

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 February 2024

**Public Authority:** House of Lords Appointments Commission  
**Address:** G/39 Ground Floor  
1 Horse Guards Road  
London  
SW1A 2HQ

#### **Decision (including any steps ordered)**

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1. The complainant submitted a request to the House of Lords Appointments Committee (HOLAC) seeking information about its guidelines and standard operating procedures for vetting and assessing nominees for life peerages. HOLAC confirmed that it held information falling within the scope of the request but considered this to be exempt from disclosure on the basis of sections 37(1)(b) (conferral of honours or dignities), 21(1) (information reasonably accessible to the applicant) and 40(2) (personal data). The complainant disputed the application of section 37(1)(b).
2. The Commissioner's decision is that the information falling within the scope of the request is exempt from disclosure on the basis of section 37(1)(b). However, for the majority of this information the public interest favours its disclosure. For a small minority of the withheld information the Commissioner has concluded that the public interest favours maintaining section 37(1)(b) and such information can be withheld by HOLAC.
3. The Commissioner requires HOLAC to take the following steps to ensure compliance with the legislation:

- Provide the complainant with the four documents identified in the confidential annex with the exception of the redactions specified in that annex.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Request and response**

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5. The complainant submitted the following request to HOLAC on 26 July 2023 seeking the following information:
- “1 The guidelines and standard operating procedures followed by the House of Lords Appointments Commission for vetting and assessing nominees for life peerages.
- 2 Any documented instances or protocols regarding the rejection of nominees for life peerages by the House of Lords Appointments Commission, and the reasons for such rejections.
- 3 Any policies or regulations that outline the authority and powers of the Prime Minister in the event that the Commission rejects a nominee for a lifetime peerage. I am particularly interested in understanding whether the Prime Minister has the capability to override the Commission's decision and, if so, under what circumstances and mechanisms.
- 4 Any communication or correspondence between the House of Lords Appointments Commission and the Prime Minister's office regarding the nomination and approval process for life peerages, especially concerning situations where the Commission has expressed reservations about a nominee.
- 5 Any documents, reports, or official communications that discuss the independence and impartiality of the House of Lords Appointments Commission in its role as an independent body responsible for assessing nominees for life peerages.”
6. HOLAC responded on 23 August 2023. In relation to part 1 of the request it explained that the information was exempt from disclosure on the basis of section 37(1)(b) of FOIA. In relation to part 2, HOLAC explained that it does not ‘reject’ nominees and directed the complainant to some information falling within the scope of this part of

the request that it considered to be exempt from disclosure on the basis of section 21(1) of FOIA as it was in the public domain. HOLAC also explained that further information in the scope of part 2 was exempt under sections 37(1)(b), 40(2) and 41(1) (information provided in confidence). In relation to part 3, HOLAC explained why it did not hold any relevant information. In relation to part 4, HOLAC explained that section 12 (cost limit) of FOIA applied. In relation to part 5, it explained that relevant information was in the public domain and therefore exempt from disclosure on the basis of section 21(1) of FOIA.

7. The complainant contacted HOLAC on the same day and explained that she accepted the response in relation to parts 2 to 5 of the request. However, she asked it to conduct an internal review in relation to its response to part 1 of the request.
8. HOLAC informed her of the outcome of the review on 7 September 2023. HOLAC upheld the application of section 37(1)(b) to the information in the scope of part 1 of the request and also explained that it considered section 40(2) to apply to some of this information.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 7 September 2023 in order to complain about HOLAC's decision to withhold information falling within the scope of part 1 of request, albeit she did not seek to contest the decision to withhold names of HOLAC staff should they be contained in the withheld information. The complainant's grounds of complaint in relation to section 37(1)(b) are set out below.
10. The complainant also explained that in her view the refusal notice failed to meet the requirements of section 17(1) of FOIA.
11. As part of his investigation, the Commissioner has established that HOLAC holds six documents which in his view fall within the scope of the request.
12. Two of these documents have been previously released by HOLAC, albeit in redacted form. The documents in question are a document entitled "GUIDANCE ON POLITICAL DONATIONS"<sup>1</sup> and a document entitled

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<sup>1</sup> <https://lordsappointments.independent.gov.uk/wp-content/uploads/2022/01/GUIDANCE-ON-POLITICAL-DONATIONS.docx-2.pdf>

"HOLAC process for vetting party political nominees"<sup>2</sup> which was released following an earlier decision by the Commissioner.<sup>3</sup> HOLAC explained that it considered the latter of these documents to be exempt from disclosure on the basis of section 21(1) of FOIA. The Commissioner notes that HOLAC has not previously provided the complainant with a link to this document – and therefore it is not necessarily the case that the information was reasonably accessible to her. As noted above, information contained in this document, along with the other published document "GUIDANCE ON POLITICAL DONATIONS", has been redacted.

