From: FOI
Sent: 11 April 2018 12:17
To: [redacted]
Cc: FOI <FOI@electoralcommission.org.uk>
Subject: FOI 026/18 Aspire Application - Response

Dear Mr [redacted]

Our Ref: FOI 026/18

Thank you for your email to the Electoral Commission dated **09 February 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.

Please supply all correspondence, internal and external, connected with the application of Aspire. Please also supply all correspondence that the Commission has engaged in concerning whether or not Tower Hamlets and the Tower Hamlets Returning Officer should participate in the Cabinet Office trial on voter ID. Please also advise the senior officer at the Cabinet Office dealing with the trial.

Our response is as follows:

Your request appears to fall into two distinct parts:

1. **Please supply all correspondence, internal and external, connected with the application of Aspire.**
2. **Please also supply all correspondence that the Commission has engaged in concerning whether or not Tower Hamlets and the Tower Hamlets Returning Officer should participate in the Cabinet Office trial on voter ID. Please also advise the senior officer at the Cabinet Office dealing with the trial.**

We hold the information you have requested. I have addressed each part of the request separately.

1. **Please supply all correspondence, internal and external, connected with the application of Aspire.**

In relation to the first part of the request, the cost of your request does exceed the limits for time and cost set out in section 12 of the Freedom of Information Act (FOIA) and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. On this occasion we will not be taking this part of your request further. In this letter I will explain why that is and provide further 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 ½ days' work, calculated at £25 per hour) to identify, extract and then provide the information that you have requested.

To meet the first part of your request, we estimate that to retrieve and extract the number or records that fall within the scope of your request (approximately 600 records, at a rate of 15 records per hour) would cost £1000, and take approximately 40 hours.

Due to the volume of information you have requested and the breadth of the time-frame over which your request reaches we are not able to meet this part of the request.

We might be able to answer a refined request if it was within the costs limit.

You may find it helpful to read the Commission's response to FOI 014/18 as published on our website here which relates to the application to register Aspire. Upon reading that response, you may be able to refine your request by identifying the information you want, if any, that has not already been published. Alternatively, you may wish to provide specific dates between which your request is limited to.

Finally you could provide some more detail to us about what specific information you are hoping to receive so that we can provide more specific guidance about refining your request.

Please be aware that we cannot guarantee at this stage that a refined request will fall within the FOIA cost limit.

I regret that we have not been able to fulfil your Freedom of Information request in this instance. At Annex A there is more information and guidance about the section 12 exemption for your information.

2. Please also supply all correspondence that the Commission has engaged in concerning whether or not Tower Hamlets and the Tower Hamlets Returning Officer should participate in the Cabinet Office trial on voter ID. Please also advise the senior officer at the Cabinet Office dealing with the trial.

We aimed to provide a full response to this question by the original statutory deadline but due to third party notification requirements this has not been possible.

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.

I regret that we are unable to disclose all the requested information to you as we consider some of it is exempt under Section 36(2)(b)(ii) of the FOIA (Prejudice to the effective conduct of public affairs). This exemption applies if, in the reasonable opinion of one of the Commission's Qualified Persons, disclosure of the information would be likely to inhibit the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation. The Commission's Qualified Person (Claire Bassett, the Commission's Chief Executive) has concluded that the exemption does apply in this case. The relevant extract from the legislation is attached at Annex B.

We have also carried out the public interest test (as must be applied in these cases) and concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The information we are able to release is attached at Annex C.

I should also point out that the Returning Officer's reasons for deciding that Tower Hamlets would not participate in this May's voter ID pilot schemes are already in the public domain and set out in the following document available on Tower Hamlets' website: https://democracy.towerhamlets.gov.uk/documents/s113785/Update%20of%20preparations%20for%20the%20Mayor%20and%20Local%20elections%202018.pdf

Your Freedom of Information request also asked the Commission to "advise the senior officer at the Cabinet Office dealing with the trial". The senior officer's name and contact details are below:

Simon James
Deputy Director
Elections Division
Tel: 020 7276 6761
Email: simon.james@cabinetoffice.gov.uk

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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Annex A: 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 (Regulations 3 and 4 Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

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 the information, or a document which may contain the information
- extracting the information from a document containing it

Annex B: Section 36 FOIA

The legislation

Section 36(1)–(4) of the FOIA states:

36.

(1) This section applies to—

(a) information which is held by a government department or by the Welsh Assembly Government and is not exempt information by virtue of section 35, and

(b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(a) would, or would be likely to, prejudice —

(i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or

(ii) the work of the Executive Committee of the Northern Ireland Assembly, or

(iii) the work of the Cabinet of the Welsh Assembly Government.

(b) would, or would be likely to, inhibit—

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

(3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).

(4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words “in the reasonable opinion of a qualified person”.

Annex C: Extracts from Cabinet Office records of Electoral Integrity Project Board meeting

2 March 2017

Existing legislation does not enable pilots of any kind in elections for local mayors and mayors for combined authorities. This would prevent Tower Hamlets from participating in the pilots.

22 June 2017

On Monday 19 June, the Minister decided that:

- ID pilots should go ahead in May 2018.

- The pilots should take place regardless of whether Tower Hamlets could participate, or whether the SIs could be passed in time for May 2018.