The Electoral Commission

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Sent via email: [redacted]

26 May 2021

Dear [redacted],

Internal review of FOI request FOI 027-21

Thank you for your email to FOI@electoralcommssion.org.uk of 28 April 2021 seeking an internal review of your request for information, reference number **FOI 027-21.**

In seeking an internal review you made the following comments:

Thank you for your response, however I would like to request an internal review.

It seems likely that at least some material, such as the metadata of emails, would be disclosable without triggering sections 30 or 31. Information must be considered and redacted, rather than withheld in full. It seems likely that further information could be provided in this regard.

There is a strong public interest in transparency around political donations, given the widespread concern about links between donations and public contracts, as well as impermissible donations, especially in light of the furore over the refurbishment of the Downing Street flat, to both assess the Conservative party's compliance, and hold the Electoral Commission accountable for its approach to enforcement.

It seems likely, where those investigations have been concluded (in relation to section 30) that the harm to disclosure would be highly limited, especially, as you say in your response, where you are not reliant on the goodwill of parties to provide information, but have the statutory right to demand the information that would be disclosed. Thus the harm in disclosure seems overwrought in your response.

As such, there seems a strong public interest in disclosing at least some of the information within the scope of my request.

I have completed this review because I am a member of the Electoral Commission's management team and I was not previously involved in the original response to your request.

Outcome of your internal review:

Having reviewed the response to your original request, I am satisfied that the relevant exemptions to the release of information were considered and applied appropriately.

I acknowledge your argument that there is legitimate public interest in transparency around donations to political parties and other campaigners, and the Electoral Commission provides significant transparency within the current legal framework. Information about donations and loans accepted by relevant regulated entities is published online through our political finance database.

Specifically in relation to investigations, our statutory Enforcement Policy (published on our website at https://www.electoralcommission.org.uk/sites/default/files/pdf_file/April-2016-Enforcement-Policy.pdf) sets out, where an investigation has been opened, how we would normally communicate information about the status and outcome of that investigation. This includes the following points of particular relevance:

- Where the matter under investigation is already the subject of public and/or media interest, we may issue a media statement about the commencement of the investigation and/or any change to its scope.

- Once an investigation is concluded we will publish the outcome on our website.

- We may also produce a more detailed investigation report and/or issue a media statement where this will further our enforcement objectives and it is in the public interest to do so. We will always issue a media statement where one was issued at the commencement of the investigation.

We also publish information about recently closed investigations every month. This includes information about the possible offence(s) we investigated, what we found, and what action we took. This information is published on our website at https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-enforcement-work/investigations

You will see that since April 2019 the Commission has conducted four investigations relating to donations to the Conservative and Unionist Party. Three related to the failure to return impermissible donations to the donor within 30 days, and the fourth case related to a failure to deliver an accurate donation report.

I am satisfied that the harm identified in the response to your original request in relation to releasing details of concluded investigations is relevant and has been appropriately considered. Notwithstanding the fact the Commission may be able to use statutory powers to require information in certain instances, releasing information relevant to your request would clearly risk prejudicing our ability to gather evidence on a voluntary basis (i.e. without relying on those statutory powers) in future.

As explained in the response to your original request, this would in turn impact on the type, timeliness, and quality of information provided to the Commission during its investigations. I am satisfied that this would be likely to prejudice the Commission's ability to conduct its statutory functions.

I have also considered whether it would be possible to release any data, including metadata, about the information that was relevant to your request.

I am satisfied that all relevant information was considered and the Commission did not simply apply a blanket approach. In this instance, the Commission considered that metadata relating to the information was covered by the exemption in the same way as the content of the information itself, for example the contents of an email.

The key issue relating to your review request is whether the balance of the public interest differs when only the metadata is considered. I acknowledge that the public interest in favour of maintaining the exemption would decrease if only the metadata was to be disclosed, but equally so would the public interest in favour of disclosure.

The public interest in maintaining the exemption relating to metadata only would not disappear entirely, however. Releasing information that would identify parties to an investigation might prejudice that investigation if it had the effect of disclosing that a particular person was a party, and this was not public knowledge. This would also reduce the likelihood of them and/or others cooperating with the Commission's regulatory work on a voluntary basis in future.

I also note that in some cases the names of the senders and/or recipients of emails would be redacted as exempt under section 40(2) of the FOIA. The Commission does not normally disclose the names of junior staff members, and nor would we disclose the names of individuals outside the Commission unless already public figures.

I am satisfied that the public interest test was appropriately applied in relation to the content and metadata of information relevant to your original request, and that on balance the public interest would not be served by disclosing only the senders, recipients, or dates of emails.

If you remain dissatisfied with our response, you can appeal to the Information Commissioner at: The ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. For further details about the appeal procedure please visit www.ico.org.uk.

Yours sincerely

Tom Hawthorn
Head of Policy
The Electoral Commission