

Caitlin Lindenberg

From: FOI
Sent: 23 February 2016 12:17
To: [REDACTED]
Subject: FOI 03/16 - AL0161322 Authorised Participant Loan

Dear [REDACTED]

Our Ref: FOI 03/16

Thank you for your request under the Freedom of Information Act 2000 dated 6th January 2016

The Commission aims to respond to requests for information promptly and regrets that on this occasion we have not done so.

Your request is in bold below followed by our response.

You have requested:

Please supply all items of information held by the Commission in relation to Authorised Participant Loan AL0161322.

This was £500,000 from Colin Weir to the Scottish National Party in March 2015.

This should include all information in relation to the original donation and all information in relation to any subsequent developments regarding the donation, including all associated correspondence, both internal and between the Commission and others.

Please note that I made a previous request for this material on 11 June 2015 which became your ref FOI 76/15.

Information was withheld on the basis of Section 30(1) (a) (i) and 31 (1) (g) as the Commission was investigating the SNP's failure to declare the loan on time.

However the Commission has now finished its investigation and that impediment to disclosure has been removed.

Our response is as follows:

The Commission does hold information relevant to your request.

The Commission has a general function under section 145 of the Political Parties, Elections and Referendums Act (2000) (PPERA) to monitor compliance and take such steps as it considers appropriate with a view to securing compliance with certain restrictions and requirements set out in the Act.

As a registered political party, the Scottish National Party (SNP) is required under section 71S of PERA to report loans to the Commission. The SNP failed to deliver its quarterly 'transaction' (loan) report to us by the required deadline of 30 April 2015. The Commission investigated whether an offence had occurred and, if so, what, if any, action was appropriate to take.

Our online system enables donations and loans reports to be uploaded rather than sent in paper form, but a report is not legally delivered until an accompanying declaration is also delivered by the registered treasurer stating that the information is accurate and complete.

On our online system that declaration is made by clicking to confirm a statement to that effect. In this case, the information was uploaded before the deadline of 30 April 2015, but the declaration was not made at the time, and not until 28 May 2015. The report was, however, published on time.

This case was concluded with no offence being found. We were satisfied that the failure to make the declaration was inadvertent and there was no loss of transparency to the public.

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.

Section 30(1) (a) (i) and 31 (1) (g)

The Commission has a statutory function to conduct investigations into potential breaches of the reporting requirements in PPERA. The information requested is held by the Commission in relation to an investigation into the failure of the SNP to report their loans as required by PPERA.

Section 30(1) (a) (i) of the Freedom of Information Act 2000 (FOI) provides for exemption from disclosure of 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.

In this case it is necessary to consider the failure to comply in order to reach a view whether a person or persons should be charged with a criminal offence.

Where there is not evidence of criminal activity, or in any event, the Commission may consider civil breaches. In so far as the investigation related to other potential breaches of PPERA, 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. Section 31 applies only to the extent that the information is not exempt under section 30.

The Commission considers that disclosure of the information you have requested would prejudice the exercise of the Commission's statutory functions and its ability to conduct investigations such as in this matter.

As you state, this matter is no longer subject to investigation by the Regulatory Compliance and Casework team in line with our Enforcement policy. However, as noted above, the section 30 exemption applies to information that is held at any time, whether or not the investigation is on-going.

The Commission considers that the information you have requested is also exempt under s.31 (1)(a), prejudice to the prevention or detection or crime, and s.31(1)(b), prejudice to the apprehension or prosecution of offenders.

Applications of the section 30 and 31 exemption are both subject to the public interest test. There are a number of factors that must be considered and weighed in the balance. The factors we have considered are set out below.

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 third parties to the Commission without which the Commission could not perform 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.

In this case we have also given specific consideration to two changes in the circumstances of this matter since your request in June 2015. Those changes are that the investigation has now concluded, and that more than six months have elapsed since your previous request.

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 and other enforcement agencies remains essential to our ability to conduct our statutory functions. As our investigations rely on gathering evidence from these organisations 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.

Those individuals and entities had and continue to have a reasonable expectation that information provided in the course of the investigation would not be made available to the public at large. If information provided in the course of our investigation 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 fact that the investigation has been closed does not affect the relevance of this.

In this particular case we have also taken into account that six months have passed since your previous request. We acknowledge that the grounds for nondisclosure of information will in general reduce with the passage of time. However, we also note that a relatively short time has passed in this case and, more importantly, the grounds we have set out above continue to be relevant and appropriate. Finally, no further action was taken in this case as we were satisfied that no offence had occurred. That being the case we consider the public interest in disclosure is less than in a situation where an offence was found.

Having carefully weighed the public interest relating to possible disclosure of the information requested under Sections 30(1) (a) (i), 31 (1) (g), 31(1)(a) and 31(1)(b), 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.

Some of the information you have requested contains personal data which is exempt under Section 40 of the FOI Act. These documents have been redacted prior to release. Further explanation of the exemption is provided below.

Section 40(2) and (3)(a)(i) of the FOI Act

Section 40 (2) provides for an exemption where the information requested constitutes personal data, some of which is sensitive personal data, as defined by the Data Protection Act (DPA), and where release of the information requested would breach one of the data protection principles. Some of the information we hold within the description of personal data as defined by section 1 of the DPA because the information relates directly to an identifiable living individual.

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.

Therefore, in addition to the sections 30 and 31 exemptions as set out above, the Commission is not satisfied that under section 40 (2) it would be fair and lawful to provide you with the personal data contained in the information requested.

I trust that this information satisfies your request. 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: <http://www.electoralcommission.org.uk/about-us/freedom-of-information-requests/how-do-i-make-an-foi-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: <http://www.ico.gov.uk>

Yours sincerely

Paul O'Malley
Information Adviser (Records Management)

The Electoral Commission

3 Bunhill Row

London EC1Y 8YZ

Tel: 020 7271 0554

Fax: 020 7271 0665

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