

[REDACTED]

From: FOI
Sent: 25 July 2016 17:52
To: [REDACTED]
Subject: FOI 118/16
Attachments: Approval of s36 by CH.pdf; RE_ FOI 76_16 _ Risk Register_1r7foou4.pdf; Re_ FOI 76_16 _ Risk Register_1r7fovec.pdf; section_36_record_of_the_qualified_persons_opinion.pdf

Dear [REDACTED]

Our Ref: FOI 118/16

Thank you for your request under the Freedom of Information Act 2000 dated **27th June 2016**

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 in bold below followed by our response.

You have requested:

The authorisation given to the qualified person at the Commission under Section 36(5)(o)(iii) of the Freedom of Information Act 2000.

Internal emails and notes of any discussion where the opinion of the authorised person was sought and obtained in relation to FOI request FOI 76/16.

Our response is as follows:

The Commission does hold information in relation to your request. Attached is the record of the qualified person's opinion and the related emails regarding sign off of that form.

While we have released all the information we hold on this subject, some of the documents have been redacted. Some of the information contains legal advice and personal data.

Section 42(1)

Some of the information we hold in relation to this matter contains internal legal advice. The Commission considers this information regarding this request exempt from disclosure under section 42 of the FOI Act, and we are withholding this information from release.

For the reasons set out below, the Commission considers that legal advice is exempt from disclosure under section 42 of the Freedom of Information Act 2000 (FOI Act), and we are withholding this information from release. Section 42(1) provides for exemption from disclosure information that is privileged under legal professional privilege. The requested information being withheld from disclosure under section 42 constitutes legal advice that informed the decision of the Commission on this matter; it is legally privileged communications and advice provided by legal advisors.

Application of this exemption is subject to the public interest test. There is a public interest in transparency and accountability. However, it is also in the public interest to safeguard the

confidential nature of legally privileged communications and advice so as to allow openness in all communications between client and lawyer to ensure access to full and frank legal advice which in turn is fundamental to the administration of justice. There is an inherent and strong public interest in maintaining this privilege given it is in the public's interest to ensure openness in order to safeguard access to fully informed, realistic and frank legal advice. The maintenance of this privilege, as the Information Commissioner's Office and the courts have stated, helps ensure the administration of justice and the effective undertaking of public policy. Having carefully weighed the public interest relating to possible disclosure of the information requested under s 42(1), we are satisfied that it is not appropriate at this time to disclose the information that the Commission holds. The Commission is satisfied that maintaining the exemption outweighs the public interest in disclosure.

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

In the information we are releasing, we have redacted some of the information in the documents. Some of the information contained in these documents contains personal data, such as direct contact information of staff members and the names and contact details of junior staff members, which is exempt under Section 40 of the FOI Act.

Section 40(2) provides for an exemption where the information requested constitutes personal data as defined by the Data Protection Act 2000 (DPA), and where release of the information requested would breach one of the data protection principles. Some of the information contained in the requested information falls within the description of personal data as defined by section 1 of the DPA because the information relates directly to an identifiable living individual.

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

Jo Crofton-Diggins
Information Manager

The Electoral Commission

3 Bunhill Row

London EC1Y 8YZ

Tel: 020 7271 [REDACTED]

Fax: 020 7271 0528

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Carolyn Hughes

From: Carolyn Hughes </O=ELECTORAL
COMMISSION/OU=LONDON/CN=RECIPIENTS/CN=[REDACTED]>
Sent: 22 June 2016 13:18
To: [REDACTED]
Subject: RE: Request for S.36 - FOI 76/16 - Risk Register

Agreed.

Thanks

Carolyn

From: [REDACTED]
Sent: 22 June 2016 12:17
To: Carolyn Hughes
Subject: RE: Request for S.36 - FOI 76/16 - Risk Register

Hi Carolyn,

Kay Jenkins (who has been assigned as the main team lead for this FOI request) has been in contact with the IM team to request if we can try to release the response to this request before the Referendum tomorrow.

To this end, would it be possible for you to review this S.36 request today? If not, I will let Kay know.

