

[REDACTED]

From: FOI
Sent: 25 May 2022 15:17
To: [REDACTED]
Subject: FOI 042-22 - Response

Dear [REDACTED],

Our Ref: FOI-042-22

Thank you for your email to the Electoral Commission dated 3 May 2022.

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.

These enquires are Freedom of Information Requests. We provide some background material to understand the requests.

- 1. Does the EC have any information as to whether s29 of the Equality Act 2010 "Services and Public Functions" applies to the Electoral Commission? ("EC").*
- 2. In response to FOI 032-22 the EC stated that it is legally at law not a public authority but a body carrying out public functions. The EC was listed as a public authority subject to an earlier version of the statutory equality duty under the Race Relations Act 1976 ("RR Act"). The EC is not listed as a public authority subject to a statutory equality duty under the Equality Act 2010 ("EqA"), being the successor act to the RR Act. The EC is excluded from the list of public authorities affected by s149 EqA by its omission under Schedule 19 EqA.*

Does the EC have any information as to what change in legal status the EC underwent so as to change the EC from a public authority for the purposes of the RR Act to a non public authority body exercising public functions for the purposes of the EqA?

- 3. Schedule 19 EqA contains the names of many bodies that are not public authorities who are subject to the statutory equality duty to the extent of their public functions – ie functions bestowed by statute. The bodies are private bodies not created by statute and yet as they carry out their statutory public functions they are still subject to the statutory equality duty.*

Does the EC have any information as why it as statutory body with statutory functions should be excluded from the list of public authorities in schedule 19 EqA when private bodies with statutory functions are included?

- 4. The Freedom of Information Act 2000 ("FOI Act") by virtue of s1 only applies to public authorities. By s3 bodies listed in Schedule 1 are public authorities for the purposes of the Act. The FOI Act does not apply to non public authority private bodies exercising public functions. The EC is listed in Schedule 1 to the FOI Act as a public authority. The EC is subject to the FOI because it is a non exempt public authority (it has to be legally at law a public authority to be subject to the FOI), but according to the EC it is at law not a public authority but a (private) body carrying out functions of a public nature.*

Does the EC have any information that explains why it qualifies as a public authority to be on a list of 100% public authority under the FOI Act.

- 5. Under the EqA, the EC asserts, it is not a case of the EC being a public authority that is excluded from s149 EqA but that the EC is a case of a non public authority private body exercising public functions and thus subject to s149 EqA.*

Does the EC have any information which explains the claimed different treatment of its legal status at law between that under the FOI Act and that under the EqA?

- 6. Does the EC have any information that shows the EC is carryout functions that at law are not the exercise of public functions? If so does the EC have any information that identifies its non public functions?*
- 7. Does the EC have any information that details whether the Human Rights Act 1998 (“HR Act”) applies to the EC – that is can the EC be subjected to judicial review in the Admin High Court for failing to comply with the HR Act.*
- 8. Does the EC have any information that details whether the HR Act grant any rights to the EC which it can enforce for its own benefit? That is the EC can claim in an action in the Admin High Court against any organ of the UK state under the HR Acts that its human rights as a private non public authority body have been violated?*

Our response is as follows:

We note your request includes requests for explanations and clarification of the Electoral Commission’s (EC) status as a public body and the exercise of its public functions. We have responded to your requests to the extent that they relate to a request for information. We have considered the guidance published by the Information Commissioner’s Office (“ICO”) on responding to requests for information and this indicates that the EC is not obliged to create new information in order to answer your requests.

