

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 01 December 2021

Public Authority: HOUSE OF LORDS APPOINTMENTS COMMISSION

Address: Room G/40,
1 Horse Guards Road,
London
SW1A 2HQ

Decision (including any steps ordered)

1. The complainant has requested information regarding the steps undertaken, by the House of Lords Appointments Commission to vet political nominees for awards.
2. The House of Lords Appointments Commission relied on section 37(1)(b) to withhold the requested information.
3. The Commissioner's decision is that House of Lords Appointments Commission incorrectly relied on section 37(1)(b) to withhold the majority, but not all, of the withheld information.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with the withheld information except for the type of media searches undertaken and the specific words utilised when media search checks are made to determine the propriety of a person for an award of an honour; and, the figures specified in the guidance on political donations given within the withheld information.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 19 January 2020, the complainant requested information by saying as follows.

“Please can you disclose, in an electronic format, any handbook, manual or other document setting out the details of the steps you undertake to vet political nominees.

If not covered by the above disclosure, please also disclose:

1. A list of 'relevant government departments' with which you check
 2. A list of 'agencies and other organisations' with which you check
 3. Any recorded information you hold setting out how the 'media search' is undertaken, e.g., which media outlets you review and how you search them
 4. Any recorded information you hold setting out how findings of these checks and searches will be assessed and what happens where concerning material is found”.
7. On 7 February 2020, House of Lords Appointments Commission (“HOLAC”) responded, it refused to provide the requested information and cited the following exemptions as its reason for doing so.
- Section 37(1)(b) (the conferring by the Crown of an honour or dignity)
 - Section 21(1) (information reasonably accessible by other means).
8. The complainant requested an internal review on 7 February 2020. The HOLAC sent him the outcome of its internal review on 4 March 2020. It upheld its original position.

Scope of the case.

9. The complainant contacted the Commissioner on 17 June 2020 to complain about the way his request for information had been handled. In particular he complained that they have wrongly applied section 37 (and also that the public interest was in favour of disclosure).

10. On 8 December 2020, the HOLAC provided further information that the complainant had requested. Namely, non-exhaustive details of government departments and organisations it may approach when vetting candidates for the awarding of honours.
11. The HOLAC provided substantive submissions to the Commissioner on 5 November 2020 and provided him with a copy of the purported withheld information on 8 December 2020. However, it appeared to the Commissioner that some of this withheld information actually post-dated the complainant's request for information. Accordingly, on 24 March 2021 the Commissioner contacted HOLAC for an explanation and/or clarification of this apparent anomaly.
12. After further exchanges of correspondence, the HOLAC on 19 May 2021, provided the Commissioner with a copy of the actual withheld information. That being the requested information that was actually held by the HOLAC at the time of the request. The HOLAC confirmed that the copy of the two documents provided were the "only things available to the Commission at the time of the FOI request".
13. In light of the HOLAC providing this information, the Commissioner on 17 June 2021 asked the HOLAC if it wished to make any new submissions. On 29 June 2021, HOLAC stated it had re-considered the public interest test but there was no change in its position.
14. The above factors contributed to the delay in issuing this decision notice.
15. The Commissioner considers he has to determine whether the HOLAC correctly relied on section 37(1)(b) to withhold the requested information from the complainant.

Reasons for decision

Section 37(1)(b) – the conferring by the Crown of any honour or dignity

16. Section 37(1)(b) of FOIA states that information is exempt if it relates to the conferring by the Crown of any honour or dignity. As the complainant is seeking information regarding the vetting process for political nominees for awards/honours the exemption is clearly engaged.
17. However, section 37(1)(b) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances

of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information

House of Lords Appointment Commission's Submissions.

18. On 29 June 2021, HOLAC stated to the Commissioner that it continued to rely on the below submissions, that were first made to him on 5 November 2020.
19. There is enough information already in the public domain to allow interested parties to gather a full picture of the process around vetting of political nominees. The release of handbooks or information sheets designed for use by Commission members is not in the public interest. They simply provide fuller administrative guidance that is not necessary in order for the process to be understood by members of the public. The Commission has sought to give an outline of the process on its website and in particular to emphasise that there is a common minimum standard of vetting which takes place for every peerage nominee considered by the Commission. It further notes that it has given some weight to the fact that it may be helpful to the vetting process to enhance public understanding of what processes are followed when vetting a potential peer.
20. However – as referenced above - beyond that basic minimum, the types of check and information which may be required can vary quite considerably depending on the individual and their circumstances. Guidance documents are not able to cover the breadth of what further work this process might entail and therefore would add no particular additional weight to the public's understanding of the vetting process.
21. It believes that the public interest inherent in section 37(1)(b) is the protection and preservation of the integrity and robustness of the peerage appointments system. It does understand though that section 37(1)(b) is not an absolute exemption. However, in this case for the reasons above, it considers the public interest continues to favour withholding the information. It makes the distinction between knowledge about the process, asked for here, and information about the outcomes of that process in specific cases. It acknowledges that the application of the public interest in respect of knowledge of the process is higher than for information about the outcome in specific cases, where broader considerations of confidentiality inevitably apply.
22. Nonetheless, it continues to believe that it is important to protect such information, both in and of itself for confidentiality of the detail of the process; but also, so that such information cannot be used unscrupulously by those who might wish to circumvent or lessen the efficacy of the vetting process.

23. It therefore does not consider that disclosing the information in scope is necessary for the purposes of informing the public debate or anyone's legitimate interests given the clear expectations of confidentiality that surround the withheld information.
24. The Commissioner is not persuaded that, on balance, in all the circumstances of the case the public interest favours maintaining the exemption for the majority of the withheld information.
25. As noted by the HOLAC itself, the withheld information is concerned with the process for vetting political nominees. It describes in general who should be contacted and what should be used to determine a person's propriety for an award.
26. The Commissioner considers that there is a strong public interest in being open and transparent about the nature and extent of the vetting process pursuant to conferring an honour or dignity in order to increase public confidence in the honours system. The withheld information would enhance rather than diminish any ongoing related debate. There is relatively little public interest in withholding the information.
27. Save for a relatively small proportion of the information, HOLAC has not persuaded the Commissioner, that release of the rest of the information would cause significant harm to the process.
28. The small proportion of the information that has been properly withheld are the types of media searches undertaken and the specific words utilised when media search checks are made to determine the propriety of a person for an award of an honour. It also includes the figures specified in the guidance on political donations given within the withheld information.
29. The Commissioner reaches this decision as he considers that public knowledge of these specific words or figures would assist those who would seek to manipulate or otherwise contaminate the selection process, and this is clearly contrary to the public interest.

Right of appeal

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@justice.gov.uk
Website: 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
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