

**HOUSE OF LORDS
APPOINTMENTS COMMISSION**

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Ref: HOLAC FOI
2020/4

14 August 2020

By email: <REDACTED>

Freedom of Information Act

I am replying to your Freedom of Information request, which the House of Lords Appointments Commission (HOLAC) received on 4 August 2020.

You asked:

- 1. Please send me full minutes and all other records held of business at Commission meetings since 29 October 2019 relating to*
 - (a) discussion of Dissolution Peerages*
 - (b) discussion of other Peerages*

- 2. Please send me copies of all papers prepared for or considered at Commission meetings since 29 October 2019 relating to*
 - (a) Dissolution Peerages*
 - (b) other Peerages*

- 3. Please send me copies of all communications since 29 October 2019 between Lord Bew and the HOLAC secretariat relating to*
 - (a) Dissolution Peerages*
 - (b) other Peerage*

In response to question 1, the information requested falls under section 22(1) of the Freedom of Information Act. Section 22(1) protects information intended for future publication. Section 22 is a qualified exemption and I have considered whether the balance of the public interest favours maintaining the exemption.

The Act recognises the desirability of information being freely available but acknowledges that there must be some freedom for organisations to determine their own publication timetables, which allows for the necessary preparation and administration to take place. The exemption of Section 22 requires the Cabinet Office to weigh the interests of the public in the context of timing of publication. The

public interest against disclosure is that the HOLAC is independent of the Government and therefore has some discretion to determine its preferred publication timetable and format for releasing information about its work. The public interest in favour of immediate disclosure is to give information about the discussions relating both to dissolution peerages and other peerages.

There is a firm intention to publish these minutes shortly on the HOLAC website. We have therefore concluded that the public interest is best served by withholding the information.

In response to your questions 2 and 3, I consider that section 37(1)(b) of the FOI Act (information relating to the conferring by the Crown of any honour or dignity) applies. 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 in the public interest, and fundamental to the Commission's ability to fulfil its core purpose of nominating individuals to sit on the crossbenches 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 withheld under Section 40(2) of the FOI Act. 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.

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, 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.

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

Secretariat to the House of Lords Appointments Commission