[redacted]

From: FOI
Sent: 28 May 2021 08:39
To: [redacted]
Subject: FOI 056-21 - Response

Dear [redacted]

Our Ref: FOI-056-21

Thank you for your email to the Electoral Commission dated 28 April 2021 and received by the Commission on 29 April 2021.

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 shown below followed by our response.

Request One
On what grounds have you ascertained that there are reasonable grounds to suspect the PMs had broken the rules re his flat refurbishment re breaching the political parties, elections & referendum act (2000) .Why is this needing a costly inquiry using public money ? Why was it made public fuelling the Media frenzy rather than kept private until the inquiry had completed ? Who are the investigators and what are their political persuasion and number of remainers v Brexiteers as the commission must be impartial and I fear it is not given the press statement . Are you reviewing past precedents re Past PMs refurbishments such as Tony Blair etc.

Request Two
Why did you only formalise an inquiry after receiving a demanding letter from labour's lawyers re In the letter to the Electoral Commission, Labour's lawyers wrote: 'The sequence of events outlined both in this letter and elsewhere merit a full and detailed investigation including whether the facts as you are able to establish warrant criminal proceedings.'

The revamp at No11 by upmarket designer Lulu Lytle is said to have cost six figures and included gold wall coverings.

Sir Keir's intervention will ramp up the pressure on No10 to publish details of 'secret' payments for the redesign.

The letter – sent by lawyers for Labour's democracy spokesman Cat Smith – calls on the commission to begin a formal investigation.The watchdog is currently probing a secret £60,000 payment for the makeover to determine whether it broke the rules. This does not constitute a formal investigation. But Labour's lawyers argue the case meets the Commission's requirements to begin one.

In the letter, they refer to a £60,000 payment from the Tory Party for the work, and a secret reimbursement to the party for the same amount from donor Lord Brownlow.
What did your informal inquiries uncover
Are your reasonable grounds solely based upon responding to a labour demand for an inquiry or what other factual data do you have to base your decision on , as we the tax payer pay for these Given you are responding to a labour demand , how was the decision made , what conflicts of

interest were declared and how many of the decision makers are labour voters or members of the Labour Party.

Our response is as follows:

We hold some of the information you have requested.

We have responded to each of your questions individually. In some cases we do not hold the information requested, in others we are applying exemptions.

Request One

1. *On what grounds have you ascertained that there are reasonable grounds to suspect the PMs had broken the rules re his flat refurbishment re breaching the political parties, elections & referendum act (2000) .*

   As stated in our public announcement, we were in discussions for some time with the Conservative and Unionist Party seeking to establish the position. Our decision that there were reasonable grounds to suspect an offence was based on, and only on, the information obtained during those discussions.

2. *Why is this needing a costly inquiry using public money?*

   The Commission has a duty under section 154 of the Political Parties Elections and Referendums Act 2000 (PPERA) to monitor and take all reasonable steps to ensure compliance with PPERA. We take a proportionate approach to this duty and we also consider the public interest. The decision to open an investigation was taken after due consideration of alternative ways to seek to resolve the matter, in line with our Enforcement Policy: www.electoralcommission.org.uk/sites/default/files/pdf_file/April-2016-Enforcement-Policy.pdf.

3. *Why was it made public fuelling the Media frenzy rather than kept private until the inquiry had completed?*

   Our Enforcement Policy states that:
   '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.'

   In this case we felt it was appropriate to do so.

4. *Who are the investigators and what are their political persuasion and number of remainers v Brexiteers as the commission must be impartial and I fear it is not given the press statement.*

   The names of the investigators is exempt from disclosure as it is personal data as defined by the Data Protection Act 2018 and is therefore exempt from disclosure under Section 40 (Personal Information) of Freedom of Information Act.

   It has been the custom and practice for the Commission to generally only release the names of staff down to 'Head of Service' level, which the Commission considers meets the Transparency Code issued by the Secretary of State for Communities and Local Government. Furthermore the Commission considers that this position is consistent with

guidance issued by the Information Commissioner, including a Decision Notice issued in respect of a similar request FS50276863.

The information you have requested would identify individuals who are employed by the Commission to undertake work within the community at large. This would be hindered, should their names be released in response to a request such as this. Therefore you will not be provided with the requested information.

