

# HOUSE OF LORDS APPOINTMENTS COMMISSION

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## BY EMAIL ONLY:

Our ref: 163

26 February 2016

Dear

## FREEDOM OF INFORMATION ACT – HOUSE OF LORDS APPOINTMENTS COMMISSION MINUTES

Thank you for your Freedom of Information (FOI) request, dated 2 November 2015, asking for the release of **the minutes of the Commission's meetings that do not appear currently on the Commission website**. I apologise that this reply has missed the 20-day deadline for responding to requests under the FOI Act. We have moved offices and changed IT systems during the period covered by this request and it has taken a bit of time to ensure that we had collated all the relevant information. I know that my colleagues have kept you updated on progress considering the request and hope that the delay has not inconvenienced you unduly. Thank you for your patience.

You asked specifically:

*Would the Commission be able to release the remaining minutes of its meetings? Specifically:*

*(a) the minutes from meetings held in 2000-2006 inclusive? (This part of the request would take into account the ruling of Rosenbaum v ICO and the House of Lords Appointments Commission, how it relates to minutes from 2005-6, and what should and should not be redacted in the minutes.)*

*(b) the minutes of the meeting held on 20 March 2013, which are currently missing from the Commission website.*

*(c) the minutes of any other Commission meeting since 2007 which are not already available on the website.*

### **Minutes of meetings held in 2000 to 2006**

In relation to part (a) of your request, I can confirm that we hold the full minutes of all but one of the Commission meetings held between 2000 and 2006. With the exception of the material outlined below, we are releasing this information to you under cover of this letter. You will see that some of the early minutes in 2000 were mis-numbered (the fifth, sixth and seventh meetings were incorrectly numbered fourth, fifth and sixth) and there were two meetings designated as the sixteenth. You will see that while the numbering of the fifth, sixth and seventh meetings were eventually corrected in manuscript (we believe in 2000), the second of the two sets of minutes numbered "16<sup>th</sup> meeting" was not, and the subsequent sequence has never been corrected.

We do not hold the full minutes of the 8 May 2001 meeting – the only version on file is one that has redactions to it. It is reasonably clear that the redactions at the beginning and end of the

#### **Members:**

Lord Hart of Chilton, Rt. Hon. Lord Howard of Lympne QC, Rt. Hon. Lord Kakkar (Chairman),  
Lord Low of Dalston, Professor Gillian Peele, Sir Malcolm Ross, Baroness Scott of Needham Market

document are the names of junior staff within the Secretariat. We would not normally redact these – and it is possible to speculate that many of the names will be the same as those attending the preceding and succeeding meetings. I have no means of telling what the information redacted at paragraph 9 refers to or judging whether, if I were considering the information for release now, I would have weighed the balance of public interest in favour of withholding or releasing.

I should note, in relation to the minutes of the 7 September 2001 meeting, that only two pages of this record exists, in hard copy, on our file. Unlike the other minutes, it does not end with the date of the minutes so it is possible that there may originally have been a third page, although it is equally possible that these are the complete minutes, as the final item dealt with on the second page is ‘Any Other Business’. Unfortunately it is not possible to confirm this either way.

The 7 September minutes include a reference to “minutes of the vetting meeting” but these are no longer held.

There is some information contained within the minutes that the Commission has concluded should be withheld under one or more of the exemptions provided in the FOI Act. I have explained below the nature of this information and the grounds on which it is being withheld from disclosure.

*Personally-identifying information relating to nominees for peerages*

The names and other personally-identifying information about the nominees themselves constitute personal data. Section 40(2) of the FOI Act allows public authorities to withhold personal data if disclosure would contravene any of the data protection principles listed in the Data Protection Act 1998. It is for the Commission to make a judgment in relation to whether the data protection principles would be contravened and the fairness of releasing data. If it would not be fair to the data subject to disclose their personal data, an absolute exemption from disclosure applies. Even if the disclosure of personal data might be fair in some individual cases, further consideration is then given to Schedule 2 and 3 of the Data Protection Act, including whether processing might be necessary for the purposes of legitimate interests.

