

**HOUSE OF LORDS**  
**APPOINTMENTS COMMISSION**

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Ref: HOLAC FOI IR/2023/02  
4th September 2023

By email: [REDACTED]

Dear [REDACTED]

Internal Review Reference: HOLAC FOI IR/2023/02  
(Original Case Reference: HOLAC FOI 2023/16)

**REVIEW OF REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000**

Thank you for your email of 4th August 2023. You asked for an internal review of our response to your request for information made under the Freedom of Information Act 2000 ('the Act'), dated 2nd August 2023. In your original request you asked for:

1. *Copies of all material created between 6 September 2022 and the date of this request (5 July 2023) which relates to Ross Kempzell*
2. *Copies of all material created between 6 September 2022 and the date of this request (5 July 2023) which relates to Charlotte Owen*

You have requested an internal review of the decision on the following grounds.

Section 37

1. *I accept that the material will fall within section 37, but I do not accept the outcome of your public interest test, which fails to take proper account of the information requested. The material under discussion 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 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. 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. I therefore believe the public interest favours disclosure.*

2. *This is particularly true in the case of the two individuals named in this request, given (a) their comparative youthfulness means 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, and indeed they are likely in due course to be amongst the longest-serving legislators who have ever held that role in the UK; and (b) 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.*

#### Section 40

3. *I accept that some of the information requested may be the personal data of certain individuals, but I do not accept this is a ground for refusing disclosure.*
4. *In my opinion disclosure is necessary to satisfy the extremely important legitimate interests of the general public to understand fully the processes for appointing people who take decisions and influence debate on behalf of the nation, and for the public to be able to see for themselves whether the processes are adequate and merit reassurance or modification.*
5. *I therefore believe disclosure would be both fair and lawful.*

#### Section 41

6. *I do not accept section 41 is relevant, given that disclosure can only constitute an actionable breach of confidence if it would be counter to the public interest. For the reasons I have already given above, I maintain that there are overriding public interests which favour disclosure.*

#### **Section 37 of the Act**

I have carefully reviewed the handling of your original request and I consider that the exemption at section 37(1)(b) of the Act was properly applied. I believe that the balance of the public interest was fully considered for the reasons set out in our previous letter. Having considered the public interest tests, we do appreciate the importance of transparency in the peerage appointments vetting process that encourages public interest, and the public's awareness of how the peerage appointments are handled. We also recognise that there is a public interest in the workings of the peerage system. While we acknowledge the weight of these public interest factors, I would maintain, however, that the public interest is in favour of withholding the information within scope of the request.

The Commission fully agrees with your view that scrutiny of peerage appointments is critical, given the role that peers then play in the public and parliamentary life of the nation. However, your arguments in favour of disclosure touch on the suitability of nominees ("*what they have achieved, or what qualities they have demonstrated they possess, which could justify their appointment*"). Suitability and merit of political peerage nominees is outwith the Commission's remit. The Commission plays no part in assessing the suitability of those nominated by the political parties, which is a

matter for the parties themselves. In the case of Resignation Lists, it is a convention that suitability and merit are a matter for the nominating former Prime Minister. The Commission's role is to advise the current Prime Minister if it has any concerns about the propriety of a nominee. The measures the Commission uses to collate that 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. The Commission does not advise the Prime Minister about whether an appointment may be justified on grounds of suitability or merit; and its advice is not binding on the Prime Minister. The Commission therefore considers that the legitimate public interest in peerage appointments is not, in this instance, best served through releasing material it holds in which other considerations are in play; and in which the focus of your public interest concerns is unlikely to be well addressed. Confidentiality is important in order to protect the integrity of the system and without which the system could not function. It ensures that those involved, including nominees submitted to the Commission (whether successful or otherwise), can take part in the understanding that their confidence will be honoured and that decisions made are taken on the basis of full and honest information.

#### *Section 40 of the Act*

I am further satisfied that the Commission has correctly determined that information within the scope of your request is exempt from disclosure under section 40(2) of the Act.

I have determined that information within the scope of your request constitutes personal data the disclosure of which would contravene any of the data protection principles and in particular, the requirement that the processing of data should be lawful, fair and transparent under Article 5(1) of the UK General Data Protection Regulation.

I note your view that:

*'...disclosure is necessary to satisfy the extremely important legitimate interests of the general public to understand fully the processes for appointing people who take decisions and influence debate on behalf of the nation, and for the public to be able to see for themselves whether the processes are adequate and merit reassurance or modification.'*

While I acknowledge a legitimate interest in the disclosure of the information requested, I do not consider that this outweighs the interests and rights of the individuals concerned. I am therefore satisfied that disclosure would not be lawful in this instance. I have also concluded that it would be neither fair nor transparent.

Section 40(2) is an absolute exemption, and is not subject to a public interest test. I am satisfied that it has been correctly applied in this case.

### *Section 41 of the Act*

I have also concluded that the Commission has correctly determined that the information you have requested is exempt from disclosure under section 41(1) of the Act on the grounds that it was obtained by the Commission from a person and that the disclosure of that information to the public would constitute an actionable breach of confidence.

The information that is provided to the Commission, including on resignation honours, is obtained from another person and with their consent, is shared with the Commission members. It is only on this basis that the information is shared. I am satisfied that such information has the necessary quality of confidence, was imparted in circumstances which imported an obligation of confidence and that the disclosure of the information would have been both unauthorised by the person confiding the information and would be detrimental to them. I am in no doubt that disclosure of the information would be a breach of confidence and that it would be actionable in the courts. I also consider that any court action brought against the Commission would be likely to succeed.

While I acknowledge that there is a public interest defence to a breach of confidence, I do not consider that, in this instance, breaching the confidentiality that exists in relation to the information would be proportionate in the pursuit of the public interest which you have identified.

### *Summary*

I have concluded that the exemptions detailed in our previous response have all been correctly applied.

If you are unhappy with the handling of your request for information 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,



**Secretariat to the House of Lords Appointments Commission**