

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2024

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

Decision (including any steps ordered)

1. The complainant submitted a request to The House of Lords Appointments Commission (HOLAC) seeking information it held relating to Ross Kempell and Charlotte Owen both of whom received peerages in Boris Johnson's resignation honours list. HOLAC confirmed it held information falling within the scope of the request but withheld this on the basis of sections 37(1)(b) (honours), 41(1) (information provided in confidence) and 40(2) (personal data) of FOIA.
2. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of section 37(1)(b) and that in all the circumstances of the case the public interest favours maintaining the exemption.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted a request to HOLAC on 5 July 2023 seeking the following information:

- "1. Copies of all material created between 6 September 2022 and the date of this request (5 July 2023) which relates to Ross Kempself.
2. Copies of all material created between 6 September 2022 and the date of this request (5 July 2023) which relates to Charlotte Owen."¹
5. HOLAC responded on 2 August 2023 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of sections 37(1)(b) (honours), 41(1) (information provided in confidence) and 40(2) (personal data) of FOIA.
 6. The complainant contacted HOLAC on 4 August 2023 and asked it to conduct an internal review of this refusal.
 7. HOLAC informed him of the outcome of the internal review on 4 September 2023. This upheld the application of the exemptions cited in the refusal notice.

Scope of the case

8. The complainant contacted the Commissioner on 11 September 2023 in order to complain about HOLAC's decision to withhold the information falling within the scope of his request. His grounds of complaint to support his position are set out below.

Reasons for decision

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

9. 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. A peerage is considered to be a dignity for the purposes of FOIA.
10. The Commissioner is satisfied the withheld information clearly falls within the scope of this exemption. This is because it relates to the vetting by HOLAC of the two individuals in question who were nominated

¹ The individuals named in the request received a peerage in Boris Johnson's Resignation Honours list which was published on 9 June 2023.
<https://www.gov.uk/government/publications/resignation-honours-2023>

for a peerage in Boris Johnson's resignation honours list. (The complainant also accepts that the withheld information falls within the scope of this exemption.)

Public interest test

11. However, 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 withheld information.

Public interest in disclosing the information

12. HOLAC acknowledged the importance of transparency in the peerage appointments vetting process that encourages the public interest and the public's awareness of how the peerage appointments are handled. It also acknowledged that there is a public interest in the workings of the peerage system.
13. For his part the complainant argued that the requested information concerns the appointment process and suitability of members of a legislative assembly – people who will be voting on laws, taking part in parliamentary debate, directly questioning ministers and so on. They will possess decision-making powers and political influence. The complainant argued that the process for giving certain individuals this role requires a special, very high degree of legitimacy in our society, as it involves determining who has the right to make important decisions and influence debate on behalf of society as a whole. In his view this requires maximum transparency, so that the process is both legitimate and seen to be legitimate, and the public can see for themselves that appropriate procedures and rules are followed.
14. In the circumstances of this case, the complainant argued that such factors attracted particular weight given the individuals in question. Firstly, their comparative youth meant they are likely to hold their decision-making and politically powerful roles for very many years, giving them power and influence for a much longer period than most of our legislators. Secondly, the widespread puzzlement and concern, of which HOLAC must be aware, as to what they have achieved, or what qualities they have demonstrated they possess, which could justify their appointment.
15. In response to HOLAC's counter arguments to the above (which are set out below) the complainant argued that it was wrong to attempt to narrow down his concerns and arguments. The complainant argued that issues of propriety are an important part of considerations for suitability

of the House of Lords and as a result are directly relevant to his case for disclosure of the information. The complainant also noted that HOLAC had highlighted that its role was advisory, but he did not consider that to be a valid or relevant reason against disclosure.

Public interest in maintaining the exemption

16. HOLAC argued that there is a strong public interest in protecting the confidentiality of the consideration of individuals and ensuring that the potentially sensitive vetting information can be candidly assessed. HOLAC also noted that it already places a great deal of information in the public domain about its working practices which it argued provides the public with reassurance that such processes are sufficiently rigorous.
17. With regard to the complainant's arguments as set out above, HOLAC argued that these touched on the suitability of nominees. However, the suitability and merit of political peerage nominees was not a matter that fell within its remit. HOLAC explained that it takes no part in assessing the suitability of those nominated by the political parties, which is a matter for the parties themselves. HOLAC explained that in the case of Resignation Lists, it is a convention that the suitability and merit are a matter for the nominating former Prime Minister. HOLAC's role is to advise the current Prime Minister if it has any concerns about the propriety of a nominee. HOLAC explained that the measures it uses to collate such advice are that i) the individual should be in good standing in the community in general and with the public regulatory authorities in particular, and ii) the past conduct of the nominee would not reasonably be regarded as bringing the House of Lords into disrepute.
18. HOLAC emphasised that it did not advise the Prime Minister whether an appointment may be justified on grounds of suitability or merit and that its advice is not binding. In the circumstances of this case HOLAC therefore argued that disclosure of the withheld information would be unlikely to meet the public interest arguments identified by the complainant. In contrast, it argued that confidentiality is important in order to protect the integrity of the system, without which the system could not function. HOLAC argued that such confidentiality ensures that those involved, including nominees, whether successful or not, can take part in the understanding that their confidences will be honoured and that decisions made are taken on the basis of full and honest information.

Balance of the public interest

19. The Commissioner accepts that it is clearly in the public interest that the public understand, and have faith in, the peerage appointments process. This includes understanding how HOLAC assesses nominations for

peerages as part of a Prime Minister's Resignation List. The Commissioner appreciates that HOLAC already places into the public domain significant information about the assessment process for such nominees. However, in the Commissioner's view disclosure of the withheld information in this case would provide a particular insight into how these processes were followed in respect of the two individuals in question.

20. The Commissioner is conscious that the two nominations in question were the subject of particular press and public interest as noted by the complainant. To some degree, the Commissioner can see that the public interest in the disclosure of information that HOLAC holds regarding these two nominations is therefore perhaps greater than in relation to the nominations of other individuals who received such peerages.
21. However, the Commissioner agrees with HOLAC that in assessing the public interest in disclosure it is vital to remember that its role is limited to assessing the propriety of those nominated, which involves the assessment of the factors set out at paragraph 17. The Commissioner appreciates the complainant's point that propriety could, and should, be seen as part of assessing an individual's suitability. Nevertheless, the Commissioner does not wish to enter into a semantical debate about the definition of the word "suitability". Rather, in his view the key point is that HOLAC's role in considering a Prime Minister's resignation list does not involve any assessment as to the merits of a particular individual's nomination. The press and public criticism and concern at the nomination (and elevation to the House of Lords) of the two individuals, can in the Commissioner's view, be fairly and objectively described as questions regarding whether they merited such an award. Given the limited role of HOLAC in assessing such nominations, the Commissioner does not consider that disclosure of the withheld information would provide any particularly useful input into this debate or issue.
22. With regard to the public interest in maintaining the exemption, the Commissioner accepts that for HOLAC's processes to operate effectively there has to be a degree of confidentiality around individual nominations and their assessments. This is to ensure that all relevant parties can contribute freely and fully to the process without fear that potentially sensitive information would be disclosed. The Commissioner accepts that disclosure of the information in the scope of the request would significantly undermine the confidentiality of the process, and in turn, HOLAC's ability to effectively conduct such assessments in the future. As a result the Commissioner considers there to be a significant public interest in maintaining the exemption, sufficiently so, that this outweighs the public interest in disclosure when taking into account the points that he has made above.

Right of appeal

23. 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

24. 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.
25. 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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Information Commissioner's Office
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