The Commission undertakes to treat nominations in confidence, thereby creating a reasonable expectation that their names or similarly personally-identifying information, will not be released publicly. To release personally-identifying information (including their names) would therefore, in the Commission’s view, be unfair and would therefore contravene the first data protection principle. This view was accepted by the Information Commissioner’s decision in relation to a previous FOI request relating to HOLAC minutes (the case that ultimately led to the Tribunal referred to in your request). Personally-identifying information about nominees has therefore been withheld under section 40(2) and redacted in the minutes as released with this letter.

The Commission also believes that, even if the exemption in section 40(2) did not apply, this information is alternatively exempt from disclosure under section 37(1)(b) of the FOI Act (information relating to the conferring by the Crown of any honour or dignity), because the Commission’s discussion of these individuals relates exclusively to processes relating to the conferring by the Crown of a dignity. Section 37(1)(b) is, however, a qualified exemption. I have therefore balanced the public interest in maintaining the exemption against the public interest in disclosing the information.

In favour of disclosure, there is a strong public interest in knowing that the appointments process is accountable and transparent, and in maintaining public confidence in the system. In favour of

maintaining the exemption, there is a strong public interest in protecting the confidentiality of the consideration of individual nominees. It is in the public interest, and fundamental to the Commission's ability to fulfil its core purpose of nominating individuals to sit on the cross-benches of the House of Lords, that individuals of high professional standing are willing to nominate themselves or be nominated. It is unlikely that individuals would be willing to put their names forward if they could not rely on the Commission's confidentiality in handling their nomination or if they otherwise felt that their personal details or personally-identifying aspects of the Commission's consideration of their case would be put in the public domain.

Taking all of the relevant factors into consideration, including the fact that the Commission already places a great deal of information about its working practices in the public domain to reassure the public that these are sufficiently rigorous, I consider that the balance of the public interest lies in maintaining the section 37(1)(b) exemption in respect of the names of nominees and other personally-identifying information about them which has not already been put in the public domain by the Commission, the Government or the individual.

Some of this information is also withheld under Section 41(1)(b) (information provided in confidence), which allows public authorities to withhold information, the disclosure of which would give rise to an actionable breach of confidence. At the start of the vetting process the Commission informs nominees that any information provided by them and any information the Commission obtains in the course of its further enquiries of other bodies will be treated as confidential. The information therefore has the necessary quality of confidence and there is no overriding public interest that would allow it to be disclosed in breach of that confidence. Section 41 is an absolute exemption, therefore there is no requirement to consider whether the public interest in disclosing it outweighs the public interest in maintaining the exemption.

#### *Other personally-identifying information*

The names of Commissioners, Secretariat staff and others attending Commission meetings constitute personal data. As explained above, section 40(2) of the FOI Act allows public authorities to withhold personal data if disclosure would contravene any of the data protection principles).

For the most part, the Commission does not believe that disclosing the individuals' names would be unfair so as to contravene any of the data protection principles and the names are therefore released. There are two exceptions to this general principle of releasing names.

The first exception is the name of a junior legal adviser – which appears in the minutes for the meetings held on **16 January 2006**, **4 April 2006** and **4 October 2006**. The first of these instances was considered by the Information Commissioner in the case that preceded the Tribunal case referred to in your request. The Commissioner concluded then that the disclosure of that individual's name would be unfair and unlawful and should therefore be withheld under section 40(2) of the FOI Act. The Commission considers that the same considerations apply to the second reference to this junior legal adviser, and the name has therefore been withheld in the 4 April 2006 and 4 October 2006 minutes, also under section 40(2).

The second exception is a reference in the **19 March 2002** minutes of the to the name of the newborn baby of one of the junior members of staff within the Secretariat. The baby – and indeed her mother – would have had no expectation that the baby's identity would be released publicly. Its disclosure would, in the Commission's view, be unfair to the individual and would

therefore contravene the first data protection principle. The baby's name and that of its mother, as that is personally-identifying to the child, have therefore been withheld under section 40(2).

