From: FOI
Sent: 27 February 2025 17:29
To: [redacted]
Subject: FOI 137-24 - Response '

Categories: Transferred to SharePoint

Dear [redacted]

Our Ref: FOI 137-24

Thank you for your email to the Electoral Commission dated 20 September 2024.

The Commission aims to respond to requests for information promptly and regrets it has done within the statutory timeframe of twenty working days.

Your request is in bold below followed by our response.

I wish to make a request under the Freedom of Information Act. This is tangential to FOI request response Ref: 124-24, but it represents a new request, and is not an Internal Review to 124-24.

Under Section 87A of Representation of the People Act 1983, Returning Officers are obliged to send copies to the Electoral Commission of candidates' full election expense return and declarations.

This is set out in this Electoral Commission guidance: https://www.electoralcommission.org.uk/guidance-acting-returning-officers-administering-a-uk-parliamentary-election-great-britain/after-election/accounting-election/what-you-need-do-spending-returns

I wish to request copies of each of these returns, in as far as the Electoral Commission currently holds them, for each Parliamentary constituency, for each Labour Party candidate (including the Co-operative Party, or Labour & Co-operative) who was elected as a Member of Parliament in the 2024 general election. I am not requesting such information for other parties, or candidates who were not elected.

In response to FOI 124-24, the Commission interpreted that request as asking for the complete set of returns: you replied that the information is "not held". I note that you will not yet have a full set of returns. However, I am now requesting the returns that you do currently hold. I am placing this in a new request for maximum clarity on that point. Again, I would stress that this is not a request for an Internal Review of 124-24.

Please provide the full election expense returns that you do hold – including any statement of donations, and any accompanying documents. Please provide the information electronically. Further to the duty to assist under Section 16 of the Act, since the files may be considerable in size, please provide via a suitable file sharing link (e.g. Dropbox or equivalent). The guidance above indicates that the Electoral Commission has such facilities.

Disclosure and processing is lawful and compliant with UK GDPR and the Data Protection

Act 2018, as there is a legal obligation for Returning Officers to provide the information, as provided for in the 1983 Act; disclosure will also support democratic engagement, a task in the public interest. The documents are open to public inspection, so are public domain.

Whilst the Electoral Commission may intend to publish a high-level summary of this spending data, I would note that the full and individual returns are not published, so there are no grounds for a Section 22 (future publication) exemption.

I also note the Information Commissioner's guidance on Section 22, which states: "9. A general intention to publish some information will not suffice. It is not enough for the public authority to note that it will identify some, but not all, of the information within the scope of the request for future publication. 10. The information that the public authority intends to be published must be the specific information the applicant has requested." https://ico.org.uk/media/for-organisations/documents/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf. This reflects the wording of the legislation in Section 22(1)(a)-(b).

I understand that as a consequence of the RPA provisions, you will need to redact the home address of any individual donor, and possibly some small elements of other personally sensitive information. Please do this to facilitate disclosure, further to Section 16, thereby avoiding the need for a Section 40 (personal data) exemption or Section 44 (a disclosure is prohibited by an enactment) exemption.

I note that the Information Commissioner guidance on Section 12, notes that when assessing whether or not a request exceeds the FOI cost threshold, a public authority cannot take account of the time likely to be taken in removing any information which is exempt. So the redaction of (home address) personal data above cannot count towards the cost limit.

In your response to FOI Request 124-24, the Commission stated that had it held all the information, it would need to consider the time taken and the implications on Commission staff and resources. Whilst noting this, I would point out that redaction cannot count towards the cost limit.

This is also made clear in the Cabinet Office's FOI Code of Practice issued under Section 45: "6.4. Other factors including redaction time or any other expenses likely to occur in cost limit calculations cannot be included when estimating whether the response would exceed the cost limit." https://www.gov.uk/government/publications/freedom-of-information-code-of-practice

Public bodies can only apply the cost limit in relation to establishing whether the information is held, locating and retrieving the information, and extracting relevant information. I would observe that the Electoral Commission has received this information from local authorities following a specific request, so the information is easily identifiable. I am not looking to extract information (rather I am requesting the full documentation provided by the local authority Returning Officers, albeit with the necessary redactions of personal information). The fact that the Electoral Commission currently only holds a partial set of returns at present will also practically reduce the totality of administrative time taken to respond.

