

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 26 September 2011

Public Authority: Office of the Advisory Committee on Business Appointments

Address: 35 Great Smith Street
London
SW1P 3BQ

Decision

1. The complainant requested from the public authority the minutes of each meeting it held since May 2009. It withheld some of the requested information on the basis of the exemptions contained in sections 36 (2)(b) and (c) and 40 of the Act. The Commissioner finds that the public authority had correctly relied upon section 40 and therefore he did not need to consider its reliance on section 36 (2) (b).

Background

2. The Advisory Committee on Business Appointments ("ACOBA") describes itself as -

" an independent body which provides advice to the Prime Minister, the Foreign Secretary, or other Ministers if requested, on applications from the most senior Crown servants who wish to take up outside appointments within 2 years of leaving Crown service.

The Committee also acts as a joint body providing advice directly to former Ministers of the UK Government, the Scottish Government and the National Assembly for Wales, about any appointments they wish to take up after leaving office"¹.

¹ <http://acoba.independent.gov.uk/>

Request and response

3. On 12 January 2011, the complainant requested from the ACOBA the following information
 - The minutes of each meeting held by the Advisory Council on Business Appointments since May 2009.
4. ACOBA provided its substantive response to the complainant on 4 March 2011 in which it disclosed the majority of the information requested but withheld the remainder of the information on the basis of the exemptions contained in sections 36 (2)(b) and (c) and 40 of the Act.
5. The complainant requested an internal review of ACOBA decision on 10 March 2011. On 7 April 2011 ACOBA wrote to him with the details of the result of the internal review it had carried out. It decided that further information would be released to him. However it still retained information in the minutes of 10 June, 21 July, 9 December 2009 and 16 June 2010 again relying on sections 36 (2)(b) and (c) and 40 of the Act to do so.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He disputed the withholding of the remaining information; the Commissioner consequently undertook to investigate whether this information was correctly withheld under the Act.

Reasons for decision

7. The withheld information consists of the detailed records of case meetings with applicants regarding appointments and the terms of those appointments they wished to take up on leaving their Crown service. (ACOBA routinely publishes its final advice, the name of the applicant and details of the appointment when an individual has taken it up.)²

² http://acoba.independent.gov.uk/former_crown_servants_appointments.aspx

8. Section 40(2) of the Act specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first and most relevant principle of the Data Protection Act 1998 (the 'DPA') states that personal data must be processed fairly and lawfully and in accordance with certain conditions for processing which are set out in Schedules 2 and 3 of the DPA.

9. Section 1(1) of the DPA provides the following definition of personal data:

"'personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."

10. As stated above there are two criteria that must be fulfilled for information to constitute personal data. The information must relate to an individual, and that individual must be identifiable either from that information directly, or from that information combined with other information available to the holder of that information.

11. The Commissioner is satisfied that the information requested by the complainant is personal data within the meaning of section 1(1) of the DPA as it is data which clearly relates to living individuals who are identifiable from that information.

12. The Commissioner has first considered whether disclosure would be fair. In considering whether a disclosure is fair under the first principle of the Data Protection Act 1998 for the purposes of section 40, it is useful to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency.

13. ACOBA state that releasing the information would be unfair as the applicants had provided the information in confidence and therefore it should not be disclosed without consent.

14. The Commissioner notes that the information relates to what outside appointments senior Crown servants wish to take up within 2 years of leaving Crown service and the terms of those appointments. The

public authority states that it only routinely releases information (see paragraph 7 above) when it is informed that the appointment or employment has been taken up (or announced)³. The information it does release is a substantial précis of the information it does hold, confirming only the salient details of the appointment and conditions thereto attached. This sharply contrasts with the withheld information, which is more discursive in nature and contains a person's considerations of various future career options and business relationships. The withheld information also sharply contrasts with the information which was disclosed to the complainant (see paragraphs 4 and 5 above) which did not contain personal data and focuses on rules and ministerial guidelines in relation to appointments.

15. The Commissioner is of the view that the applicants, upon leaving the service of the Crown, would not expect these detailed discussions with or by ACOAB to be the subject of public dissemination. While accountability and transparency in government are undoubtedly factors which add weight to the argument for disclosure, what these soon-to-be former senior Crown Servants intend to do after their role in government ceases are matters that they likely consider to be prima facie confidential between themselves and the Crown. As such, they are entitled to privacy unless they wish otherwise and it would be unfair if their privacy was disregarded in the absence of their consent. As such, disclosure would contravene the first data protection principle of the DPA. The Commissioner therefore finds that ACOAB were correct to rely on section 40 (2) to withhold requested information, which is substantially more discursive and personal than its précis that the public authority subsequently releases.
16. Given the Commissioner's view that disclosure would be unfair, he did not go on to consider whether any of the aforementioned DPA conditions for processing could be satisfied.
17. Similarly, the Commissioner did not go on to consider the applicability of section 36 (2)(b).

³ http://acoba.independent.gov.uk/former_crown_servants_appointments.aspx

Right of appeal

18. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

19. 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.
20. 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

Alexander Ganotis
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