#### *Information supplied by referees or by vetting agencies*

The majority of the information supplied by referees (in respect of the Commission's nominations for cross-bench nominations) or vetting agencies (in respect of all nominees) is already caught by the exemption relating to personally-identifying information referred to above. Insofar as it is not, it is covered by section 37(1)(b) of the FOI Act (information relating to the conferring by the Crown of any honour or dignity), for example in the minutes of 16 November 2005, 6 December 2005 and 16 January 2006. Section 37(1)(b) is, however, a qualified exemption. I have therefore balanced the public interest in maintaining the exemption against the public interest in disclosing the information.

- In favour of disclosure, there is a strong public interest in knowing that the appointments process is accountable and transparent, and in maintaining public confidence in the system.
- In favour of maintaining the exemption in relation to this information, there is a strong public interest, given that those who are appointed take on a public role as a life member of the legislature, that the assessment of individuals (for cross-bench recommendations made by the Commission) and the vetting for propriety of nominees (both for appointment to the cross-benches and for political appointments) is done with access to all relevant information. The Commission needs to be able to ensure that those who provide information about particular nominees, including the nominees themselves, can do so frankly and without inhibition, thereby enabling decisions to be taken on the basis of the fullest possible information about the individuals concerned. Vetting agencies would be less likely to provide the level of information that the Commission needs if they could not feel confident that the information they provided would be treated in confidence. And individual referees would be less likely to provide frank views on a nominee if they felt that these views would be made public.

Taking all of the relevant factors into consideration including the fact that the Commission already places a great deal of information about its working practices in the public domain to reassure the public that these are sufficiently rigorous, I consider that the balance of the public interest lies in maintaining the exemption in respect of the information provided by referees and vetting agencies. This information has therefore been redacted from the copies of the minutes being disclosed in response to your request.

#### *Legal advice*

There are a few cases in the minutes where the Commission's legal advice is set out and referred to and section 42 of the FOI Act, which relates to legal professional privilege (LPP), is therefore engaged in relation to that information. The exemption in section 42 is subject to a public interest test.

LPP is a rule of litigation that protects, in general terms, confidential communications between lawyers and their clients. The Commission generally retains legal professional privilege over its advice, save where disclosure is appropriate pursuant to section 42 or as directed by the Information Tribunal, as detailed below. Where references to legal advice have been provided, that disclosure is specifically for the purpose of compliance with section 42 and does not amount

to a waiver of legal privilege more generally which the Commission retains over the legal advice contained within the minutes you have requested.

In relation to the minutes of the meetings held on **6 December 2005, 16 January 2006 and 9 March 2006**, the information disclosed and withheld follows the 2008 Tribunal ruling in *Rosenbaum v ICO and the House of Lords Appointments Commission*, as referred to in your request, and the earlier releases of information made in relation to those minutes. The Tribunal set out clearly its reasoning for upholding the Commission's decision not to disclose the withheld information and I have not repeated that assessment here.

In relation to the paragraphs listed below in the minutes of the meetings held on

26 June 2000 paragraph 6 (iii);  
23 July 2000 paragraphs 2, 4(i) & 6 (iii);  
1 September 2000 paragraphs 6, 7, 8, 9 & 17;  
30 October 2000 paragraphs 5, 7-9;  
23 November 2000 paragraph 4;  
9 January 2001 paragraphs 3 (title) & 8;  
16 February 2001 paragraph 14;  
26 February 2001 paragraph 5; and  
4 October 2006 paragraph 6;

each of them contains an account of the legal advice that was commissioned by or provided to the Commission on particular issues. As these engage section 42, I have therefore considered where the balance of public interest lies.

