From: FOI
Sent: 09 March 2018 18:37
To: [redacted]
Cc: FOI <FOI@electoralcommission.org.uk>
Subject: FOI 007/18 English Independence Emblem Correspondence - Response

Dear [redacted]

Our Ref: FOI 007/18

Thank you for your email to the Electoral Commission dated **17 January 2018**.

The Commission aims to respond to requests for information promptly and regrets that on this occasion we have not done so.

Your request is in bold below followed by our response.

1. **I need all internal and external communication and information in relation to the registration of the English Independence Emblem (lion-eating-pie), whether or not that originates from the Commission or Ourselves.**

2. **This would include any UKIP correspondence on our (lion-eating-pie) emblem.**

Our response is as follows:

We hold the information you have requested.

We have included information in relation to the registration of the following emblem:



Question one
Please find attached the documents in relation to this request.

Question two
This information was released in a previous FOI request. You can find a link to this on our website here.

Exemptions under section 21
We are excluding the information under Section 21 of the Freedom of Information Act as this is correspondence that should be reasonably accessible to you as the requester by alternative means, being emails between you and the Commission. If you do not have copies of the correspondence excluded under Section 21, you can request the excluded information by submitting a Subject Access Request under the Data Protection Act 1998 to foi@electoralcommission.org.uk.

Exemptions under section 40(2)
You will notice that certain personal details have been redacted from the documents we are releasing. Section 40(2) provides exemption where the information requested

constitutes personal data as defined by the Data Protection Act 1998 (DPA), and where release of the information requests would breach one of the data protection principles. Some of the information contained in the requested information falls within the description of personal data as defined by section1 of the DPA because the information relates directly to an identifiable living individual. This includes names and contact details of individuals in some instances. The individuals in some cases are junior staff members and they would not reasonably expect their information to be released.

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]
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Application summary

PR 17/27 – 01 November 2017

The following table summarises the applications received by the Commission and the registration team's recommendations

Table 1: Director of Political Finance & Regulation and Legal Counsel delegated party registration decisions

Party name and proposed party identity marks (link to assessment note)	Registration team assessment
English Independence **Proposed emblems:** 1.  2. 	• Existing Party • England application complete 24.10.17 • Public notices published 26.10.17 • Recommendation to reject emblem 1 and approve emblem 2. **Initial view** BP 12.11.2017: As recommended, I am minded to refuse emblem 1 and approve emblem 2. On emblem 1 I struggle to see the initials or acronym E and I in or near the mouth of the lion, but if they are there I think they are so small as to not be a consideration. However, I am minded to refuse the emblem for reason of likely to mislead the voter as to the effect of their vote, due to the similarity with the current well-publicised lion emblem of UKIP. **Approval Board Comments** LE: I agree with the recommendation and initial view to reject (1) and approve (2). BW: I agree with the initial view. RT: agree with the initial view [redacted] I agree with the recommendation and initial view to reject emblem 1 and approve emblem 2

Application summary

PR 17/27 – 01 November 2017

The following table summarises the applications received by the Commission and the registration team's recommendations

Party name and proposed party identity marks (link to assessment note)	Registration team assessment
	AON: I agree with the initial view AW: I agree with the recommendation and initial view TH: I agree with the recommendation and initial view. **Final Decisions** BP 28.11.2017: Refuse emblem 1 and approve emblem 2. On emblem 1 I struggle to see the initials or acronym E and I in or near the mouth of the lion, but if they are there I think they are so small as to not be a consideration. However, refuse the emblem for reason of likely to mislead the voter as to the effect of their vote, due to the similarity with the current well-publicised lion emblem of UKIP.
[redacted]	

English Independence

Application to register new emblems

Political objectives/party information

- The party's application was lodged on 30.09.17 and considered complete on 24.10.17. The application was originally submitted and authorised by email. In this email chain the party ask that one of their proposed emblems replace emblem ID3529, which means the party will stay within the maximum of 3 emblems. This was completed when we received a cheque in payment of the fee on 24.10.17 with a letter. I am satisfied that we hold all of the elements of an application as required by the Political Parties, Elections and Referendums Act 2000 (PPERA).
- The party is registered to stand candidates in England.
- Some of the party objectives outlined in their constitution are as follows:
    - "During the recent reign of Elizabeth II, the UK has forgotten financial and political equality, and the legal basis of its federal union. English taxes are used to subsidize other union countries, whilst the English are denied. "It is not our job to pay your bills". There are Scottish, Welsh and Irish assemblies and Parliaments, but none for England. It is no co-incidence that monarchs and prime-ministers only come from Scottish families. England is a nation suppressed no longer."
    - "seek to diminish the role of the State"
    - "lower the burden of taxation on individuals and businesses"
    - "ensure proper control over national borders"
- https://twitter.com/EnglishIndParty is the twitter account for the party leader.
- John Bickley, the UKIP treasurer, made comments on this application via our website[1]:
    - "Their party emblem is a direct copy of UKIP new 'lion' logo which UKIP publicly launched at their conference in Torquay at the end of September. UKIP's website, press releases & other promotional

[1] http://ecscrm11/CCM/userdefined/edit.aspx?etc=4202&id=%7b8B981A95-BCC3-E711-80EE-005056A7002A%7d

materials have used the logo which has also been extensively used by the mainstream media in their reporting of UKIP. English Independence's use is a breach of UKIP's inherent copyright."

