

15 August 2017

Dear [REDACTED]

Internal review of FOI request 115/17

Thank you for your request dated 31 July 2017 for an internal review of the Electoral Commission's response to your earlier request under the Freedom of Information Act 2000 (FOIA), which was given the reference EC 115/17 and dated 11 July 2017.

Your request was as follows:

- **In an interview with Channel 4 news it would appear that the Constitutional Research Council informed the Electoral Commission of who donated £425,000 to Constitutional Research Council which was then donated to the Democratic Unionist Party.**
- **Can you confirm or deny if the Electoral Commission holds details regarding the source of the donation to CRC which was then passed to the DUP.**
- **As this entity did not donate directly to a NI political party can you confirm the source of the donation to the CRC.**

You subsequently, on 31 July 2017, requested an internal review on the basis that the Commission was unable to confirm or deny whether or not we hold such information as you have requested. As part of your request for a review you noted your view that:

- **by publicly admitting donating to the DUP, the CRC has waived its protection under s.71E by virtue of s.71E(4A) by effectively giving consent to disclosure, and**
- **the information requested relates to donations to the CRC, which is not a 'Northern Ireland recipient', and therefore s.71E does not apply.**

The Commission's response to your original request, sent on 31 July 2017, explained that Section 71E of the Political Parties, Elections and Referendums Act 2000 (PPERA) places a duty of confidentiality on the Commission in relation to any information that relates to donations to Northern Ireland recipients or any information relating to our function in this area.

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It went on to explain that, as such, we considered the information you requested exempt under section 44(1)(a) of the Freedom of Information Act 2000. Section 44 exempts from disclosure any information if its disclosure is prohibited by any enactment and, as was stated, the information requested is specifically prohibited from being released by section 71E of PPERA.

I have undertaken this review because I am a member of the Commission's management team and I was not previously involved in the original response to your request. I have considered whether the decision to neither confirm nor deny whether or not we hold such information as you have requested was appropriate.

In doing so I have considered the following points in relation to s.71E of PPERA:

- the s.71E(4A) consent provision is only in force for the purpose of prescribing requirements for giving consent. To date, no such requirements have been prescribed; and
- s.71E refers to 'any information' which 'relates to a donation received by a Northern Ireland recipient'. In certain circumstances, the scope of s.71E may extend beyond a Northern Ireland recipient if the statutory test prohibiting disclosure is met.

Having reviewed your request and noted your specific points, I am satisfied that s.71E PPERA has been correctly applied in this instance.

In addition, I have also referred to the relevant guidance published by the Information Commissioner's Office, which is available on its website at <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>.

In particular, I have taken into consideration its guidance that:

- Section 44(1)(a) exempts information if its disclosure is prohibited by other legislation. Such provisions are referred to as statutory prohibitions or statutory bars and they prevent public authorities from disclosing specific types of information.
- Section 44 is an absolute exemption, which means that if information is covered by any of the subsections in section 44 it is exempt from disclosure.
- Section 44 is not subject to a public interest test.

On the basis that s.71E PPERA has been correctly applied in this situation, I am satisfied that Section 44 of the Freedom of Information Act 2000 has also been applied correctly. I therefore uphold the Commission's decision to neither confirm nor deny whether or not we hold such information as you have requested, as explained in the original response to your request.

The Commission's response to your original request pointed out that, since 2005, the Electoral Commission has consistently called for an increase in transparency so that voters in Northern Ireland can access information on how political parties are funded. Since then, the Secretary of State for Northern Ireland has announced that he intends to bring forward legislation that will provide for the publication of all donations and loans received by Northern Ireland parties on or after 1 July 2017, meaning that this information is likely to be available on the Electoral Commission website in the autumn. The Commission continues to call for the necessary legislation to be put in place to allow publication of details of all donations and loans received since January 2014 but ultimately this is a matter for the Government.

As you will be aware, if you remain dissatisfied with the Commission's response, you have the right of appeal to the Information Commissioner at: The ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Details of the appeal procedure can be found on the ICO website: <http://www.ico.org.uk>.

Yours sincerely,

Melanie Davidson
Head of Support and Improvement