From: FOI
To: [redacted]
Subject: FOI 199/18 - response
Date: 08 March 2019 15:19:15

Dear [redacted],

Our Ref: FOI 199/18

Thank you for your email to the Electoral Commission dated 04 December 2018.

The Commission aims to respond to requests for information promptly and regrets it has not done so within the statutory timeframe of twenty working days.

Your request is in bold below followed by our response.

1. Copies of all communications received by the Electoral Commission from third parties urging or otherwise encouraging the Electoral Commission to investigate Vote Leave for any reason.

- Subsequently limited to the time from 26 June 2016 to 17 July 2018

2. Copies of all internal information in relation to the Electoral Commission's consideration of whether to investigate Vote Leave, where no investigation was then commenced.

3. Copies of all communications from the Electoral Commission to third parties in relation to any decision as to whether or not to investigate Vote Leave.

- **The following clarification received on 7 December 2018:**

  3.1 Any communication informing a third party of a decision taken not to commence an investigation.

  3.2 Any communication informing a third party that an investigation into Vote Leave had been opened.

  3.3 Any communication with a third party seeking further information which might assist the Electoral Commission in deciding whether to investigate Vote Leave, where the decision was then taken not to investigate.

Our response is as follows:

We hold some of the information you have requested.

In response to **question 1**, the Commission does not categorise incoming correspondence as ‘urging or otherwise encouraging’ us to investigate campaigners (or any other entities for that matter) but instead by the subject matter. It is not therefore possible for us to answer this request without creating new information.

We do record allegations of non-compliance with the law that result in enforcement action, and we publish the outcomes of all of our investigations on our website.
You can search for 'Vote Leave' to find all investigations concerning it.

In response to **questions 2 and 3**, we interpret this as a request for any information in respect of assessments of allegations against Vote Leave carried out by the Commission.

An assessment is a pre-investigative process described in our: Enforcement Policy. The purpose of an assessment is for us to decide whether or not to investigate. Again, our threshold for investigating is set out in the Enforcement Policy.

As you can see from our published list of investigations, we have concluded three investigations into Vote Leave. Two, in 2016, led to findings of offences but where no further action was taken.

In one instance we published an investigation report. This explains that the investigation was opened following a review of earlier assessments, in February and March 2017, one of which concerned Vote Leave. It also incorporated a further investigation opened in early 2017.

Exemption under section 30 of the Freedom of Information (FOI) Act

You have asked for all information, including communications, about assessments into Vote Leave. For the following reasons, we consider this information exempt.

The Commission has a statutory function to secure compliance with the Political Parties, Elections and Referendums Act 2000 ("PPERA"). In discharging that function we conduct assessments and, where appropriate, investigations into potential breaches.

Section 30(1)(a)(i) of the Freedom of Information Act 2000 (FOI) provides for exemption from disclosure of 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. Assessments fall under this exemption.

The public interest test

Application of the section 30 exemption is subject to a public interest test. There are a number of factors that must be considered and weighed in the balance. The factors we have considered are set out below.

The public interest lies in enabling the Commission to communicate with others 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 third parties to the Commission without which the Commission could not perform 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 our enforcement function 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 political finance.

In carrying out effective inquiries the Commission depends on being able to secure the cooperation of those individuals and entities from whom we seek information. Whilst the Commission has powers to require information, the co-operation of others remains essential to our ability to conduct our statutory functions efficiently. As our investigatory process relies 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.

Those individuals and entities had, and continue to have, a reasonable expectation that information provided in the course of the investigation (which includes assessing if an investigation should be commenced) would not be made available to the public at large. If information provided in the course of our investigation was made public it might make individuals and entities reluctant to provide information 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 carry out its statutory functions.

Decision on disclosure

Having carefully weighed the public interest relating to possible disclosure of the information requested under sections 30(1)(a)(i) of the FOI Act the Commission is satisfied that it is not appropriate at this time to disclose the information which the Commission holds.

We consider that disclosure of the information you have requested would prejudice the exercise of the Commission's statutory functions and its ability to conduct investigation such as in this matter, and is satisfied that maintaining the exemption outweighs the public interest in disclosure.

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]
Access to Information Officer (FOI and DPA)

The Electoral Commission
FOI@electoralcommission.org.uk
electoralcommission.org.uk