- It should be noted that, as stated to John Bickley, the Commission does not consider copyright a reason to refuse a registration[2].

Recommendation

In making my recommendation I have considered the requirements and statutory tests set out in PPERA.

I recommend that the following identity mark be **approved** and entered onto the register of political parties in Great Britain.

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I recommend that the following identity mark be **rejected** for the reasons as set out in this assessment.

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[2] http://skynet/dm/Functions/PEFreg/Registration%20Library/2016-06-29-legal-advice-intellectual-property-rights-consideration.docx

[redacted]

07.11.2017

Appendix A: Proposed emblems

Proposed emblem 1

Recommendation: Reject

Ballot paper size, 2cm^2	**5cm^2 for review and assessment**
	

3.1 In making my recommendation to reject the proposed party emblem I have considered the issues set out in the following paragraphs.

3.2 The emblem does meet our minimum requirement to be an emblem by containing some designed or pictorial element.

3.3 The proposed emblem is not the same as that of a party which is already registered in the register in which that party is applying to be registered.

3.4 I searched the register to examine whether this proposed emblem is likely to cause a voter to confuse it with another already registered identity mark or one that is protected after deregistration. I have set out the most similar below:

[3] [4] 

[5] 

[6] 

[7]

3.4.1 Above are all the emblems that have a lion as the focus of the emblem. We have previously allowed several types of lions with different styles, particularly for 'Britain First' and 'Communities United Party'. On the basis of consistency with previous decision, I do not consider this emblem likely to cause confusion.

3.4.2 I am therefore satisfied that the proposed emblem is not likely to result in electors confusing that party with a party which is already registered in respect of the relevant part of the United Kingdom.

3.5 The proposed emblem is not offensive. The proposed emblem is not obscene.

3.6 The proposed emblem does not include words the publication of which would be likely to amount to the commission of an offence.

3.7 I am satisfied that the proposed emblem is likely, were it to appear on a ballot paper issued at an election to result in an elector being misled as to the effect of their vote.

3.7.1 I have firstly considered if this emblem is likely to mislead a voter if it is considered to contain text.

3.7.2 It appears to the left of the mouth there is lower case 'e' and potentially an 'I' to the right. This would be consistent with other emblems that the party has tried to register with simply the letters 'e' and 'i' in reference to the party name.[8]

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[3] Britain First - protected
[4] Communities United Party
[5] Shiromani Akali Dal Amritsar UK
[6] The Protest Party
[7] White Rose GB - protected
[8] http://skynet/dm/Functions/PEFreg/Decision%20Records/2016-08-18-English%20Independence-RP1%20Decision%20Record.pdf

3.7.3 As is mentioned below, the emblem closely resembles the UKIP emblem. This 'lettering' does not appear in the UKIP version of this emblem so I assume it has been deliberately added by the party. If this is deliberate then I also assume that it is intended to be lettering – if we consider that this emblem contains lettering, then those letters meet our minimum text requirement to ensure that it is legible for voters.

3.7.4 If the decision maker is satisfied that the emblem contains text, then the text would constitute an abbreviation that has not been spelt out within the emblem. 'EI' or even 'E' is not a well-known and widely-used abbreviation. If this emblem is considered to contain text them I would recommend rejecting it on this basis.

3.7.5 I have also considered this emblem against the wider mislead test as it may mislead voters who consider it similar to new emblem announced by UKIP (which is not currently registered with the Electoral Commission):

UKIP emblem: [9] [10] English Independence emblem:



3.7.6 Stylistically, the proposed emblem is very similar to the lion head used in the UKIP emblem. As can been seen above, there is a striking similarity between the two and I believe that it is very likely a voter would be misled as to the effect of their vote. That is because I consider it is likely they would consider this emblem, if used on a ballot paper, to be connected to or endorsed by UKIP.

3.7.7 Although the UKIP emblem contains its name, much of the media attention has been around the lion image, and this is what is most prominent. The proposed is similar to the lion image, and without the text, it could still appear to have a similarity with the UKIP emblem. It is the lion image that is most infamous about the emblem, not the text that accompanies it.

[9] https://twitter.com/UKIP (accessed 7/11/17, this page currently uses this emblem as its banner picture)
[10] http://www.independent.co.uk/sport/football/premier-league/ukip-nwew-logo-lion-premier-league-badge-copyright-party-conference-a7974041.html

3.7.8 This connection is strengthened by both parties having broadly similar ideologies as both are politically on the right,nationalist and libertarian[11]. English Independence constitution[12] describes the party has 'nationalist' (3.4), Anti-EU(3.5), and 'libertarian'(3.18).