As helpful background, the EC is a body corporate established in accordance with section 1 of the Political Parties, Elections and Referendums Act 2000 (“PPERA”). The EC’s functions as a public body are also detailed in PERPA and other legislation such as the Representation of the People Act 1983 (“RPA”). In addition, the EC has powers set out in paragraph 2 of Schedule 1 where it states “*The Commission may do anything (except borrow money) which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of their functions*” ([Political Parties, Elections and Referendums Act 2000 \(legislation.gov.uk\)](#)). Whilst the EC is not a listed public authority in Schedule 19 of the Equality Act 2010, it is a still a body corporate that exercises public functions. In the exercise of its public functions the Commission must have due regard to matters set out in section 149(1) of that Act. The EC is obliged to comply with the public sector equality duty by operation of section 149(2) of the Equality Act 2010.

- 1. Does the EC have any information as to whether s29 of the Equality Act 2010 “Services and Public Functions” applies to the Electoral Commission? (“EC”).*

We do not hold this information.

- 2. In response to FOI 032-22 the EC stated that it is legally at law not a public authority but a body carrying out public functions. The EC was listed as a public authority subject to an earlier version of the statutory equality duty under the Race Relations Act 1976 (“RR Act”). The EC is not listed as a public authority subject to a statutory equality duty under the Equality Act 2010 (“EqA”), being the successor act to the RR Act. The EC is excluded from the list of public authorities affected by s149 EqA by its omission under Schedule 19 EqA.*

Does the EC have any information as to what change in legal status the EC under went so as to change the EC from a public authority for the purposes of the RR Act to a non public authority body exercising public functions for the purposes of the EqA?

We do not hold this information. To assist, you may wish to make enquiries with the Department for Housing, Levelling Up and Communities, the department currently responsible for equalities policy. They are contactable at 2 Marsham St, London SW1P 4DF, email: correspondence@levellingup.gov.uk.

3. Schedule 19 EqA contains the names of many bodies that are not public authorities who are subject to the statutory equality duty to the extent of their public functions – ie functions bestowed by statute. The bodies are private bodies not created by statute and yet as they carry out their statutory public functions they are still subject to the statutory equality duty.

Does the EC have any information as why it as statutory body with statutory functions should be excluded from the list of public authorities in schedule 19 EqA when private bodies with statutory functions are included?

We do not hold this information. To assist, you may wish to make enquiries with the Department for Housing, Levelling Up and Communities, the department currently responsible for equalities policy. They are contactable at 2 Marsham St, London SW1P 4DF, email: correspondence@levellingup.gov.uk.

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Does the EC have any information that explains why it qualifies as a public authority to be on a list of 100% public authority under the FOI Act.

We do not hold this information. To assist, you may wish to make enquiries with the Cabinet Office, the department currently responsible for freedom of information policy. They are contactable at 70 Whitehall, London, SW1A 2AS, email: publiccorrespondence@cabinetoffice.gov.uk.

5. Under the EqA, the EC asserts, it is not a case of the EC being a public authority that is excluded from s149 EqA but that the EC is a case of a non public authority private body exercising public functions and thus subject to s149 EqA.

Does the EC have any information which explains the claimed different treatment of its legal status at law between that under the FOI Act and that under the EqA?

We do not hold this information.

6. Does the EC have any information that shows the EC is carryout functions that at law are not the exercise of public functions? If so does the EC have any information that identifies its non public functions?

We do not hold this information. To assist you, the EC’s powers are detailed in Schedule 1 of PPERA ([Political Parties, Elections and Referendums Act 2000 \(legislation.gov.uk\)](http://legislation.gov.uk)).

7. Does the EC have any information that details whether the Human Rights Act 1998 (“HR Act”) applies to the EC – that is can the EC be subjected to judicial review in the Admin High Court for failing to comply with the HR Act.

We do not hold this information.

8. Does the EC have any information that details whether the HR Act grant any rights to the EC which it can enforce for its own benefit? That is the EC can claim in an action in the Admin High Court against any organ of the UK state under the HR Acts that its human rights as a private non public authority body have been violated?

We do not hold this information.

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: <https://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

Information Officer
FOI@electoralcommission.org.uk

The Electoral Commission
[electoralcommission.org.uk](https://www.electoralcommission.org.uk)