HOUSE OF LORDS
APPOINTMENTS COMMISSION

Room G/40, 1 Horse Guards Road, London SW1A 2HQ
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Ref: HOLAC FOI 2022/25

25 November 2022

<REDACTED>
By email: **<REDACTED>**

Dear **<REDACTED>**

Freedom of Information Act

I am replying to your Freedom of Information request, which the House of Lords Appointments Commission (HOLAC) received on 15 November 2022.

You asked:

*May we know the formal advice-in outline/redacted form-regarding the appointment of **EVGENY LEBEDEV** to the House of Lords?*

I am writing to advise you that following a search of our paper and electronic records, we have established that the information you requested is held by the House of Lords Appointments Commission (HOLAC).

Some of the information in the scope of your request is being withheld under section 37(1)(b) of the Freedom of Information Act (information relating to the conferring by the Crown of any honour or dignity). The information you request 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 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. We believe the same consideration applies to political nominees who are vetted by the Commission.

Taking all of the relevant factors into consideration I consider that the balance of the public interest lies in maintaining the section 37(1)(b) exemption in respect to information 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 40(2) of the Freedom of Information Act. The name and other personally-identifying information about the nominee themselves, such personal information retained on documents and other identifiable information constitute personal data. Section 40(2) of the 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 HOLAC to make a judgement 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. HOLAC 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 would be unfair and would therefore contravene the first data protection principle.

Personally-identifying information about nominees has therefore been withheld under section 40(2).

Some of this information is also withheld under Section 41(1)(b) (information provided in confidence) which allows public authorities to withhold information where the disclosure of which would give rise to an actionable breach of confidence. At the start of the vetting process, the House of Lords Appointments 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 relating to nomination that is held by HOLAC 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.

In addition, some of the information in scope is exempt under section 23(1) of the Freedom of Information Act. Section 23(1) relates to information supplied by, or relating to, bodies dealing with security matters. Section 23 is an absolute exemption and therefore we are not obliged to consider the public interest in disclosure.

Some of the information in scope is also exempt under section Section 24(1) of the Freedom of Information Act. Section 24(1) relates to safeguarding national security.

Section 24(1) is a qualified exemption and is subject to public interest testing which means the information requested can only be withheld if the public interest in doing so outweighs the public interest in disclosure. The outcome of the public interest test concluded that there remains significant public interest in maintaining the effectiveness and integrity of the vetting process and how information is obtained through specified searches and sources.

Under section 23(5) & 24(2) of the Act, HOLAC neither confirms nor denies whether it holds any additional or other information that would be in scope of the type you have requested on the grounds that it would, if held (which is neither confirmed nor denied), be supplied by, or relates to, one of the security bodies listed under section 23(3) of the Act. Section 23 is an absolute exemption and HOLAC is not required to consider whether the public interest favours the confirmation or denial as to whether this information is held.

Under section 24(2) of the Act, HOLAC neither confirms nor denies whether it holds any additional or other information that would be in scope of the type you have requested on the grounds that it would, if held (which is neither confirmed nor denied), be required for the purposes of safeguarding national security. Section 24 is a qualified exemption and we have considered whether the balance of the public interest favours confirming or denying whether information of this type is held. There is a general public interest in openness in government, which may increase public trust in and engagement with the Government. However, we consider that there is a stronger public interest in neither confirming nor denying whether information of this type is held. We consider that the confirmation or denial as to whether information of this type is held would have the effect of damaging national security. Such an outcome would plainly not be in the public interest. We have therefore determined that the public interest is in favour of neither confirming nor denying whether information of this type is held.

If you are unhappy with this response to your request, you may write to the Secretary to the Commission, Alison Bennett, 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

Yours sincerely,

Secretariat to the House of Lords Appointments Commission