

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 February 2016

**Public Authority:** Advisory Committee on Business Appointments

**Address:** G/08  
1 Horse Guards Road  
London  
SW1A 2HQ

#### Decision (including any steps ordered)

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1. The complainant has requested correspondence between the Advisory Committee on Business Appointments ('ACOBA') and Mr Tony Blair and his representatives from July 2005 to July 2009.
2. The Commissioner's decision is that ACOBA has appropriately applied the exemption at section 36 of the FOIA.
3. The Commissioner does not require the public authority to take the any steps to ensure compliance with the legislation.

#### Request and response

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4. On 19 February 2015, the complainant wrote to ACOBA and requested information in the following terms:  

"Would you please provide me with copies of all correspondence, or records of oral conversations, between Acoba and Tony Blair/Mr Blair's representatives, in the period from July 2005 to July 2009."
5. ACOBA responded on 30 March 2015. It refused to provide the requested information citing the exemptions at section 36 and 40 of the FOIA.
6. Following an internal review ACOBA wrote to the complainant on 28 July 2015 maintaining its original position.

## Scope of the case

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7. The complainant contacted the Commissioner on 28 July 2015 to complain about the way his request for information had been handled. He explained his consideration that :

“...there is a great deal of public interest in any commercial intentions that Mr Blair expressed to officials at the time that he left government and the years afterwards.

He has since been accused of a lack of transparency in his business dealings, with some MPs having expressed concern that he should be able to carry out paid work for foreign governments such as Abu Dhabi, Kazakhstan and Kuwait given the knowledge and contacts he acquired as prime minister.”

8. The Commissioner considers that the scope of his investigation is to determine whether ACOBA is entitled to rely on sections 36 and 40 as a basis for refusing to provide the withheld information.

## Reasons for decision

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### Section 36 - Prejudice to effective conduct of public affairs

9. Section 36(2)(b) provides that –

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –

(b) would, or would be likely to, inhibit-

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”

10. Section 36 can only be engaged if, in the reasonable opinion of the qualified person, disclosure would result in any of the effects set out in section 36(2) of the Act.
11. ACOBA informed the Commissioner that after receiving advice from its legal advisor a submission was provided on 17 March 2015 to Baroness

- Browning, the Chair of the Committee, as the qualified person. The submission comprised the draft response to the complainant. Before giving her opinion Baroness Browning visited the Committee Secretariat's office on 24 March 2015 to read all of the information in the scope of the request. She gave her opinion verbally at that time. The Commissioner is satisfied that Baroness Browning was an appropriate qualified person for the purposes of the exemptions at sections 36(2)(b) and (c).
12. The next step in determining whether the exemption is engaged is to consider whether the opinion of the qualified person was reasonable. The Commissioner's guidance explains that the opinion does not have to be one with which the Commissioner would agree, nor the most reasonable opinion that could be held. The opinion must be in accordance with reason and not irrational or absurd.
  13. The qualified person accepted the recommendation provided by ACOBA that the exemptions at sections 36(2)(b) and (c) should be relied upon to withhold the requested information. She agreed with the reasoning set out in the response to the complainant which reflected legal advice received from ACOBA's legal advisor in the Government Legal Department. That being, disclosure of the information would be likely to inhibit the free and frank provision of advice and exchange of views between ACOBA and its applicants and consequently this would be likely to prejudice the effective conduct of public affairs through the negative impact on public administration created if applicants were deterred from cooperating with the consultation procedure in place.
  14. The Commissioner has reviewed the withheld information which comprises the Secretariat's report to ACOBA of discussions between it and the Office of Tony Blair ('OTB') concerning Mr Blair's potential activities and correspondence from OTB seeking advice on various matters relating to Mr Blair's prospective appointments.
  15. After reviewing the withheld information the Commissioner is satisfied that it was reasonable for the qualified person to conclude that section 36(2)(b) and (c) applied to it. The Commissioner accepts that as Chair of ACOBA the qualified person is fully aware of the requirement for applicants to voluntarily cooperate with ACOBA. It is reasonable to conclude that any disclosure which may limit that cooperation would be likely to prejudice the function of ACOBA and the transparency of the activities of former Ministers.
  16. As a qualified exemption, section 36 is subject to a public interest test. Having accepted that the opinion of the qualified person that prejudice would be likely to result from disclosure of the information, the Commissioner must then consider whether the public interest in

disclosure is equal to or outweighs the concerns identified in the opinion of the qualified person.

