From: [redacted]
To: [redacted]
Cc: FOI
Subject: FOI Response - Good Law Project - 158/17
Date: 19 October 2017 15:49:11

Dear [redacted],

Our Ref: FOI 158/17

Thank you for your email to the Electoral Commission dated **29 September 2017**.

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.

You have requested:

12. The Electoral Commission is asked to provide us with answers to the following questions and provide us with the following documents:

a. all documents (including any attachments and any documents contemporaneous to the Referendum whenever provided) which have been provided to the Electoral Commission by (i) Vote Leave, (ii) Mr Grimes, (iii) VFB, or (iv) AIQ in connection with any of the following :

i. post-Referendum spending returns ;
ii. spending by any party in relation to AIQ ;
iii. donations to other campaigners.

b. all other documents obtained from any third party relating to spending by any person in relation to AIQ ;

c. all documents demonstrating the extent of the Electoral Commission 's investigations into spending by any party in relation to AIQ , except to the extent that those documents are legally privileged ;

d. all documents relating to donations by Vote Leave to any other permitted participant, with detailed explanation as to how the money was donated and what it was spent on ;

e. all documents relating to donations from permitted participants for referendum expenses;

f. did Vote Leave seek the advice of the Electoral Commission as to whether it could pay the referendum expenses of other permitted participants or bodies/individuals that pursued the same outcome in the referendum as Vote Leave and in so doing, exceed its permitted expenditure limits?

g. if the answer to that question is yes, please provide full details, including all relevant underlying documentation, including E-mails,

phone notes etc.

13. Did the Electoral Commission ask AIQ for the following:

a. its contract with Mr Grimes, including its terms of payment;

b. all e-mail communications and other correspondence between AIQ and Mr Grimes;

c. all instructions from Mr Grimes to AIQ in relation to the services or the Referendum campaign;

d. AIQ's policy on credit/credit checking for organisations/individuals to whom it was to provide services (importantly, how AIQ satisfied itself that Mr Grimes would be in a position to meet his purported obligation to pay AIQ);

e. whether AIQ had a guarantor for the work undertaken for Mr Grimes and/or whether it knew that this work was to be paid for by Vote Leave (and if so, when it knew this and how, providing all telephone/e-mail notes/documents etc);

f. how was the work organised on the campaign - was there any overlap
between the people working on providing services to Mr Grimes and those working on providing services to Vote Leave, and if so, how much?

14. If not, please explain why. If so, please provide all responses and an explanation as to any follow up. If further questions were asked, or documents were sought, please set these out.

15. Did the Electoral Commission ask Darren Grimes/BeLeave:

a. when he first contacted AIQ?

b. what steps he took to ensure compliance with the relevant spending rules?

c. what instructions he gave to AIQ?

d. the precise detail of his instructions to AIQ and the basis on which he drafted them?

e. how Mr Grimes satisfied himself that he would be in a position to meet the debt he purportedly incurred to AIQ?

f. what if any knowledge he had of any instructions given to AIQ by Vote Leave for the work that Vote Leave commissioned?

g. what if any guarantees were given/requested by AIQ in relation to

the work he commissioned?

h. how he went about setting up his agreement with AIQ?

i. the date on which Vote Leave first contacted him offering a donation and the basis for that donation?

j. what if any criteria Vote Leave set as a condition for the donation?

k. to provide copies of all correspondence, including e-mails, texts and phone notes, between him and Vote Leave associated with the donation/ referring to AIQ?

I. to provide any minutes referring to these donations and proposed donations?

16. If not, please explain why. If so, please provide all responses and an explanation as to any follow up. If further questions were asked , or documents were sought, please set these out.

17. Did the Electoral Commission ask Vote Leave:

a. what if any steps it took to make sure it was not incurring 'referendum expenses' by making a donation to a campaign aimed at procuring the same result in the Referendum?

b. why it chose to donate to Darren Grimes - such as the criteria used to select him and/ any other campaigning individuals or organisations to which money was provided?

c. to provide copies of all board meetings/minutes/notes etc regarding any such decision?

d. to provide copies of all documentation between Vote Leave and Mr Grimes regarding a potential payment whether directly to Darren Grimes/BeLeave or to Ala or any other provider?

e. to provide copies of all correspondence between Vote Leave and Ala concerning the relevant work for which Vote Leave paid, irrespective of who commissioned it?

f. to provide copies of any instructions provided by Vote Leave to Ala for the campaigning work that it did?

g. to provide copies of all documentation concerning the decision of Vote Leave or any individual working for Vote Leave to give away funds associated with Referendum campaigning (including what grounds/ criteria they set for the donation , who in the organisation made the decision , and how they made it)?

h. what, if any, checks were in place within Vote Leave regarding those to whom it made significant payments?

