosed to the complainant was located and copied from the electronic file related to the complainant's request from 2012, referred to earlier, rather than in the filing system relating to the Honours nominations.

The Commissioner's view and reasoning

27. In reaching his decision, the Commissioner has taken account of the view put forward by the complainant. He has also considered the arguments provided by the Cabinet Office, including steps taken to check whether it holds any further information within the scope of the request and the explanations provided as to why the information is no longer held.
28. He has also had sight of the disclosed information, namely, the three documents located and copied from the file related to the complainant's earlier FOI request submitted in 2012.
29. The Commissioner notes the complainant's dissatisfaction with the responses from the Cabinet Office, and that the complainant considers that further information he requested may be held by the Cabinet Office. However, while the complainant may believe that the information might be held, the Commissioner has found no evidence which would suggest that this is the case.
30. In fact it is the Commissioner's view that the two documents referred to by the complainant which support his belief that further information within the scope of his request may be held by the Cabinet Office, provide evidence to the contrary.
31. The Commissioner examined both documents and concluded that whilst the annotation in the first document related to the Birthday List of 1977 which states that Sir John Gielgud was the subject of special enquiries in 1949 and 1952, this document also states that 'No papers kept', confirming that the information had been destroyed as explained by the Cabinet Office earlier.
32. With regard to the annotation in the second document referred to by the complainant and his reasoning for believing that further information may be held, the Commissioner finds that this is a mere speculation rather than sufficient evidence to support the probability that the information is held.
33. Consequently, based on the evidence available to him, the Commissioner is persuaded that, on the balance of probabilities, the Cabinet Office does not hold any more recorded information falling within the scope of the request and therefore is satisfied that the Cabinet Office has complied with the requirements of section 1(1) of FOIA in this case.

Other matters

Internal review response – time limit

34. As part of his complaint, the complainant expressed his dissatisfaction with the length of time taken by the Cabinet Office to respond to his internal review request.
35. Although FOIA does not contain a time limit within which public authorities have to complete internal reviews, the Commissioner's guidance¹ explains that an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.
36. In this case, the complainant requested an internal review on 28 June 2023. However, despite several emails asking for an update, the Cabinet Office did not respond until 19 December 2023, and therefore almost six months after the request was made and after the Commissioner accepted the substantive case for investigation.
37. The Commissioner notes that the Cabinet Office apologised to the complainant for the length of time it took to respond to his internal review request.
38. Nevertheless, he finds the delay in this case to be excessive and wishes to point out that he will consider complaints where the internal review is delayed and remains outstanding, as it happened in this case.

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

Right of appeal

39. 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

40. 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.
41. 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

Jonathan Slee
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Wycliffe House
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