

Dear [REDACTED],

Internal review of FOI request FOI 091/18

Thank you for your request dated 19 July 2018 for an internal review of our response to your earlier request under the Freedom of Information Act 2000 (FOIA).

Your original request

Your original request asked for the information below.

- Please could you provide me with copies of all correspondence that the Electoral Commission had with the DUP concerning financial donations in the EU Referendum campaign. (NB: I am aware that there are legal restrictions on what information the Commission can disclose with regard to political donations in Northern Ireland. However, please could any such information be blacked out, so that any remaining text can still be released?)
- All correspondence that the Commission has had with the Constitutional Research Council since 01 Jan

Your request for an internal review

In seeking an internal review you made the points below.

- I am happy to drop the second question of my FOI request, which relates to the Constitutional Research Council, and focus simply on the first part, requesting correspondence between the EC and the DUP.
- This question does not relate to the identity of donors. As I understand it, the law only prevents information from being released which may identify donors. But I don't believe the law also says that surrounding information always exempt as well - such as correspondence between the EC and the DUP. The previous ICO ruling you have referred to specifically asked for information "regarding the source of the donation", and the ICO pointed out that "the intention of this provision is 'to guard against intimidation of legitimate donors' to Northern Ireland recipients". It is true that the ICO says there may be situations where identities could be inferred indirectly, but I cannot see a situation in which the particular wording of my own FOI request would necessarily fall within that category.
- My FOI request is for correspondence, rather than being a yes/no question. Therefore, any information that is a legitimate exemption under the PPERA or FOIA should be redacted by way of blacking it out within the document. Therefore, even if the EC is right to apply the exemptions with regard to specific parts of the text, it does not follow that the documents should be withheld in their entirety.

Summary of our original response

Our response to your original request, sent on 19 July 2018, explained that we are unable to confirm or deny whether or not we hold any information to fulfil your request. This is because section 71E of the Political Parties Elections and Referendum Act 2000 (PPERA) prohibits us from releasing information about donations that may or may not have been given to a registered Northern Ireland party, as well as information about our function in this area.

This restriction applies to donations made to Northern Ireland parties during the EU referendum campaign. We also explained that we consider this information exempt under section 44(1)(a) of the FOIA.

Outcome of your internal review

You argue that the prohibition on disclosure in section 71E PPERA only applies to information that may identify donors in Northern Ireland. This is not correct. Section 71E places our employees under a duty not to disclose any information which relates to a donation received by a Northern Ireland recipient before 1 July 2017, which we obtained in the exercise of our functions under Part 4 PPERA. A 'Northern Ireland recipient' includes a political party registered in the Northern Ireland register (section 71A(2)(a) PPERA).

Therefore the prohibition is wider than information that identifies a donor. The exemption covers any information that identifies a donor but also all other information that relates to a donation to a Northern Ireland registered party before 1 July 2017, which we obtained in the exercise of our functions under Part 4 PPERA.

The information you requested is any correspondence that we had with the DUP about financial donations in the EU referendum campaign, which took place in 2016. We explained in our original response that all of the information you requested was exempt under section 71E of the Political Parties Elections and Referendums Act 2000 (PPERA). I am satisfied that this was the correct conclusion. As explained below, we neither confirm nor deny that we hold this information. This means that all of the information you requested is exempt under section 44(1)(a) FOIA, as we are prohibited by or under any enactment (in this case section 71E PPERA) from disclosing it.

In our original response we referred to a decision from the Information Commissioner's Office (ICO). In this the ICO was considering a different request. In that case the person asked for the identity of a donor. The ICO concluded that "The key phrase here is 'any information' which 'relates to'. The ICO agreed that this information was exempt from disclosure. Although this decision was about a different request, this conclusion is consistent with our use of the section 44 FOIA exemption in this case.

Also in our original response we stated that "We are unable to confirm or deny as to whether or not we hold any information in relation to your request". This is because by confirming or denying that we hold any information, we would be disclosing information relating to donations to a Northern Ireland party. Therefore we are

exempt from the duty in section 1(1)(a) FOIA to confirm or deny that we hold the requested information under section 44(2) FOIA.

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. I have considered whether the decision to withhold the information you asked for was appropriate. In doing so I have referred to [guidance from the ICO](#).

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. More details about the appeal procedure are on the [ICO website](#).

Yours sincerely,

Emma Hartley
Head of Campaigns and Corporate Communications
The Electoral Commission