13. HOLAC explained that it considered the four documents which had not been previously disclosed to be exempt in their entirety on the basis of section 37(1)(b) of FOIA. The Commissioner understands that HOLAC also considers the information redacted from both documents which are in the public domain (ie the documents contained at footnotes 1 and 2) to be exempt from disclosure on the basis of section 37(1)(b) of FOIA.
14. Therefore, this decision notice considers whether the information redacted from these two documents, along with information contained in the four documents which have been withheld in full, is exempt from disclosure on the basis of section 37(1)(b) of FOIA. Although HOLAC has argued that small parts of these documents are also exempt on the basis of section 40(2), as they contain the personal data of civil servants, the Commissioner has not considered the application of this exemption in view of the complainant's position set out above (see paragraph 9).

## Reasons for decision

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### **Section 37(1)(b) – the conferring by the Crown of any honour or dignity**

15. Section 37(1)(b) of FOIA states that information is exempt if it relates to the conferring by the Crown of any honour or dignity.
16. The complainant argued that it was important to draw a distinction between information about the conferral of honours, and the information sought by this request, namely internal procedures and guidelines used by HOLAC to evaluate and assess nominees for life peerages. The

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<sup>2</sup> [https://lordsappointments.independent.gov.uk/wp-content/uploads/2022/06/2020\\_01-HOLAC-FOI-Further-letter-Jan-2022-Annex-B.pdf](https://lordsappointments.independent.gov.uk/wp-content/uploads/2022/06/2020_01-HOLAC-FOI-Further-letter-Jan-2022-Annex-B.pdf)

<sup>3</sup> IC-42774-T8X3 <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/4022618/ic-42774-t8x3.pdf>

complainant argued that section 37(1)(b) is generally intended to safeguard the confidentiality surrounding the process of granting specific honours or dignities. However, the requested information does not revolve around the actual granting of life peerages but rather centres on the internal process employed by HOLAC for assessing and vetting nominees. She therefore did not accept that the withheld information fell within the scope of this exemption.

17. The complainant's position is an incorrect understanding of the application of this exemption. A peerage is a dignity conferred by the Crown, and the requested information concerns the process by which new peers are vetted, and therefore clearly falls within section 37(1)(b). This point is set out in the Commissioner's guidance on this exemption and has been accepted in a number of previous decision notices, including that referred to at footnote 3. The Commissioner is therefore satisfied that the withheld information is exempt from disclosure on the basis of section 37(1)(b) of FOIA.

### **Public interest test**

18. Section 37(1)(b) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest in disclosing the information**

19. The complainant provided the Commissioner with detailed submissions to support her view that the public interest favoured disclosure of the information. The Commissioner has summarised these submissions below: The disclosures of information already in the public domain about the vetting process do not contain details of the specific guidelines and standard operating procedures. These limited disclosures do not allow a comprehensive understanding of the procedures in place.
20. The complainant argued that without access to such information it is difficult for the public to understand the steps involved in vetting nominees for life peerages. The complainant argued that there was a clear public interest in HOLAC being transparent about the processes and procedures that it used as this would reassure the public that these were thorough and fair and that such appointments are made with the highest level of scrutiny.
21. For its part, HOLAC acknowledged that there is a clear public interest in the public understanding the process and protocols, in order that the public can feel confident that the outcomes of its vetting process are

robust. HOLAC also argued that it helps build confidence in the House of Lords, and the government as a whole, if people are assured that those individuals appointed meet a suitable standard of propriety.

#### Public interest in maintaining the exemption

22. HOLAC explained that whilst it endeavoured to make the process as transparent as possible, in its view some parts of how the process operates must remain confidential in order to maintain the integrity of the system and to ensure that decisions about peerages may continue to be taken on the basis of full and honest information. HOLAC argued that this allows those who offer opinions to do so freely and honestly, in confidence, on the understanding that their confidence will be honoured.
23. HOLAC also argued that providing a completely clear picture of all the processes could allow individuals that are being vetted to 'game the system', and find ways to inappropriately circumvent its assessment of their propriety.
24. HOLAC argued that it therefore has to balance putting sufficient policy and process information into the public domain to allow applicants to understand the requirements; against ensuring that the scope for nuanced and confidential judgements is retained.
25. HOLAC argued that given the information already available, and taking into account the content of the withheld information, it judged that the public interest favoured withholding the information to which it had applied section 37(1)(b) of FOIA.
26. With regard to the information already in the public domain, HOLAC cited the two documents referred to at footnotes 1 and 2. It also explained that in the last 18 months it had published the following documents on its website:
  - A letter to leaders of political parties about propriety and the standards of public life.
  - Guidance on crossbench applicants with previous political activity.
  - Its agreements with several of the vetting bodies with which it works. Public statements and letters on its role in relation to several high profile peerage appointments.
27. Furthermore, HOLAC explained that it had given public evidence to the Public Administration and Constitutional Affairs Select Committee on the following occasions in the last 18 months:
  - The then chair Lord Bew's evidence on political peerages in April 2022.