This information is not reasonably accessible by other means (under Section 21). Returning Officers are not subject to the Freedom of Information Act. No other single organisation holds a collated set of candidates' expenses. Obtaining a full set would require individual RPA requests to every Returning Officer and pay a 20p/page fee: this

would not be 'reasonably accessible', as the copying costs under RPA would be likely to be in the region of £4,000+ (e.g. 20p x 50 pages x 411 candidates) and be excessively burdensome in time, by requiring every local authority (with a winning candidate) to be contacted. The Electoral Commission is the only public body which will 'hold' the aggregated returns, so the requested information is not 'held' under the Act otherwise and is not reasonably accessible. (Whilst noting that the Electoral Commission may not yet have a full set of returns). I also note that the Electoral Commission has recently released such information for past elections (i.e. election returns of named Labour MPs) under FOI, as evident the Commission's Disclosure Log (e.g. FOI 007-24).

Disclosure will be in the public interest as it will facilitate public scrutiny of the election expenses and donations of MPs of the governing party, and ensure greater accountability of elected representatives. This is particularly relevant in light of the ongoing public debate about donations and donations in kind given to MPs. The reporting threshold for RPA returns is lower than the House of Commons' rules or PPERA, so the release of the RPA returns will increase transparency on party funding.

If there are legal irregularities in such RPA returns, then disclosure and the associated public scrutiny and inspection would help identify this, and facilitate such matters being brought to the attention of the police – thus assisting with the detection and prevention of crime. Equally, it is in the public interest if there is reassurance that there are no such irregularities.

I also note that the Electoral Commission has previously called for greater transparency on the pro-active publication of such expense returns by public authorities (e.g. https://www.electoralcommission.org.uk/sites/default/files/pdf_file/Political-finance-regulation-at-the-June-2017-UK-general-election-PDF.pdf, para 2.28 and https://www.electoralcommission.org.uk/sites/default/files/pdf_file/UKPGE-Spending-Report-2015.pdf para 6.55). In the light of that policy position, it is clearly in the public interest for the Electoral Commission to disclose such information in response to this request.

In relation to any consideration of Section 14, I would note that:
• this request has a serious purpose and value (for the public interest reasons outlined above, and due to the fact that this information is not 'reasonably' accessible).
• the Commission has said such returns should be pro-actively published.
• the burden on the public authority is not disproportionate - the only notable staff time is redaction time, and FOI law and guidance is very clear that this cannot be counted. The Commission will hold software to undertake quick and effective redactions of PDFs (e.g. Adobe Acrobat). Again, I note that the Commission will only hold a partial set of returns, reducing the overall burden of processing the request. Indeed, trying to compile the information through local authorities would require a cost of up to £4,000 and hundreds of separate requests.
• there is no need to consult third parties (as there is a right to public access).
• this is not a repeated request, as information sought was not provided previously.
• other than FOI request 124-24, I have not made previous FOI requests to the public authority in recent years, and there is no personal grudge behind the request (indeed, I would like to thank the Commission's staff for their assistance so far, and in due course).

Please contact me if any aspect of my request needs clarification, or the request needs narrowing or refining (further to your duty to assist under Section 16) to bring it under the cost threshold. For the avoidance of doubt, I reserve my right to submit an internal review to FOI 124-24.

Our response is as follows:

We hold some of the information you have requested.

We apologise for our delay in providing you with a full response to your request. Your request is complex and it has taken an extended period to thoroughly consider your request and our response. Our decision is to refuse your request to the Electoral Commission under the following grounds set out in summary and then further detail below.

