

Sent via email: [REDACTED]

22 March 2022

Dear [REDACTED],

### **Internal review of FOI request FOI 009-22**

Thank you for your email to [FOI@electoralcommssion.org.uk](mailto:FOI@electoralcommssion.org.uk) of 28 February 2022 seeking an internal review of your request for information, reference number FOI 009-22.

In seeking an internal review you made the following comments:

*You must have some information on how to apply the BNP case to applications for registration.*

*You state you do not know what applications have been turned down by relying on this case either alone or in conjunction with other factors. Please would you reconfirm this the position – “The EC has no information whatsoever on which applications or why but the EC does use this case to judge application.”*

*This cannot be – you must have some information.*

*What information do you hold – do you have a policy guidance or statement for staff, counsel’s opinion, correspondence with the CEHR, a list of rejected application where unlawful discrimination was given as a reason for example. Do you have any information on what applications have been rejected on the basis the applicant proposes to engage indirect discrimination as determined by the EC based on this case.*

*As we say if you are using this case you have information.*

*Please do identify what information you have and a copy of the same.*

### **Outcome of your internal review:**

I have reviewed the response to your original request, and sought further information in relation to it where necessary.

We have published guidance for people applying to register a political party [Introduction to registering a political party](#), which says (page 14):

“You must also ensure that your constitution and how the party operates complies with equalities law. If you don’t do so, your application will be rejected. You should

read the guidance for political parties produced by the Equality and Human Rights Commission which is [available on their website](#).”

The guidance produced by the Equality and Human Rights Commission makes clear that “Political parties are not allowed to restrict membership to people who share a protected characteristic”. It provides an explanation of the outcome of legal proceedings by the Equality and Human Rights Commission against the BNP in relation to its membership criteria.

We have also published information about the process we apply when considering and determining applications to register political parties [Process for registering a political party](#) (see page 23 onwards).

As our response to your original request explained, and as highlighted in the guidance mentioned above, compliance with equalities legislation is one factor that the Electoral Commission takes into account when determining an application to register a political party. The judgment in the specific case referred to in your request is relevant to equalities law in relation to membership organisations, including political parties.

However, as our response also explained, compliance with equalities legislation generally (including this specific case where relevant) is only one of several factors that the Electoral Commission is required to consider when determining an application to register a political party. This means that where we decide not to approve an application to register a political party, it may be because the application did not satisfactorily comply with any number of the required criteria.

The Electoral Commission already publishes information on our website about applications to register new political parties or new identity marks (names, descriptions or emblems), which you can find here: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/party-registration-applications/party-registration-decisions>. This includes further information and the reason for rejection where relevant.

The Freedom of Information Act provides a general right of access to information held by the Commission, in recorded format, and we are not expected to create information in order to comply with a request. I am satisfied that the Electoral Commission does not maintain any separate records showing whether decisions to reject an application to register a political party relied on this case, either solely or as one of multiple factors in the decision beyond the publicly available information. I am satisfied that providing this would therefore require the Commission to create new information, which is not required under the Freedom of Information Act.

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.

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](http://www.ico.org.uk).

Yours sincerely,

**Tom Hawthorn**

Head of Policy