- Written evidence to the PACAC peerage appointments inquiry in September 2023.
  - The now chair Baroness Deech's confirmatory hearing evidence in October 2023.
  - A letter to PACAC about Lord Cameron of Chipping Norton's peerage in November 2023.
28. HOLAC accepted that some of these documents post-date the request, but argued that these publications demonstrate a sustained and ongoing commitment to transparency which is relevant to the assessment of the public interest test.
29. Finally, HOLAC disputed the complainant's main argument that the information previously disclosed is high level; rather in its view the information already in the public domain does provide information about specific guidelines and procedures.

### **Balance of the public interest test**

30. In reaching a decision as to the balance of the public interest in this case the Commissioner has followed the arguments and rationale in the previous decision notice referred to above. That decision notice concerned a request which sought information HOLAC used to vet political nominees. The information in question was withheld on the basis of sections 37(1)(b) and 21(1). Whilst the Commissioner accepted that the information was exempt from disclosure on the basis of section 37(1)(b), he concluded that the public interest only favoured withholding a small amount of information. This was on the following basis:

"26. The Commissioner considers that there is a strong public interest in being open and transparent about the nature and extent of the vetting process pursuant to conferring an honour or dignity in order to increase public confidence in the honours system. The withheld information would enhance rather than diminish any ongoing related debate. There is relatively little public interest in withholding the information.

27. Save for a relatively small proportion of the information, HOLAC has not persuaded the Commissioner, that release of the rest of the information would cause significant harm to the process.

28. The small proportion of the information that has been properly withheld are the types of media searches undertaken and the specific words utilised when media search checks are made to determine the propriety of a person for an award of an honour. It also includes the

figures specified in the guidance on political donations given within the withheld information.

29. The Commissioner reaches this decision as he considers that public knowledge of these specific words or figures would assist those who would seek to manipulate or otherwise contaminate the selection process, and this is clearly contrary to the public interest.”
31. In applying the same rationale to the information falling within the scope of this request the Commissioner also finds that only a small amount of information would genuinely risk disrupting HOLAC’s processes. Furthermore, the Commissioner remains of the view that there is a significant public interest in the release of information which would further aid the public’s understanding of HOLAC’s processes, even despite the additional information which has now been published since the date of the request which was the focus of the previous decision notice.
32. The Commissioner would also add that whilst it may be the case that some of the withheld information may not add significantly to the public’s understanding of HOLAC’s processes as it is similar to information already in the public domain, this is not a reason to withhold such information.
33. In addition, the Commissioner is not persuaded by HOLAC’s argument above (paragraph 22) that disclosure of information falling within the scope of this request risks undermining the confidence of those who offer opinions on particular nominations. The information in scope here is clearly only restricted to information about processes and procedures and not individual nominations. Whilst the Commissioner acknowledges the importance of discussions about individual nominations being free and honest, and that requires an element of confidentiality and trust, he does not accept that disclosure of information simply about procedures would suggest or imply to third parties that their contributions about individual nominations would be likely to be disclosed.
34. The Commissioner has therefore concluded that the public interest favours disclosure of the withheld information, save for a relatively small minority of the information for which he has concluded that the public interest favours withholding such information.
35. The Commissioner has set out in a confidential annex the information which he accepts HOLAC can withhold on the basis of section 37(1)(b). This because in order to identify which information he accepts can be withheld on the basis of this exemption, the Commissioner needs to refer to the content of the withheld information itself.



36. The Commissioner can confirm however that he is only requiring HOLAC to disclose redacted versions of the four documents which it has withheld in full. He does not require HOLAC to disclose less redacted versions of the two documents which it has already placed in the public domain, ie the documents identified at footnotes 1 and 2. This is because he is satisfied that the information redacted from these documents is exempt on the basis of section 37(1)(b) and that the public interest favours withholding this information. This is because, in line with the findings of the previous decision notice, the Commissioner accepts that disclosure of such information could allow for the manipulation of the certain aspects of HOLAC's vetting processes.

### **Procedural matters**

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37. Section 17(1) of FOIA requires that if a public authority is relying on an exemption to withhold information it must provide the requester which a notice stating so, and that such a notice must a) state that fact, b) specify the exemption in question, c) state, if not otherwise apparent, why the exemption applies.
38. The complainant argued that HOLAC's refusal notice fell short of this requirement of FOIA because, in her view, HOLAC's rationale for why the exemptions applied was not clear and moreover arguments relevant to one exemption were cited to support the use of other exemptions.
39. The Commissioner has considered HOLAC's refusal notice and disagrees with the complainant. In his view the notice meets the requirements of section 17(1) and provides a sufficient explanation as to why HOLAC considered the exemptions to apply.

## Right of appeal

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40. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**