1. Section 89 of the Representation of the People Act 1983 (RPA 1983) requires returning officers to make candidate spending returns available for 2 years. As the requested information is reasonably accessible by other means, it is exempt from disclosure under section 21 of the Freedom of Information Act 2000 (FOIA).

2. The request for the return for each Parliamentary constituency, for each Labour Party candidate (including the Co-operative Party, or Labour & Co-operative) who was elected as a Member of Parliament in the 2024 general election, amounts to a request for copies of the documents for 411 individual candidates. The request is therefore refused as vexatious due to being disproportionately burdensome to the Commission by virtue of section 14(1) of FOIA.

3. The release of the requested information could pose a risk to candidates' health and safety and the request is therefore refused under section 38 of FOIA.

Exemption under section 21

The information requested is exempt under section 21 of FOIA because it is reasonably accessible by other means. Section 89 of the RPA 1983 places a duty on returning officers to provide copies of returns, declarations and any accompanying documents upon request. The relevant section is set out below:

"*89. Inspection of returns and declarations.*

(1) Where the appropriate officer receives any return or declaration under section 75, 75A, 81 or 82 above he shall—

(a) as soon as reasonably practicable after receiving the return or declaration make a copy of it, and any accompanying documents, available for public inspection at his office, or some other convenient place chosen by him, for a period of two years beginning with the date when the return is received by him;

(b) if requested to do so by any person, and on payment of the prescribed fee, supply that person with a copy of the return or declaration and any accompanying documents.

(1A) If any such return contains a statement of donations in accordance with paragraph 10 of Schedule 2A to this Act above, the appropriate officer shall secure that the copy of the statement made available for public inspection under subsection (1)(a) above or (as the case may be) supplied under subsection (1)(b) above does not include, in the case of any donation by an individual, the donor's address.

(2) After the expiry of those two years the appropriate officer—

(a) may cause those returns and declarations (including the accompanying documents) to be destroyed, or

(b) if the candidate or his election agent so require, shall return them to the candidate.

(3) Any returns or declarations delivered under section 75 or 75A shall be returned not to the candidate (if he or his election agent so require) but to the person delivering them, if he so requires.".

Returning officers are required to share copies of the return with the Electoral Commission under s87A RPA 1983, in order for the Commission to carry out its functions, but the Commission is not itself required to publish or make available the returns; that duty rests with the returning officer.

Section 21 of FOIA provides an exemption from disclosure where the information is reasonably accessible from the public authority or from any other person obliged to communicate the information whether free of charge or on payment (here the returning officer under s89 RPA 1983).

Section 21 is an absolute exemption and, once satisfied that the information is accessible via other means, we do not need to consider the public interest test.

It is normal practice for the Commission not to publish or release candidate spending returns under FOIA and apply the section 21 exemption. The FOI 007-24 publication was in error and the copies of the candidate information have been removed from the Electoral Commission website.

Exemption under section 14

Your request is refused as vexatious on the grounds of being disproportionately burdensome to the Commission under section 14(1) of FOIA. Section 14 is an absolute exemption and does not require an application of the public interest test.

The Commission is not suggesting that you have deliberately made your request burdensome or drafted it with the intent of making it so.

Your request includes all the documentation submitted to the Commission for 411 candidates. This is a large volume of documentation which would require collation and then individual review and redaction. Section 14 FOIA permits us to add in the time that redaction would take and the impact on the delivery of the transparency publications and work of the Commission.

Guidance from the Information Commissioner's Office reminds public authorities that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.

To assist public authorities the ICO guidance has provided a number of indicators of requests that might be refused under s14, and we have determined that burden on the authority and disproportionate effect are relevant indicators in this instance.

Although we understand that you believe there to be serious purpose and value behind your request, we must consider whether the burden on the Electoral Commission is disproportionate.

We as the regulator have a statutory duty to monitor compliance with the regime and to assist transparency, but not to publish the full candidate returns. Following a general election, we publish a dataset that includes headline figures on spending incurred and donations received by candidates. For the 2024 general election, this publication is scheduled to take place in March. The nature of your request therefore exceeds our normal publication.