We do not hold information as to political views held by Commission staff, and that information is in any case also personal data as above.

The Commission takes its duties of independence and impartiality seriously. Our Code of Conduct for staff requires that staff must not act in a way that is determined by party political or non-party campaign group considerations, allow any personal political views to determine any action; or do anything to call into question the impartiality of the Commission's work role, duties and responsibilities.

Staff must not do anything that does or could appear to call into question the impartiality of the Commission's work, role, duties and responsibilities. That includes active political activity or campaigning involvement.

All staff are required to confirm their compliance with the Code of Conduct on an annual basis.

5. *Are you reviewing past precedents re Past PMs refurbishments such as Tony Blair etc.*

   No. The scope of the Commission's investigation is whether the Conservative and Unionist Party properly reported any funds it received.

<u>Request Two</u>

1. *Why did you only formalise an inquiry after receiving a demanding letter from labour's lawyers re In the letter to the Electoral Commission, Labour's lawyers wrote: 'The sequence of events outlined both in this letter and elsewhere merit a full and detailed investigation including whether the facts as you are able to establish warrant criminal proceedings.'*
2. *The revamp at No11 by upmarket designer Lulu Lytle is said to have cost six figures and included gold wall coverings.*
3. *Sir Keir's intervention will ramp up the pressure on No10 to publish details of 'secret' payments for the redesign.*
4. *The letter – sent by lawyers for Labour's democracy spokesman Cat Smith – calls on the commission to begin a formal investigation.*
5. *The watchdog is currently probing a secret £60,000 payment for the makeover to determine whether it broke the rules. This does not constitute a formal investigation. But Labour's lawyers argue the case meets the Commission's requirements to begin one.*
6. *In the letter, they refer to a £60,000 payment from the Tory Party for the work, and a secret reimbursement to the party for the same amount from donor Lord Brownlow.*

   Please see response to question 1.

7. *What did your informal inquiries uncover*

   As we have stated, our discussions with the party led to our concluding there were reasonable grounds to suspect an offence.

If your question is in fact a request for the information held which was provided by the party, and upon which our decision was based, we regard that information as exempt from disclosure. We have provided a more detailed explanation below.

8. *Are your reasonable grounds solely based upon responding to a labour demand for an inquiry or what other factual data do you have to base your decision on, as we the tax payer pay for these given you are responding to a labour demand.*

   Please see response to question 1.

9. *How was the decision made*

   The decision to open an investigation was made using our normal procedure, based on evidence held, and involving a recommendation by an officer and authorisation from a more senior officer.

10. *What conflicts of interest were declared*

    Officers involved were required to declare any conflict of interest, officers confirmed they had none.

11. *How many of the decision makers are labour voters or members of the Labour Party*

    The Commission does not hold information as to the voting habits of officers. Please see also our response to question 4 above.

Exemptions in relation to question 7

The Commission has a statutory function to conduct investigations into potential breaches of the reporting requirements in Political Parties, Elections and Referendums Act 2000 ("PPERA").

Section 30(1)(a)(i) of the Freedom of Information (FOI) Act 2000 provides an exemption from disclosure for information which has been held at any time by a public authority for the purpose of any investigation which the authority has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence. The section 30 exemption applies to information that is held at any time, whether or not the investigation is on-going.

The information requested is held by the Commission in relation to such an investigation.

Public interest test

Application of the section 30 exemption is subject to the public interest test. There are a number of factors that must be weighed in the balance to consider whether the public interest in applying the exemption outweighs the public interest in disclosure.

Public interest factors in favour of disclosure

The Commission recognises that with regard to the disclosure of information generally, there should be a presumption in favour of disclosure. We also recognise that there is a general public interest in promoting transparency, accountability, public understanding and involvement in the democratic process. Flowing from that general public interest, there is a legitimate public interest in our carrying out investigations in an open and transparent way, and in promoting public understanding of the decisions we make as a regulator.

Public interest factors in favour of applying the exemption

The public interest lies in enabling the Commission to undertake inquiries as part of its investigation powers so that it can make regulatory decisions based on a firm factual basis and to gather such evidence and facts on a confidential basis. It is in the public interest to maintain this confidentiality, as it encourages the free and frank exchange of information from others to the Commission without which the Commission could not perform its statutory functions.

