

[REDACTED]

From: FOI
Sent: 01 June 2023 09:02
To: [REDACTED]
Subject: FOI 053-23 - Response

Dear [REDACTED],

Our Ref: FOI-053-23

Thank you for your email to the Electoral Commission dated 2 May 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.

Please provide copies of the constitution and financial scheme of the proposed party "The Party of Women" / POW.

I am particularly interested in how the Party intends to meet its obligations under The Equality Act 2010. If the intention is to literally create a "Party of Women" and restrict membership to only female applicants it would seem at odds with the act. Political parties are not allowed to restrict membership to people who share a protected characteristic Schedule 16, 1(5) the 2 protected characteristics I think that would be discriminated against are Sex and Gender Reassignment.

Our response is as follows:

We hold some of the information you have requested.

For clarity, we have considered your request and relevant response in two parts.

Part 1:

Please provide copies of the constitution and financial scheme of the proposed party "The Party of Women" / POW.

We hold the proposed constitution and financial scheme of the applicant party 'Party of Women'. However, as the application is still under consideration, we consider these documents exempt from disclosure under Section 31(1)(g) of the Freedom of Information Act 2000 (FOIA).

Exemption: 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 the Political Parties, Elections and Referendums Act 2000 (PPERA) for the purposes of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment, as provided by s31(2)(c) of the FOI Act.

The Commission administers a registration function, as set out by the PPERA. The information you have requested is currently under consideration as to whether the party in question will be registered, or the application rejected. Disclosure of a document currently under consideration as part of our registration function would in our view be likely to prejudice the exercise of that function, which involves deciding between two regulatory actions in pursuance of the Political Parties Elections and Referendums Act 2000.

Public interest test

Application of the section 31 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.

The factors we have considered are set out below.

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 promoting public understanding of the decisions we make as a regulator.

The Commission aims to be robust and fair in its regulatory decisions. 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 have made public through our website that an application has been received, and made available the descriptions and emblems that the party seeks to register. We do this so that the public can provide comments and views on those specific parts of the application, because views on whether any of these are likely to cause confusion, one of the statutory tests, are relevant factors which we take into account. No such factors apply to a proposed constitution or financial scheme.

We will also make public our decision on this application, and if it is registered the party's registered details will be published. Although we do not publish constitutions or financial scheme we will, if asked, disclose the constitution or financial scheme of a registered party.

Public interest factors in favour of applying the exemption

The public interest also lies in enabling the Commission to conduct its regulatory functions effectively and efficiently.

Disclosure of a constitution or financial scheme (and the Commission discloses information on its website to the public, not just to the particular requester) under consideration may in our view lead to public debate and speculation unhelpful to the decision making process. It may also create confusion for the public as to whether the party is in fact registered or not, or as to what is in fact the correct constitution or financial scheme of the party, should it be registered. The constitution and financial scheme we currently hold may be rejected, or we may make recommendations for changes to be made to these documents in order for them to be compliant.

Releasing this information whilst we are making a decision could also create a controversial precedent on the release of information or impair the Commission's ability to obtain information in the future, which in turn may adversely affect the Electoral Commission's proper functioning.

Balance of the public interest

We consider that the balance of public interest in this case lies on the one hand in carrying out our regulatory functions 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 our regulatory work effectively and efficiently, in a way that gives the public clarity as to the status of an application.

We consider that the public interest in carrying out our regulatory functions 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 publishing through our website that an application had been received, and made available the descriptions and emblems that the party seeks to register, and will be further met by the fact that we will also make public the outcome of our consideration.

We do not consider that disclosure of the specific constitution and financial scheme in this case would add to any degree to carrying out our regulatory functions in an open and transparent way, and in promoting public understanding of the decisions we make as a regulator.

Having carefully weighed the public interest relating to possible disclosure of the information requested under Section 31(1)(g) we are 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.

As noted above, we will disclose the constitution and financial scheme of the party should it be registered, and the document requested under the FOI Act.

We aim to process applications within seven weeks from the point an application is considered complete. In some cases, it can take less or more time than that. Please note that this timeframe reflects the time taken to reach a decision to approve or refuse an application. We consider an application complete either on receipt or following a party providing any additional information.

This party provided additional information after submitting their application. We consider Party of Women to have submitted a complete application to register as of 17 May 2023. On a monthly basis, we publish records of decisions taken, on [this webpage](#).

Part 2:

I am particularly intrested in how the Party intends to meet its obligations under The Equality Act 2010. If the intention is to literally create a "Party of Women" and restrict membership to only female applicants it would seem at odds with the act. Political parties are not allowed to restrict membership to people who share a protected characteristic Schedule 16, 1(5) the 2 protected characteristics I think that would be discriminated against are Sex and Gender Reassignment.

A political party with more than 25 members is obliged to follow the requirements of the Equality Act 2010, in particular the requirements in section 101, which relate to the conditions of membership to a political party. To act fairly and consistently, we assume a party does or will have more than 25 members. So, where a party's structure and organisation includes provisions that could allow it to

discriminate against someone on the basis of a protected characteristic(s), the constitution will not meet this test of lawfulness.

The Commission is bound by the public sector equality duty in section 149 of the Equalities Act when exercising its functions. We can confirm that in exercising this duty, we will consider whether the application to register 'Party of Women' meets relevant equalities legislation. This approach will be consistent with our processes which we carry out when assessing all applications to register a political party.

The Freedom of Information Act provides a general right of access to information held by the Electoral Commission. However, you have sought our view which by its very nature is not recorded information. The Freedom of Information Act is only applicable to information held by the Commission in recorded format, and we are not expected to provide opinion or speculate to answer an FOI request. Therefore, the Commission is unable to provide you with a response in respect of this part of your enquiry.

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

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The Electoral Commission
electoralcommission.org.uk