- In favour of disclosing the information, there is a public interest in the Commission being accountable for the quality of its decision-making. Transparency in the decision-making process and access to the information upon which decisions are taken can enhance accountability. Ensuring that decisions have been made on the basis of good quality legal advice may form part of that process.
- In favour of maintaining the exemption, it is in the public interest that the decisions taken by the Commission are taken in a fully-informed legal context, where relevant. The Commission needs high-quality, comprehensive legal advice for the effective conduct of its business. Without such comprehensive advice the quality of the Commission's decision-making would be much reduced because it would not be fully informed and this would be contrary to the public interest. Disclosure of legal advice has a high potential to prejudice the Commission's ability to defend its legal interests – both directly, by unfairly exposing its legal position to challenge, and indirectly by diminishing the reliance its can place on the advice having been fully considered and presented without fear or favour. Neither of these is in the public interest.

Taking these factors into account, and the fact that the Commission has already put a considerable amount of information about its workings into the public domain, and reflecting on how the Tribunal articulated its reasoning and conclusions in *Rosenbaum v ICO and the House of Lords Appointments Commission*, I consider that the balance of public interest, in relation to the information in question, lies in maintaining the exemption and withholding from disclosure the legal advice on these issues. The relevant text is therefore redacted from the minutes.

### Meeting scheduled for 20 March 2013

In relation to part (b) of your request we do not hold the information requested, as the meeting did not take place. The meeting on 21 November 2012 (the 74<sup>th</sup> meeting of the Commission) anticipated that the Commission's next meeting would be on 20 March 2013. In fact, the Commission did not meet on that date and the next (75<sup>th</sup>) meeting of the Commission took place on 9 May 2013.

### Minutes of meetings since 2007

In relation to part (c) of your request, all the minutes of the meetings held since 2007 are available on the Commission's website. The minutes of the meetings in 2007 and from 2012 onwards are at ([http://lordsappointments.independent.gov.uk/publications\\_and\\_forms.aspx](http://lordsappointments.independent.gov.uk/publications_and_forms.aspx)). The minutes for the meetings held between 2008 and 2011 were released in response to an FOI request – see <http://lordsappointments.independent.gov.uk/media/31918/foi%20responses%202012.pdf>, and scroll down till you reach the response dated 29 March 2012 attached to which are all the 2008 to 2011 minutes). Your request has helpfully highlighted the fact that this information is not displayed in an accessible or transparent way on our website and we will be addressing this in the coming months. Thank you for drawing our attention to this.

### Appealing this response

If you are unhappy with this response to your request, you may write to me to ask for an internal review by another person not involved with this request. Please note that we will not normally accept an application for internal review if it is received more than two months after the date that the reply was issued.

If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by HoLAC. The Information Commissioner can be contacted at:

The Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF

Once again, my apologies for the delay in responding to your request.

Yours sincerely,



**CLARE SALTERS**  
Secretary to the Commission

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Internet: <http://lordsappointments.independent.gov.uk>  
E-mail: [enquiry@lordsappointments.gov.uk](mailto:enquiry@lordsappointments.gov.uk)

18 August 2016

Dear [REDACTED]

Our ref 318

## FREEDOM OF INFORMATION ACT

Thank you for your email of 25 July and for your Freedom of Information Request.

2. You asked the House of Lords Appointments Commission (HOLAC) for the following information:

- a) details of any meetings or discussions between the House of Lords Appointment Commission and the former Prime Minister David Cameron in the last month;
- b) details of any meetings or discussions between the House of Lords Appointment Commission and No10/Cabinet office in the week prior to or since the resignation of the former Prime Minister David Cameron;
- c) copies of any letters or advice given to the former Prime Minister David Cameron in the last month;
- d) copies of all minutes of any such discussions that fall within the scope of my request.

3. I have consulted each member of the Commission and the Secretariat and can advise you that no information in respect of a, b, c and d above is held by HOLAC.

4. If you are not content with the outcome of this response, you may write to the Interim Secretary of the Commission, Mr Ekpe Attah, to request an internal review.

5. If you are not content with the outcome of the internal review you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

Yours sincerely

**CLIVE BARBOUR**

### Members:

Lord Hart of Chilton, Rt. Hon. Lord Howard of Lympne QC, Rt. Hon. Lord Kakkar (Chairman),  
Lord Low of Dalston, Professor Gillian Peele, Sir Malcolm Ross, Baroness Scott of Needham Market