Thanks,

[REDACTED]

From: FOI
Sent: 20 June 2016 11:32
To: Carolyn Hughes
Cc: [REDACTED]
Subject: Request for S.36 - FOI 76/16 - Risk Register

Dear Carolyn,

An application of Section 36 of the Freedom of Information act 2000 has been requested for the following FOI request:

[FOI 76/16 – Risk Register](#)

Here are the relevant [Draft Response Letter](#) and the [Completed Section 36 form](#)

The information to be exempted under s.36 can be found here: [REDACTED]

The deadline for this request is Thursday 7th July.

Thank you for your consideration,

██████

████████████████████

Information Adviser (Records Management)

The Electoral Commission

3 Bunhill Row

London EC1Y 8YZ

████████████████████

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Kay Jenkins

From: Kay Jenkins </O=ELECTORAL
COMMISSION/OU=LONDON/CN=RECIPIENTS/CN [REDACTED]>
Sent: 22 June 2016 11:48
To: Michelanne Wilson
Subject: RE: FOI 76/16 - Risk Register

Hi Michelanne
That's great, thanks very much.
Yes all well here thanks – very calm so far in fact!!
All the best
Kay

From: Michelanne Wilson
Sent: 22 June 2016 11:40
To: Kay Jenkins
Cc: [REDACTED]
Subject: RE: FOI 76/16 - Risk Register

Hi Kay

Sorry for delayed reply (yesterday was my non- working day). So I dealt with this on Monday and sent it off to IM. It is awaiting Carolyn's approval and should be ready to go out shortly.

Hope all is well in Manchester. Let me know if you need anything else!

Michelanne Calhoun Wilson
Lawyer - Electoral Administration
The Electoral Commission
3 Bunhill Row London EC1Y 8YZ
[REDACTED]

From: Kay Jenkins
Sent: 21 June 2016 12:50
To: Michelanne Wilson
Subject: Re: FOI 76/16 - Risk Register

Hi Michelanne
Just wondering if you've been able to look at the below?
I'll be in Manchester soon but can pick up emails on my iPhone.
Many thanks
Kay

Sent from my iPhone

On 17 Jun 2016, at 16:47, Michelanne Wilson [REDACTED] <[\[REDACTED\]@electoralcommission.org.uk](mailto:[REDACTED]@electoralcommission.org.uk)> wrote:

I will have a look at this on Monday as a priority. No problem - thanks Kay

Michelanne

Sent from my iPhone

On 17 Jun 2016, at 16:44, Kay Jenkins [REDACTED] <[\[REDACTED\]@electoralcommission.org.uk](mailto:[REDACTED]@electoralcommission.org.uk)> wrote:

Hi all

I've drafted a response to the FOI and also drafted the section 36 form. Could you have a look at these please and let me know what you think? I'm in the office (in Cardiff) on Monday but then in Manchester for the referendum for the rest of the week. [REDACTED]

[REDACTED] Carolyn will need to sign this I assume. I believe she is in Bunhill Row all next week.

It would therefore be very helpful to discuss as needed during Monday so that I can make any changes necessary and I could then perhaps leave it with Paul for sign-off by Carolyn and send it off?

Thanks very much

Kay

From: FOI
Sent: 10 June 2016 11:27
To: Kay Jenkins
Cc: [REDACTED]
Subject: FOI 76/16 - Risk Register

FOI 76/16

Dear Kay,

The Commission has received the following FOI request:

Please provide me with the information contained in the Electoral Commission's risk register in relation to the Referendum on Membership of the European Union as it stood at 22:00 on 8 June 2016.

For information, here is a link to the [FOI Internal Procedure](#)

You have been identified as the MT member responsible for preparing the response and ensuring that it is sent out to the requester as soon as possible and within the 20 working days statutory deadline for FOI requests. For this request the 20 working day deadline falls on **7th July** but we should aim to get the response out in advance of that date if possible.

If you are not the right MT member to lead on this request, it is your responsibility to pass on the request to that person as a

matter of urgency.

Please update the FOI log every Friday with details of the progress in responding to the request. This should include the risk level and who is involved in preparing the response.

- If Third Party consultation is required, please ensure that this is done at the earliest opportunity, preferably by the end of day 3. This will ensure little hold up in made in preparing the response.
- If you decide that this FOI is deemed high risk, please inform me as soon as possible so that we can plan a realistic schedule to meet the deadline.

Please insert your answer to the request into this relevant [FOI Response Letter Template.docx](#).