3.7.9 The UKIP emblem above first came to prominence at the end of October when it was chosen by party members at their party conference.[13] The same day, the party chose its new leader.[14] Both events received a lot of media and social media attention, as can be seen from a number of links in this assessment, and the emblem itself gained notoriety for its similarities to the Premier League Logo. I consider that the UKIP emblem has a very high profile already, despite not being registered, as the UKIP emblem.

3.7.10 It should be noted that Henry Bolton (UKIP leader) has confirmed that their new emblem "It may change in ways you won't even notice"[15] due to its similarity with the premier league logo. I do not consider this to have an impact on its similarity with the English Independence emblem, as the changes are likely to be minor.

3.7.11 As mentioned on page 1, this emblem received comments through our website notification from the UKIP treasurer to say that they considered the emblem to be a "direct copy" and that they have received a lot of coverage in association with that emblem[16].

3.7.12 I have considered this emblem's similarity to the current Premier League logo.

[11] https://en.wikipedia.org/wiki/UK_Independence_Party - ideology 'Right-wing populism', 'British Nationalism', 'Economic Liberalism'
[12] http://ecsccmshpt/Account/English Independence GB-Public/2016-07-05-English_Independence-constitution.doc
[13] http://www.telegraph.co.uk/news/2017/09/29/ukip-mocked-new-logo-design-looks-like-premier-league-rip-off/
[14] http://www.bbc.co.uk/news/uk-politics-41447568
[15] http://www.lbc.co.uk/radio/presenters/nick-ferrari/ukips-leader-explains-logo-lion/
[16] http://skynet/dm/Functions/PEFreg/Registration%20Library/2016-06-29-legal-advice-intellectual-property-rights-consideration.docx



3.7.13 There has been a lot of public comment about the UKIP emblem being similar to the Premier League logo.[17]

3.7.14 There is a broad similarity between the Premier League logo and the proposed emblem, but I do not consider it similar enough to make it likely to mislead a voter as to the effect of their vote, or at least, it is much less similar to the Premier League logo than it is to the UKIP emblem, which I think there is a much stronger likelihood of it misleading voters. I have also considered that it is unlikely that a voter would consider a party to be connected to or endorsed by the Premier League which is not a political organisation. As it is not an overtly political organisation, it is less likely that a voter will consider there to be a connection with a political party, unlike UKIP which is a political party. It is reasonable to assume voters would be more likely to see a link between two political groups than a political group and a non-political group. This lowers the risk of it misleading voters.

3.7.15 I consider the proposed emblem to be much more similar to the UKIP emblem than the Premier League logo. Accordingly, I think it is much more likely to mislead voters into thinking there is a connection between the applicant party and UKIP, rather than the Premier League.

3.7.16 Due to the similarities of the proposed emblem and the UKIP emblem, and the UKIP emblem having the much higher profile than the proposed emblem due to the media coverage it attracted, I recommend that the proposed emblem be rejected for being likely to mislead a voter as to the effect of their vote.

3.8 I am satisfied that the proposed emblem does not contradict, or hinder an elector's understanding of, any directions for his guidance in voting given on the ballot paper or elsewhere.

[17] http://news.sky.com/story/new-ukip-logo-lands-party-in-premier-league-copyright-row-11059150

3.9 The proposed emblem does not include any word or expression prohibited by order made by the Secretary of State.

Proposed emblem 2

Recommendation: Approve

Ballot paper size, 2cm^2	**5cm^2 for review and assessment**
	

3.10 In making my recommendation to approve the proposed party emblem I have considered the issues set out in the following paragraphs.

3.11 The emblem does meet our minimum requirement to be an emblem by containing some designed or pictorial element.

3.12 The proposed emblem is not the same as that of a party which is already registered in the register in which that party is applying to be registered.

3.13 I searched the register to examine whether this proposed emblem is likely to cause a voter to confuse it with another already registered identity mark or one that is protected after deregistration. I have set out the most similar below:

[18] [19] 

[20] 

[21] 

[22] 
[23]

3.13.1 As with emblem 1 above, I have included the emblems with Lions as the focus. I have also considered emblems with flags or crosses. The party already have registered an emblem that uses a similar style of emblem:



3.13.2 As the party already have registered an emblem with a similar style, I do not consider the proposed emblem to be likely to cause confusion.

3.13.3 I am therefore satisfied that the proposed emblem is not likely to result in electors confusing that party with a party which is already registered in respect of the relevant part of the United Kingdom.

3.14 The proposed emblem is not offensive. The proposed emblem is not obscene.

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[18] Britain First - protected
[19] Communities United Party
[20] Shiromani Akali Dal Amritsar UK
[21] The Protest Party
[22] White Rose GB - protected
[23] Christian Movement for Great Britain - protected

3.15 The proposed emblem does not include words the publication of which would be likely to amount to the commission of an offence.

3.16 I am satisfied that the proposed emblem is not likely, were it to appear on a ballot paper issued at an election to result in an elector being misled as to the effect of their vote.

3.17 I am satisfied that the proposed emblem does not contradict, or hinder an elector's understanding of, any directions for his guidance in voting given on the ballot paper or elsewhere.

3.18 The proposed emblem does not include any word or expression prohibited by order made by the Secretary of State.