There were 632 candidates representing the Labour Party in the UKPGE, of which 411 won their respective seats. To provide you with the information you have requested, the Commission would need to carry out a number of steps.

- Firstly, we would need to create a spreadsheet, listing each Labour party, Co-operative Party and Labour & Co-operative candidates who were elected as a member of Parliament in the 2024 general election.

- Following receipt of the details from the Returning Officer (before analysis), we would need to:
    - Check PDF accuracy
    - Save it in our folder
    - Track & allocate

- Each return would then need to be read and checked to see what is in scope specifically for this request and all attachments would need to be converted to PDF in preparation for the redaction of all personal/sensitive information.

- As this publication would be greater than previous years, we would then need to email each candidate a third-party notice (TPN). The purpose of a TPN is to gain the views of the individual regarding any personal information that is present.

- The return would then need to be redacted to remove personal information. The candidate spending return is a declaration of spending: it can contain itemised spending, itemisation of donations received and accompanying invoices and receipts to show proof of such spending.

- Redaction would require eliminating all identifying details. Identifying information released in the public domain could pose a risk to candidates as we could be sharing where they stay and where they eat during a campaign and this could be used by someone wishing to target them.

- We would need to respond to all correspondence/queries we receive from individuals following TPNs and chase those who do not reply. We would need to wait for all the responses to be received and queries to be resolved before preparing a response for release.

In coming to this conclusion, we have considered the Information Commissioner's latest published guidance, particularly taking into account the volume of information to be considered for redaction, the work in gathering that information, and the resulting burden to the Electoral Commission in reviewing and preparing the information for disclosure.

The request cannot be answered without the Electoral Commission incurring significant encumbrance which would impact its day-to-day activities as a regulator. The team answering this request are responsible for many other functions and duties of the Commission under PPERA. Some of the vital work they do includes conducting investigations, financial reporting, publication of spending returns, and donations over £250,000.

Exemption under section 38

Section 38 of FOIA states:

> *"(1) Information is exempt information if its disclosure under this Act would, or would be likely to-*
> *(a) endanger the physical or mental health of any individual, or*

(b)endanger the safety of any individual."

We believe that disclosure of the requested information would endanger the safety of the Members of Parliament. There are significant reports and evidence of increasing intimidation of and attacks on candidates, so this exemption is relied upon.

The requested information includes hotel and travel information that would identify the routines and likely locations of MPs. We have reasonable cause to believe that there are individuals who are interested in knowing this information about MPs, so that they can use it to target them for abuse or intimidation. The Institute for Government has, for example, reported on this concern here: https://www.instituteforgovernment.org.uk/explainer/mps-security.

Taking this into account, we consider that there is a legitimate basis for believing that the disclosure of the information would endanger the safety of the MPs and those they campaign and/or routinely travel with, including their family.

Public interest test:

Section 38 is not an absolute exemption, which means that we have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

In this case the public interest factors in favour of disclosing the requested information are:

- The public interest in understanding spending by Members of Parliament during campaigns.

The factors in favour of withholding the requested information are:

- The public interest in ensuring the personal safety of the affected Members of Parliament to allow them to carry out their duties without additional personal security concerns.
- The public interest in the ICO making decisions which take due consideration of security risks and consequences, particularly where this means saving costs of time and resources to manage risks that have resulted exclusively from a public disclosure.

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

We accept there is an interest in understanding the financial arrangements of those who campaign to be Members of Parliament and the amounts spent during the campaign phase of the election. However, the Electoral Commission publishes sufficient information into the public domain via our Candidate Spending Return tool to meet the public interest without exposing candidates to real and unnecessary risk to their safety. We consider the balance of the public interest test is in favour of withholding the information.

We trust that this explains our response to your request in sufficient detail. 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: 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 Team
FOI@electoralcommission.org.uk

The Electoral Commission
electoralcommission.org.uk