

Caitlin Lindenberg

From: FOI
Sent: 27 May 2016 16:44
To: [REDACTED]
Subject: FOI 47/16 - Meeting with CPS

Dear [REDACTED],

Our Ref: FOI 47/16

Thank you for your request under the Freedom of Information Act 2000 dated 10th May 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:

On Wednesday 4th May 2016, a meeting was held between the Electoral Commission, the Crown Prosecution Service and representatives of different police forces, to discuss election expenses overspending by the Conservative Party.

Please provide details of the representatives of the police forces present at the meeting.

Please provide a copy of the agenda of the meeting.

Please provide a copy of the minutes of the meeting.

Our response is as follows:

The Commission does hold information relevant to your request.

The meeting on 4 May 2016 took place as part of, and directly related to, its investigation in relation to the spending report delivered to the Commission by the Conservative Party for the 2015 UK Parliamentary General Election.

Prior to the meeting on 4 May 2016 the Commission published a media statement on 28 April 2016 in response to speculation about the meeting:

<http://www.electoralcommission.org.uk/i-am-a/journalist/electoral-commission-media-centre/news-releases-donations/electoral-commission-statement-on-allegations-regarding-conservative-party-spending-return-for-2015-general-election3?>

The statement set out in general terms the purpose of the meeting and the attendees.

Following the meeting, on 4 May 2016, the Commission responded to queries with a statement which set out in general terms the outcome of the meeting.

'Representatives from the Electoral Commission, Crown Prosecution Service (CPS) and police met today (4 May) as part of the Commission's investigation into the Conservative Party's General Election campaign spending return.

The meeting, at the request of the Commission, was for the CPS and police to consider applying for an extension to the time limit available to pursue criminal prosecutions in respect of candidate spending returns submitted following last year's General Election.

*Commenting on the meeting, **an Electoral Commission spokesperson said:***

"The decision on whether to request an extension to pursue criminal prosecutions is a matter for the police. The Commission will not be commenting further until they have made their decision and has nothing to add beyond the statements it has already made."

The Commission holds further information, an agenda for the meeting, and brief notes of the meeting with a list of attendees. However, the Commission considers this information to be exempt from disclosure for the reasons given below.

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

Under The Political Parties, Elections and Referendums Act 2000 (PPERA), the Commission has a statutory function to conduct investigations into potential breaches of party and election funding rules. The information requested is held by the Commission in relation to its investigation in relation to the spending report delivered to the Commission by the Conservative Party for the 2015 UK Parliamentary General Election.

Section 30(1) (a) (i) 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 the investigation is ongoing, and there are a number of potential criminal offences which it will be necessary to consider 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 relates to potential breaches of PERA, section 31 (1) (g) exempts from disclosure information that would or would be likely to prejudice the exercise of the Commission's functions under PERA 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. Such disclosure would hinder the Commission's ability to share information with other law enforcement bodies. thus limiting the Commission's ability to co-operate with those bodies and effectively enforce the law.

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. These factors are that:

The Commission has a statutory duty to monitor compliance with the provisions of the PPERA. The public interest lies in enabling the Commission to undertake inquiries as part of its investigation powers and work with other law enforcement bodies so that it can make regulatory decisions based on a firm factual basis and to gather such evidence and facts, and share information, 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 other law enforcement bodies to the Commission without which the Commission could not perform its statutory functions. This is particularly true in a case such as this where there are two legal regimes involved, requiring the Commission to work together with the police.

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 order to promote transparency in our investigation procedures and decision making the Commission published the media statement noted above, explaining the purpose of the meeting, and commented on the outcome after the meeting. The Commission recognises that this does not provide the public with the detail of the discussions, but does consider that it strikes a reasonable balance between full disclosure, which we do not believe would be in the public interest as set out in this response, and providing the public and those the Commission regulates with a clear understanding of the issues discussed at the meeting.

We do not therefore consider that releasing further detail of the meeting beyond that already made public would significantly add to the public's understanding of the issues discussed or the purpose and outcome of the meeting.

The release of the information would be likely to prejudice the exercise of the Commission's statutory functions under PPERA and its ability to conduct investigations such as this in the future. Co-operation with other enforcement agencies in general is essential to our ability to conduct our statutory functions. This case, involving potential breaches of PPERA but also the possibility of breaches of the Representation of the People Act 1983, requires particular co-operation between the Commission and the police, as well as the Crown Prosecution Service. As such, free exchange of information between the Commission and the police and CPS, in confidence, is essential to the successful conduct of the investigation.

In considering this request, the Commission asked the National Police Chiefs' Council (NPCC) for their views, on behalf of attendees at the meeting. The NPCC confirmed that they did not consider the public interest was best served by disclosure.

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

Section 40(2)

In withholding the information from disclosure, the Commission relies on the exemptions section 30(1)(a)(i) and 31(1)(g). It should also be noted that some of this information also falls within section 40(2). If this information were not already subject to exemptions mentioned previously, the Commission would apply section 40(2) considering the Data Protection Act 1998 (DPA) principles of fairness in relation to personal data.

Section 40 (2) provides for an exemption where the information requested constitutes personal data as defined by the DPA, and where release of the information requested would breach one of the data protection principles.

Some of the information we hold that is relevant to your request 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, and is 'personal data' under section 40 (2). Disclosure of this information would contravene the first principle of the DPA.

The first data protection principle states that personal data shall be processed fairly and lawfully. The Commission considers that it would be unfair to release the information requested as it would be reasonably expected by those individuals that details of who they are, the positions they hold or held, any home addresses and similar personal data would not be disclosed to the general public including in connection with this investigation.

As stated above, the Commission does not consider that release of this information would provide any relevant or useful additional information relating to the issues under consideration or the decision made by the Commission over and above that already given in the case summary, nor add to any material degree to the public's understanding of the facts as a whole.

In addition, some of the personal data will be sensitive personal data in view of the fact that it was gathered as part of an investigation into potential criminal offences. Therefore, in addition with sections 30 and 31 exemptions as mentioned 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

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