## **Public Interest Test**

### **Arguments in favour of disclosure**

17. The complainant explained his view to the Commissioner as set out in paragraph 7 above.
18. In its responses to the complainant ACOBA acknowledged that there is clearly a public interest in transparency thereby ensuring public confidence in public authorities' operations. It went on to explain that it is for this reason that ACOBA publishes, on its website and in its annual reports, its final advice on applications made to it, including the factors taken into account.

### **Arguments in favour of withholding the information**

19. ACOBA explained to the Commissioner that its role and remit is that of an advisory body. It is not a statutory authority and does not have the power to compel applicants to co-operate with it. Consequently it relies on having a safe space to discuss prospective outside appointments with applicants or applicants' representatives in advance of any public announcement. It considers that if applicants could not feel confident that ACOBA would maintain the confidentiality of their information, there would be a negative effect on future applicants' willingness to consult and co-operate with ACOBA.
20. In this regard the Commissioner further investigated the role of ACOBA. He determined that its role is not to 'approve' posts, nor does it reject or accept applications. Its remit is to provide advice and in the case of former ministers, advice to them directly. The advice is published on its website once an appointment has been taken up or announced. Although its website states that former ministers must seek advice from ACOBA about any appointments or employment they wish to take up within two years of leaving office, and abide by that advice, neither ACOBA nor the Government audits or enforces compliance with this instruction.

### **Balance of the public interest**

21. The Commissioner has considered at length the arguments for and against disclosure. In accordance with his guidance the Commissioner has focussed on the concept of a 'chilling effect' inhibiting free and frank future discussions between ACOBA and its applicants. The Commissioner acknowledges that disclosure of the content of such discussions creates a real risk of a chilling effect in terms of how

applicants choose to share information with ACOBA in the future. In acknowledging this risk the Commissioner accepts that this would be likely to have a negative impact on ACOBA performing its role. ACOBA relies on applicants voluntarily seeking its advice, if that advice is subsequently disclosed outside of the routine disclosure on ACOBA's website, applicants may choose not to seek its advice or to restrict their discussions resulting in less transparency.

22. The Commissioner considers that there is a strong public interest in ACOBA having the ability to perform its function effectively. Without this function the outside appointments of former ministers and crown servants would not be subject to independent scrutiny or would be subject to less rigorous scrutiny which would potentially result in greater public concern or criticism, whether justified or unjustified.
23. The complainant highlighted accusations against Mr Blair for a lack of transparency in his work with foreign governments (as set out in paragraph 7). However, the Commissioner notes that former ministers are only instructed to consult with ACOBA for two years after leaving office. The complainant's request focuses on information relating to the period 2005 – 2009. Mr Blair left office in June 2007 consequently the relevant period of consultation with ACOBA was 2007 – 2009. Some of the work referenced by the complainant in paragraph 7 did not commence until outside of this timeframe.
24. The Commissioner acknowledges the controversy surrounding Mr Blair's work since leaving office which has been comprehensively covered in the media. Although the Commissioner considers that this carries weight in favour of disclosing the requested information, the information covers limited activities. Consequently the withheld information is limited to that information still held by ACOBA within the timeframe of the request. Some information may have been destroyed in accordance with its retention policy.
25. The Commissioner notes that ACOBA proactively publishes the advice it has given and in this respect he considers that ACOBA is demonstrating transparency in its function.
26. Having reviewed the withheld information the Commissioner considers that the information demonstrates that ACOBA is following its procedures as set out in the flowchart detailed on its website. The Commissioner acknowledges that disclosure of this information could enhance confidence in ACOBA's system of operation.
27. The Commissioner has deliberated on the significance of this request focussing on Mr Blair rather than on any other government minister. To some extent, information relating to Mr Blair as a former prime

minister is a special case. As referenced in paragraph 23 there has been, and continues to be, public interest in Mr Blair's appointments which continue to attract controversy and media attention.

28. The Commissioner has concluded that there is significant weight both in favour of disclosure and in favour of withholding the requested information. On balance he is satisfied that the public interest is best served by withholding the requested information. He considers that the public interest in ensuring that former ministers are able to be confident that they have a safe space to hold free and frank discussions with ACOBA and therefore to enable ACOBA to advise them appropriately, aids transparency and maintains a degree of control. The information subsequently published on ACOBA's website provides access to information which would be otherwise unavailable. The Commissioner has therefore decided that the exemptions at sections 36(2)(b) and (c) have been correctly applied and the public interest favours maintaining the exemptions.
29. Having found that the withheld information is exempt under sections 36(2)(b) and (c), the Commissioner has not gone on to consider the additional application of section 40(2).

## Right of appeal

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30. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. 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** .....

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**