

[REDACTED]

From: FOI
Sent: 17 August 2022 08:04
To: [REDACTED]
Subject: FOI 059-22 - Response

Dear [REDACTED],

Our Ref: FOI-059-22

Thank you for your email to the Electoral Commission dated 27 July 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.

Under the Freedom of Information Act 2000, please provide me with:

–All European Union referendum spending returns supplied by Leave.EU Group Limited (Leave.EU) to the Electoral Commission;

–All pre-poll regulated transaction reports supplied by Leave.EU to the Electoral Commission; and

–The contract between Leave.EU and Better for the Country Limited (BFTC) that Leave.EU supplied to the Electoral Commission, showing the "Terms of Engagement" and all other provisions.

If my request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the Act.

I will also expect you to release all non-exempt material. I reserve the right to appeal your decision to withhold any information or to charge excessive fees.

I would prefer to receive the information by email to this address (paul@tortoisemedia.com).

If you require any clarification, I expect you to contact me under your section 16 duty to provide advice and assistance if you find any aspect of this FOI request problematic.

Our response is as follows:

We hold the information you have requested.

With regard to the first two elements of your request, we publish all data from statutory reports delivered to us by campaigners that is not exempt from disclosure, such as signatures and other personal data. You can find all relevant data for Leave.EU on our website. To assist you, the links below are to search results for Leave.EU regarding spending and transactions.

[Search - The Electoral Commission](#)

Our providing you with these links is in line with the section 21 exemption of the Freedom of Information Act 2000 (FOIA) which provides for an exemption where the information requested is reasonably accessible to the applicant by other means. We are not required to repeat the information in our response, as long as we provide you with a means to access it.

With regard to the third element of your request, this is exempt from disclosure.

Exemption: Investigations and proceedings: Section 30(1)(a)(i) Freedom of Information Act 2000

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 FOIA 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 made public that an investigation had been opened in this case and explained why we had done so, and we then published a [summary](#) of the outcome of the investigation.

Balance of the public interest

In assessing where the public interest balance lies in section 30(1), 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 has been concluded. That is a factor that can weigh in favour of disclosure, depending on all of the circumstances of the matter. However, 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 was not 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 by the fact that we also made public the outcome.

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 is not exempt under section 30.

The Commission strives to be an open, transparent authority and I trust that this information satisfies your request. 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:

<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