Once the draft has been completed, and approved if it is a higher risk request, please send it to the Information Management team who will send the response out to the requester.

All emails and documents that need to be retained as a record of the Commission's actions in responding to the request should be stored in this folder: Skynet/DM/Functions/Information Management/FOI DPA Requests/[Risk Register](#)

As MT lead for this request, is your responsibility to ensure that they are there ready for review in the event of a request for internal review of an FOI response, or a request for information from the Information Commissioner's Office.

Please get back to me with any questions.

Kind regards,


Information Adviser (Records Management)

The Electoral Commission
3 Bunhill Row
London EC1Y 8YZ


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Kay Jenkins

From: Kay Jenkins </O=ELECTORAL
COMMISSION/OU=LONDON/CN=RECIPIENTS/CN [REDACTED]>
Sent: 22 June 2016 13:39
To: [REDACTED]
Cc: Kay Jenkins; Michelanne Wilson; [REDACTED]
Subject: Re: FOI 76/16 - Risk Register

Hi [REDACTED]
That's great, thanks very much. Happy for that to be sent now.
Kay

Sent from my iPhone

On 22 Jun 2016, at 13:26 [REDACTED] electoralcommission.org.uk> wrote:

Hi Kay,

I am happy to report that Carolyn Hughes has agreed to the use of Section 36 in this FOI request.
If you are not happy with the response, I can dispatch this today.

[FOI 76/16](#)

Thanks,

[REDACTED]

[REDACTED]
Information Adviser (Records Management)

The Electoral Commission
3 Bunhill Row
London EC1Y 8YZ

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www.electoralcommission.org.uk

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<image001.jpg>

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Record of the qualified person's opinion **Freedom of Information Act 2000 Section 36**

When dealing with a complaint regarding section 36 of the Freedom of Information Act 2000, the ICO will expect to see evidence of the qualified person's opinion and how it was reached. We require this evidence in order to decide whether the opinion was a reasonable one. The following form sets out the minimum information that we expect public authorities to provide to us about the qualified person's opinion, in the event of a complaint.

Completing this form is a convenient way for public authorities to give us the information we need. It is intended as a tool to assist public authorities, but there is no statutory requirement for them to use it; if instead they are able to send us other documents that record the same information about the qualified person's opinion, we will accept those.

While the purpose of the form is to help in providing information to us when we are investigating a complaint, public authorities may also wish to use it when they are considering applying section 36, as part of the internal process of obtaining and recording the qualified person's opinion.

Please see the notes at the end for help in completing this form. For further information on section 36 of the Freedom of Information Act 2000, please see our [guidance document on Prejudice to effective conduct of public affairs \(section 36\)](#).

This form only records the qualified person's opinion under section 36(2) of the Freedom of Information Act. If the qualified person's opinion is that section 36(2) is engaged (ie that disclosure of the information would or would be likely to cause prejudice or inhibition), the public authority must then carry out the public interest test. As a matter of good practice, public authorities should also keep a record of the factors considered in the public interest test and the outcome of that test.

The public authority	
1. Name of the authority	The Electoral Commission
The qualified person	
2. Name (<i>see Notes below</i>)	Carolyn Hughes
3. Job title	Deputy Chief Executive
4. Subsection of s36(5) under which qualified person is authorised (<i>see Notes below</i>)	
Information on which opinion was sought	
5. Brief description of the information requested	The Electoral Commission's risk register in relation to the Referendum on Membership of the European Union as it stood at 22:00 on 8 June 2016
6. Information was	<input checked="" type="checkbox"/> shown to qualified person
	<input type="checkbox"/> described to qualified person
Submission to the qualified person	
7. Date opinion sought	_20 / _06_ / _2016____ (DD/MM/YYYY)
8. Subsection(s) of s36(2) on which opinion was sought (<i>see Notes below</i>)	<input type="checkbox"/> 36(2)(a)(i) <input type="checkbox"/> 36(2)(a)(ii) <input type="checkbox"/> 36(2)(a)(iii) <input type="checkbox"/> 36(2)(b)(i) <input type="checkbox"/> 36(2)(b)(ii) <input checked="" type="checkbox"/> 36(2)(c)
9. Arguments put forward as to why prejudice/ inhibition would/ would be likely to occur	Releasing the Commission's risk register for the EU Referendum during the timescale for this request would in itself prejudice the safe conduct of the referendum. The risk register covers a range of referendum issues including matters of safety and security. If released, use of this information in the wrong hands could jeopardise the delivery of the referendum, the safety and timeliness of the referendum count and the safety of Electoral Commission staff and external partners. The conduct of the referendum is a matter of national