In carrying out effective inquiries the Commission depends on being able to secure the co-operation of those individuals and entities from whom we seek information. Whilst the Commission has powers to require information, the co-operation of the regulated community remains essential to our ability to conduct our statutory functions. As our investigations rely on gathering evidence from these individuals and entities it is clearly in the public interest that we maintain their co-operation and avoid releasing information that could prevent exchange of relevant information in the future and have the effect of hindering our ability to conduct our statutory functions.

If information provided in the course of our investigations was made public under the Act, it would make individuals and entities reluctant to co-operate and may prejudice interactions with them as well as others in the future. This would in turn impact on the type, timeliness, and quality of information provided to the Commission during its investigations which would prejudice the Commission's ability to conduct its statutory functions.

The Commission aims to be robust and fair in its regulatory decisions. We acknowledge that there is a legitimate public interest in carrying out investigations in an open and transparent way, and in promoting public understanding of the decisions we make as a regulator. These are matters we acknowledge and take into account, including when deciding whether to disclose information, whilst ensuring proper regulation of party political funding. For that reason we have, as you know, made public that an investigation has been opened and explained why we have done so, and we have committed to making public the outcome of the investigation. In doing so we will again carefully consider the public interest in promoting understanding of our decisions.

Balance of the public interest

In assessing where the public interest balance lies in section 30(1) case relevant matters include:

(a) The stage a particular investigation or prosecution has reached;
(b) Whether and to what extent the information is already in the public domain;
(c) The significance or sensitivity of the information requested; and
(d) whether there is any evidence that an investigation or prosecution has not been carried out properly which may be disclosed by the information.

In this case the investigation is ongoing. The information requested is not in the public domain, the information requested is in the Commission's view sensitive and significant, and no evidence appears to be put forward to suggest that the investigation is not being carried out properly. All of these factors add weight to the public interest in maintaining the exemption in the Commission's view.

The Commission considers that the balance of public interest in this case lies on the one hand in carrying out investigations in an open and transparent way, and in promoting public understanding of the decisions we make as a regulator; and on the other in our ability to conduct investigations effectively in future, as well as on our wider regulatory work.

The Commission considers that the public interest in carrying out investigations in an open and transparent way, and in promoting public understanding of the decisions we make as a regulator was met in part by our announcement of this investigation and the reasons for it, and will be further met by the fact that we will also make public the outcome. We will consider carefully the appropriate level of detail to disclose at that time to meet both our regulatory objectives and the public interest in promoting understanding of our decisions.

The Commission does not consider that disclosure of specific evidence in this case would add to any significant degree to public understanding of our decisions. In addition, we consider it likely that disclosure could lead to a significant impact on the voluntary cooperation of organisations and individuals involved in this case, and others regulated by the Commission, with a consequent impact on our ability to conduct investigations effectively in future, as well as on our wider regulatory work.

Having carefully weighed the public interest relating to possible disclosure of the information requested under Section 30(1)(a)(i), the Commission is satisfied that it is not appropriate at this time to disclose the information which the Commission holds. The Commission is satisfied that maintaining the exemption outweighs the public interest in disclosure.

Exemption: Law enforcement: Section 31(1)(g) Freedom of Information Act 2000

Section 31(1)(g) exempts from disclosure information that would or would be likely to prejudice the exercise of the Commission's functions under PPERA for the purposes of ascertaining whether any person has failed to comply with the law, as provided by s31(2)(a) of the FOI Act.

For the same reasons set out above in relation to s.30, the Commission is satisfied that the information requested would likely prejudice the exercise of the Commission's functions under PPERA to conduct investigations into potential breaches of the reporting requirements.

Further, again for the same reasons set out above in respect of s.30, the Commission is satisfied that in this case the public interest in preventing that prejudice outweighs the public interest in disclosure.

The Commission therefore considers the information you have requested and which we hold to be exempt from disclosure under section 31 to the extent that it not exempt under section 30.

The Commission strives to be an open, transparent authority. 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: www.electoralcommission.org.uk/freedom-information/make-a-freedom-information-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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The Electoral Commission

electoralcommission.org.uk