

From: FOI
To: [REDACTED]
Subject: FOI 188/18 - Response
Date: 17 December 2018 10:32:37

Dear [REDACTED],

Our Ref: FOI 188/18

Thank you for your email to the Electoral Commission dated **23 November 2018**.

The Commission aims to respond to requests for information promptly and **has done so within the statutory timeframe of twenty working days**.

Your request is in bold below followed by our response.

- 1. I would like to know when the description of and link to the guidance *Part B Guidance - Planning and Organisation: Council elections in Scotland, 4 May 2017: guidance for Returning Officers* was removed from the Commission's webpage listing Scottish local authority returning officer guidances (currently at <https://www.electoralcommission.org.uk/i-am-a/electoral-administrator/local-council-elections-in-scotland-2017>) ;**
- 2. I would like to see any internal communication explaining the reasons for the removal or non-inclusion of references to this guidance on the page listing Scottish local authority returning officer guidances;**
- 3. I would like to see copies of any internal records during 2018 or correspondence during 2018 between the Commission and Scottish returning officers, Scottish local authorities, auditors of Scottish local authorities, the Scottish Government and the Electoral Management Board in relation to section 5 in general and paragraph 5.6 in particular of this guidance addressing whether this guidance means that it is the Commission's opinion that councils have the legal power to contract as principals with vendors for election services in Scottish local elections.**
- 4. I would like to see copies of any internal records during 2018 or any correspondence during 2018 between the Commission and Scottish returning officers, Scottish local authorities, auditors of Scottish local authorities, the Scottish Government and the Electoral Management Board in relation to whether councils have the legal power to contract as principals with vendors for election services in Scottish local elections.**

Our response is as follows:

We hold some of the information you have requested.

- 1. Part B of our guidance was not deliberately removed from our website. It disappeared as a result of a technical fault. Once we became aware of its absence, as a result of this freedom of information request, we immediately republished the guidance to the website.**

2. We do not hold any internal correspondence in relation to the removal of the guidance because, as noted above, it disappeared as a result of a technical fault which we were not aware of.

3. We have had no correspondence with Returning Officers, Scottish local authorities, auditors of Scottish local authorities, the Scottish Government and the Electoral Management Board in relation to section 5 in general and paragraph 5.6 in particular of this guidance.

4. We do hold some information which falls within the scope of part 4 of your request.

The information we hold in relation to this matter is internal legal advice. The Commission considers this information regarding this request exempt from disclosure under section 42 of the FOI Act, and we are withholding this information from release for the reasons set out below.

Section 42(1) provides for exemption from disclosure information that is privileged under legal professional privilege. The requested information being withheld from disclosure under section 42 constitutes legal advice relating to this matter; it is legally privileged communications and advice provided by legal advisors.

Application of this exemption is subject to the public interest test. There is a public interest in transparency and accountability. However, it is also in the public interest to safeguard the confidential nature of legally privileged communications and advice so as to allow openness in all communications between client and lawyer to ensure access to full and frank legal advice which in turn is fundamental to the administration of justice. There is an inherent and strong public interest in maintaining this privilege given it is in the public's interest to ensure openness in order to safeguard access to fully informed, realistic and frank legal advice. The maintenance of this privilege, as the Information Commissioner's Office and the courts have stated, helps ensure the administration of justice and the effective undertaking of public policy. Having carefully weighed the public interest relating to possible disclosure of the information requested under s 42(1), we are satisfied that it is not appropriate at this time to disclose the information that the Commission holds. The Commission is satisfied that maintaining the exemption outweighs the public interest in disclosure.

I trust that this information satisfies your request. The Commission strives to be an open, transparent authority, but in some circumstances we cannot responsibly release requested information, and we ask for your understanding in this regard.

If you are not satisfied with this response, please note that the Commission operates a review procedure, details of which can be found on the Commission website at: <http://www.electoralcommission.org.uk/about-us/freedom-of-information-requests/how-do-i-make-an-foi-request>

Please also note that if you have exhausted all internal Commission review procedures and you are still not satisfied you have the right to appeal to the Information Commissioner. Details of this procedure can be found on the ICO website: <https://ico.org.uk/>

Yours sincerely,

[REDACTED]

[REDACTED]

Access to Information Officer (FOI and DPA)

The Electoral Commission

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