	<p>importance. Releasing the risk register could enable the referendum to be jeopardised by external interference before the count takes place, during the count or soon afterwards.</p> <p>There are also considerations regarding future electoral events. Release of the risk register would have a negative impact on any future events as the risks in the register would likely be very similar. There is likely to be a detrimental effect to our ability to discuss such risks internally due to fear of the information being released.</p>
<p>10. Counter arguments put forward</p>	<p>There is inherent public interest in the way the referendum is conducted and in the actions of the Electoral Commission in relation to the referendum.</p>
<p>11. Any other factors taken into account</p>	<p>On 8 June, the Electoral Commission published on its website a statement about the technical difficulties experienced by the UK Government's electoral registration website and the impact the difficulties had on the deadline for registering to vote by midnight on 7 June. The Commission called on the Government to extend the deadline for registering to vote to be extended, and published a statement to that effect, including on its website . On 9 June, the Commission published a further statement, including on its website and published its views in a briefing to Parliament about the draft legislation introduced by the Government to extend the deadline. By publishing information on its website and releasing public statements to the as soon as events occurred on 8 and 9 June, the</p>

	<p>Commission has been transparent about its views of the events which occurred on 7, 8 and 9 June. Its views and actions are already in the public domain. The Commission's referendum risk register, however, covers a substantial number of matters relating to the referendum. Releasing the referendum risk register and the information that it contains would cause a disproportionate risk to the safe conduct of the referendum. That risk is not outweighed by public interest, bearing in mind the information that the Commission has already placed in the public domain about the extension of the deadline to register to vote. The overriding public interest is that the referendum is conducted safely and produces a timely result that the public can have confidence in.</p>
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The qualified person's opinion

12. (see Notes below)

The qualified person's opinion is that, if the information requested were disclosed, the prejudice/ inhibition specified in the following section(s) of the Freedom of Information Act 2000

36(2)(a)(i)
 would occur would be likely to occur
for the following reasons(s):

.....

.....

36(2)(a)(ii)
 would occur would be likely to occur
for the following reasons(s):

.....

.....

36(2)(a)(iii)
 would occur would be likely to occur
for the following reasons(s):

.....

.....

36(2)(b)(i)
 would occur would be likely to occur
 for the following reasons(s):

36(2)(b)(ii)
 would occur would be likely to occur
 for the following reasons(s):

36(2)(c)
 would occur would be likely to occur
 for the following reasons(s): ... Releasing the Commission's risk
 register for the EU Referendum during the timescale for this request
 would prejudice the safe conduct of the referendum

13. Date opinion was given (see Notes below)	_22_ / 06_ / 2016 ____ (DD/MM/YYYY)
14. Qualified person's signature (see Notes below)	Carolyn Hughes

Notes for completing this form

2. Where the public authority itself, rather than an individual, has been authorised as the qualified person, the name will be that of the highest decision making body of the authority.

4. Please refer to section 36(5) of the Freedom of Information Act 2000 for the list of qualified persons.

8. This lists the subsections of section 36 which the qualified person was asked to consider.

The full text of section 36(2) is as follows:

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(a) would, or would be likely to, prejudice—

(i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or

(ii) the work of the Executive Committee of the Northern Ireland Assembly, or

(iii) the work of the Cabinet of the Welsh Assembly Government.

(b) would, or would be likely to, inhibit—

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

12. This lists the subsections of section 36 which the qualified person decided were engaged. Please tick the relevant subsection(s), and in each case indicate whether the prejudice or inhibition would or would be likely to occur and the reasons for this.

13. This is the date on which the qualified person's opinion was given. If the form is completed after that, the date entered here must still be the date on which the opinion was given.

14. Where the public authority itself, rather than an individual, has been authorised as the qualified person, the form should be signed on behalf of the highest decision making body of the authority. In that case, please also print the name of the person signing on behalf of that body.

Record of the qualified person's opinion
November 2011 Version: 1.0