



OFFICE OF THE ADVISORY COMMITTEE ON BUSINESS APPOINTMENTS

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Telephone: 020 7271 0839

Email: acoba@acoba.gov.uk

Website: <http://www.gov.uk/acoba>

24 August 2018

By email:

Dear

I am responding to your request for information under the Freedom of Information Act 2000 (the Act) which we received on 31 July 2018.

You requested:

1. *'All internal correspondence and communications held by ACOBA that mentions, or refers to, Boris Johnson, from 01 July 2018 to the day this request is processed.'*
2. *'All external correspondence and communications held by ACOBA that mentions, or refers to, Boris Johnson, from 01 July 2018 to the day this request is processed. I expect this would also include correspondence and communications between ACOBA and Mr Johnson.'*

Background

ACOPA is independent from Government and its role is to provide advice on applications submitted under the Government's Business Appointment Rules (the Rules). In doing so it considers the risks posed by an application and advises on the conditions that should apply. It is not ACOBA's role to pass judgement on the appointment/ employment with regards to other matters.

The Rules for former Ministers seek to counter suspicion that:

1. the decisions and statements of a serving Minister might be influenced by the hope or expectation of future employment with a particular firm or organisation; or
2. an employer could make improper use of official information to which a former Minister has had access; or
3. there may be cause for concern about the appointment in some other particular respect.

Response

I can confirm that ACOBA does hold relevant information relating to this request.

The Chair of the Committee, Baroness Angela Browning (the 'qualified person' for the Committee for the purposes of Section 36 of the Act) considered that the information you have requested is caught by Section 36(2)(b)i, (b)ii and (c) of the Act, as disclosure of it would be likely to inhibit the free and frank provision of advice and exchange of views; and would be likely to prejudice the effective conduct of public affairs.

I will explain below why the information is being withheld under this exemption. However, I will first outline what information is already available to you in relation to your request.

Publicly available information

The letter published on the website details: the description of Mr Johnson's role at *The Telegraph*; the timing of his application to ACOBA and its retrospective nature; the relevant sections of the Ministerial Code and the Rules; ACOBA's view - that it was unacceptable the Rules were not followed in this instance; ACOBA's refusal to provide advice for this reason; information received from the FCO about the application; and the steps Mr Johnson volunteered to take, including adding a clause to his contract which precludes him from using privileged information.

I have attached this letter for information.

Consideration under Section 36(2) (b) and (c) of the Act (prejudice to the effective conduct of public affairs)

Guidance from the Information Commissioner's Office says that information may be exempt when disclosure would likely inhibit the ability of public authority staff and others to *'express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation.'*

The information being withheld includes that which was provided voluntarily by Mr Johnson, Mr Johnson's office and the Foreign and Commonwealth Office (FCO), to enable ACOBA to properly advise on the application that had been made. If the information provided by Mr Johnson, his office and the FCO is released in this case, it puts at risk the likelihood of full and frank provision of information from; discussion with; and exchange of views with Government departments and individuals who are subject to the Rules in future.

ACOBA has no enforcement or coercive powers and therefore depends on voluntary cooperation from applicants, both in terms of making an application for advice in the first place; and in terms of provision of information about the proposed appointment/ employment and their former role. Similarly, it depends on voluntary cooperation from Government departments to provide information about an applicant's former role, contact that the applicant may have had with particular organisations or employers while in that role, and other relevant information. ACOBA seeks to ensure such cooperation by assuring those it deals with, that communications will be kept confidential unless and until an applicant takes up a proposed appointment/ employment - at which point ACOBA publishes a detailed letter that sets out the material information relating to its advice.

Disclosure of the information requested would, or would be likely to, make applicants and government departments reluctant to share information as freely with ACOBA in future, especially if there was any perceived sensitivity about the information. This in turn would compromise the advice that ACOBA is able to give. Disclosure of the information requested would also make it more likely that some of those subject to the Rules would not approach ACOBA for advice in circumstances where they should have done.

As such, the qualified person considers that disclosure of the information requested would, or would be likely to prejudice the free and frank exchange of views for the purposes of deliberation (**Section 36(2)(b)(ii)**) and/ or the free and frank provision of advice (**Section 36(2)(b)(i)**). It would also make it more difficult for ACOBA to ensure that the purpose of the Rules is fulfilled. If ACOBA's ability to obtain sufficient information was compromised, it would have a negative impact on transparency and accountability, and the ability of ACOBA to discharge its role effectively and would not be in the public interest (**Section 36(2)(c)**).

Section 36 is a qualified exemption and therefore, we considered whether the public interest favoured disclosure of the information or maintenance of the exemption.

We recognise there is significant public interest in knowing that a former Foreign Secretary, with a significant public profile, has properly complied with their duties to seek ACOBA's advice; and that ACOBA has considered relevant information and come to a well-reasoned decision. Further, ACOBA recognises the importance of relevant information being accessible so that members of the public and/ or the press may question it and hold individuals to account. ACOBA considers the public interest in transparency in these respects is well met by the information that it has published on its website.

The public interest in maintaining the exemption is strong for the reasons set out above and given the information provided in the letter, which has been published on ACOBA's website, we consider the public interest here is sufficiently met.

Therefore, on balance, we have concluded that the public interest favours maintenance of the exemptions under Section 36 (2)(b)i, (b)ii and (c) and the information should be withheld.

Consideration under Section 40(2) of the Act (personal data)

ACOBA is clear about its approach to both transparency and confidentiality. The Rules for former Ministers state that *"all approaches to the Advisory Committee will be handled in strict confidence, and will remain confidential until the appointment or employment is publicly announced or taken up, at which time the Committee will make public its advice, alongside summary details of the former Minister's last Ministerial post, and the appointment or employment to be taken up. Details will be placed on its website and in its annual report."*

We consider this amounts to an assurance to applicants that the personal data they share during the application process will be treated in confidence. Therefore, we consider that disclosure of personal data, other than that which the applicant has consented to be published (the information routinely published on our website and in our annual report, as stated in the Rules) would be unfair. Accordingly, we rely on an absolute exemption and there is no requirement to consider whether the public interest in disclosing information outweighs the public interest in maintaining the exemption.

However, for completeness, it should be noted that if we considered there was no unfairness in releasing this data, we consider in any event that any legitimate interest (for example, in the role and what was considered by ACOBA) is already served by the publication of ACOBA's correspondence. Publishing this information in the public domain allows ACOBA to achieve a proportionate balance between any wider interest and the individual's privacy.

Next steps

If you are unhappy with this response to your request, you may write to the senior manager with responsibility for ACOBA, Peter Lawrence, at the address below to ask for an internal review. 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.

Peter Lawrence
Room G/08, 1 Horse Guards Road
London
SW1A 2HQ
Email: acoba@acoba.gov.uk

If you are not then content with the reply, 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,

Sarah Parkington
Committee Secretariat