18. If not, please explain why. If so, please provide all responses and an explanation as to any follow up. If further questions were asked, or documents were sought, please set these out.

19. Further, we note that the Electoral Commission announced on 21 April 2017 (a full 10 months after the Referendum) that it was launching an investigation into the spending by Leave.EU. Five further months have now passed and there has been no public statement regarding that investigation. The Electoral Commission is asked to provide an explanation as to the stage that that investigation has reached and the reasons for the delay, which have serious implications for the relevance of its regulatory role in this context.

Our response is as follows:

We hold the information that you have requested. However, the cost of your request exceeds the limits for time and cost set out in section 12 of the FOIA and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. On this occasion we will not be taking your request further. In this email I will explain why that is and provide advice as to how you could refine your request so that we may be able to answer it.

Section 12 of the FOIA allows us to decline to answer FOI requests when we estimate that it would cost us more than £600 (equivalent to 3.5 days' work, calculated at £25 per hour) to identify, extract and then provide the information you have requested.

We estimate that to retrieve and extract the number of records that fall within the scope of your request would cost at least £16,667 and take a minimum of 667 hours.

A search of the Commission's records for entries regarding Vote Leave, Mr Grimes, Veterans for Britain and Aggregate IQ returns a very large number of results. Adding on entries relating to donations made by permitted participants increases this further. Although not all of the results will fall within the scope of your request, retrieving these entries and determining which of that information does fall within scope would exceed the limits for time and cost as set out above. As an indication, we estimate that we would need to retrieve and review around 10,000 records, at a rate of 15 per hour.

We might be able to provide information you are seeking following a refined request if it was within the cost limit. You may wish to consider, for example:

- limiting the timeframe of your request;

- with particular reference to very broad requests such as 12(e), specifying particular campaigners or other organisations.

Please be aware that we cannot guarantee at this stage that a refined request will

fall within the cost limit.

I would also refer you to the information we have already published in response to FOI requests on matters relating to Vote Leave, Mr Grimes and Aggregate IQ. These provide some of the material you are seeking. You can find this information here, following the links:

"FOI 67 17 a request for correspondence between the Electoral Commission, Cambridge Analytica and AggrigateIQ"

"FOI 59 17 a request for documents exchanged between either Vote Leave and BeLeave and the Electoral Commission during the EU Referendum regulated period."

"FOI 48 17 a request for information related to the money spent by major parties on Cambridge Analytica Services"

You may find other published FOI responses relevant as well. All our published FOI responses can be found in this linked to area of the website: https://www.electoralcommission.org.uk/freedom-of-information-requests

I regret that we have not been able to fulfil your request in this instance. Commission is committed to being an open, transparent authority, but in some circumstances we cannot responsibly release requested information, and we ask for your understanding in this regard. There is more information and guidance about the section 12 exemption contained in Appendix 1.

Paragraph 19 of the request falls outside the scope of FOIA as it is not a request for information held by the Commission. In any event it has already been addressed in our letter dated 12 October 2017.

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,

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Appendix 1: Additional Information about Section 12 FOIA
We have provided below additional information about Section 12 of the Freedom of Information Act. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

The legislation

Section 1: Right of Access to information held by public authorities (1) Any person making a request for information to a public authority is entitled— (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him.

Section 12: Cost of compliance exceeds appropriate limit (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit. (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. (3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases. (4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority— (a) by one person, or (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them. (5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

Guidance
The appropriate limit
The 'appropriate limit', for the purposes of section 12 of the Freedom of Information Act has been set at:

- £600 for central government and Parliament.
- The hourly rate is set at £25 per person per hour.

The following activities may be taken into account when public authorities are estimating whether the appropriate limit has been exceeded.

- determining whether it holds the information requested
- locating the information or documents containing the information
- retrieving such information or documents
- extracting the information from the document containing it.