[redacted]

**From:** FOI
**Sent:** 23 March 2023 08:23
**To:** [redacted]
**Subject:** FOI 019-23 - Response

Dear [redacted],

**Our Ref: FOI-019-23**

Thank you for your email to the Electoral Commission dated 28 February 2023.

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.

*On 17th August 2022 you published a press release announcing the publication of the 2021 accounts of 18 political parties and ten accounting units in the United Kingdom with income or expenditure over £250,000. The Reclaim Party (Income £1,850,002, expenditure £1,624,642) was one of these party's. You stated in this press release "The Reclaim Party's submission was incomplete because it failed to include an auditor's report alongside its statement of accounts, which is required by law."*

*1. Can you confirm that Section 47 (1)(b) of the Political Parties, Elections and Referendums Act 2000 states the treasurer of the registered party is guilty of an offence if they do not deliver an auditors report?*

*2. In line with your enforcement policy was an assessment made of whether there was reasonable grounds in this case to suspect an offence or contravention had occurred?*

*3. Did the party treasurer present any reasonable excuse as to the absence of an auditors report?*

*4. Did the electoral commission appoint an auditor for the party by virtue of PPERA 2000 section 43(4)(a)?*

*5. When will the Commission publish the revised, complete 2021 accounts for the Reclaim Party?*

**Our response is as follows:**

We hold some of the information you have requested.

We have responded to your individual questions below, or provided an explanation why we are not able to respond or provide information.

*1. Can you confirm that Section 47 (1)(b) of the Political Parties, Elections and Referendums Act 2000 states the treasurer of the registered party is guilty of an offence if they do not deliver an auditors report?*

Section 47(1)(b) provides that where any statement of accounts, notification or auditor's report required to be delivered to the Commission is, without reasonable excuse, not delivered to them before the end of the relevant period, the person who was the treasurer of the party immediately before the end of that period is guilty of an offence.

Section 47(1)(b) does not therefore state that the treasurer of the registered party is guilty of an offence if an auditor's report is not delivered by the due date – an offence occurs only if there is also no reasonable excuse for the failure.

*2. In line with your enforcement policy was an assessment made of whether there was reasonable grounds in this case to suspect an offence or contravention had occurred?*
Yes, an assessment was conducted, and an investigation was opened on 18 January 2023, to establish all relevant facts of this matter, including whether any reasonable excuse may have applied. That investigation is ongoing.

*3. Did the party treasurer present any reasonable excuse as to the absence of an auditors report?*
As noted above, there is an ongoing investigation into this matter, and we consider this information exempt from disclosure under sections 30 and 31 of the Freedom of Information Act 2000, see below.

*4. Did the electoral commission appoint an auditor for the party by virtue of PPERA 2000 section 43(4)(a)?*
As noted above, there is an ongoing investigation into this matter, and we consider this information exempt from disclosure under sections 30 and 31 of the Freedom of Information Act 2000, see below.

*5. When will the Commission publish the revised, complete 2021 accounts for the Reclaim Party?*
We do not hold this information. We will consider whether any further publication is appropriate in due course.

**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 Freedom of Information Act 2000 (FOI) 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 you have 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 will make public the outcome of the investigation when it is concluded. In doing so we will again carefully consider the public interest in promoting understanding of our decisions.

Balance of the public interest:

In assessing where the public interest balance lies in section 30(1) case 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

(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 is ongoing. 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 is not being 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 will be met by making public the outcome. We will consider carefully the appropriate level of detail to disclose at that time to meet both our regulatory objectives and the public interest in promoting understanding of our decisions.

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 not exempt under section 30.

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: 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
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**The Electoral Commission**
electoralcommission.org.uk