

[REDACTED]

From: FOI
Sent: 04 July 2016 16:19
To: [REDACTED]
Subject: FOI 68/16 - Legal and Electoral Consultancy Services Ltd
Attachments: Contract extension redacted.pdf; Contract redacted.pdf

Dear [REDACTED]

Our Ref: FOI 68/16

Thank you for your request under the Freedom of Information Act 2000 dated 3rd 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:

**Please provide me with all information available on the contract between the Electoral Commission and Legal & Electoral Consultancy Services Ltd., including:
the original tender documentation,
the invitation to tender and responses to the tender;
the contract between the company and the Electoral Commission;
any notes concerning the persons who provide services to the Electoral Commission on behalf of Legal & Electoral Consultancy Services Ltd.;
any Electoral Commission protocols concerning dealing with the company and any assessments of the company's performance under the contact.**

Our response is as follows:

The Commission does hold some information relating to your request.

In preparation for the May 2016 polls and a referendum on the UK's membership of the European Union, the Commission contracted the services of Legal & Electoral Consultancy Services Ltd. The company provided one consultant to help prepare the Commission's suite of guidance and resources for electoral administrators, candidates and agents and campaigners for the May 2016 polls and the EU referendum. The contract lasted from 11 August 2015 to 31 March 2016.

The procurement route adopted in awarding the contract to one supplier was a single tender action due to the specialist expertise required. As a result, there was no invitation to tender and, consequently, the Commission does not hold any tender documentation. We are, however, able to release a copy of the contract (and an extension to the contract) between Legal & Electoral Consultancy Services Ltd. and the Commission. We have redacted the personal details of the person who provided the consultancy service as this includes employment information related to a specific individual, which is personal data.

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. 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.

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

www.electoralcommission.org.uk

www.aboutmyvote.co.uk

Putting voters first

 Please consider the environment before printing this email.

██████████
Legal & Electoral Consultancy Services
Limited
5 Top of the Bank
Thurstonland
Huddersfield
HD4 6XZ

26 January 2016

Dear ██████████

Consultancy Agreement between the Electoral Commission and Legal & Electoral Consultancy Services Limited (dated 11 August 2015)

We wish to confirm extension of the date of termination for this agreement (copy attached) to 31 March 2016. The terms of the agreement would otherwise be unchanged.

This change to the termination date should have been made earlier, but the position should be regularised by confirming the alteration to the termination date now.

I'd be grateful if you could arrange for both copies of this letter to be signed where indicated and for one of these to be returned to me by post.

Yours sincerely

Ailsa Irvine
Head of Guidance
██████████@electoralcommission.org.uk
██████████

The Electoral Commission
3 Bunhill Row
London EC1Y 8YZ

Tel: 020 7271 0500
Fax: 020 7271 0505
info@electoralcommission.org.uk
www.electoralcommission.org.uk

We hereby agree to extend the termination date of the attached agreement to 31 March 2016.

Signed on behalf of Legal & Consultancy Services

.....

Date

Signed on behalf of the Electoral Commission

.....

Date

Consultancy agreement

Dated 11 August 2015

Parties

- (1) The Electoral Commission whose registered office is at 3 Bunhill Row, London, EC1Y 8YZ (the **Client**).
- (2) Legal & Electoral Consultancy Services Limited whose registered office is at 5 Top of the Bank, Thurstonland, Huddersfield, HD4 6XZ (the **Consultant**).

AGREED TERMS

1 Term of engagement

- 1.1 The Client shall engage the Consultant and the Consultant shall provide the Services on the terms of this agreement.
- 1.2 The Engagement shall commence on 11 August 2015 and shall continue unless and until terminated:
 - 1.2.1 as provided by the terms of this agreement; or
 - 1.2.2 by the Consultant giving to the other not less than one month's prior written notice; or
 - 1.2.3 by the Client giving to the other not less than one month's prior written notice.

2 Duties and obligations

- 2.1 During the Engagement the Consultant shall:
 - 2.1.1 provide the Services with all due care, skill and ability and use their best endeavours to promote the interests of the Client;
 - 2.1.2 unless prevented by ill health or accident, devote at least 3 days per week to the carrying out of the Services together with such additional time if any as may be necessary for their proper performance; and
 - 2.1.3 promptly give to Ailsa Irvine, Head of Guidance and Performance, all such information and reports as she may reasonably require in connection with matters relating to the provision of the Services or the Business of the Client.
- 2.2 If the Consultant is unable to provide the Services due to illness or injury, they shall advise the Client of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 3 in respect of any period during which the Services are not provided.
- 2.3 The Consultant may, with the prior written approval of the Client, which will not be unreasonably withheld if a substitute of equal qualifications, expertise and skill is provided,

and subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services on their behalf, provided that the Substitute shall be required to enter into direct undertakings with the Client, including with regard to confidentiality. If the Client accepts the Substitute, the Consultant shall continue to invoice the Client in accordance with clause 4 and shall be responsible for the remuneration of the Substitute.

- 2.4 The Consultant shall use reasonable endeavours to ensure that they are available at all times on reasonable notice to provide such assistance or information as the Client may require.
- 2.5 Unless specifically authorised to do so by the Client in writing the Consultant shall not:
- 2.5.1 have any authority to incur any expenditure in the name of or for the account of the Client; or
- 2.5.2 hold themselves out as having authority to bind the Client.
- 2.6 The Consultant shall comply with the Client's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Client any unsafe working conditions or practices.
- 2.7 The Consultant shall comply with the Client's policies on health and safety, data protection, whistleblowing, travel expenses, code of conduct and any other policies and procedures that may be relevant.
- 2.8 The Client shall have no right to, nor seek to exercise any direction, control or supervision over the Consultant in the provision of the Services. The Consultant shall endeavour to cooperate with the Client's reasonable requests within the scope of the Services, however it is acknowledged that the Consultant shall have autonomy over how, when and where they provide their services.
- 2.9 The Consultant must rectify at their own cost any defective work they or the Substitute carry out in relation to the Contract.
- 2.10 The Consultant undertakes to the Client that during the Engagement they shall take all reasonable steps to offer (or cause to be offered) to the Client any Business Opportunities as soon as practicable after the same shall have come to their knowledge and in any event before the same shall have been offered by the Consultant (or caused by the Consultant to be offered) to any other party provided that nothing in this clause shall require the Consultant to disclose any Business Opportunities to the Client if to do so would result in a breach by the Consultant of any obligation of confidentiality or of any fiduciary duty owed by it or them to any third party.
- 2.11 The Client does not have an obligation to offer further contracts or services to the Consultant and if it does make any such offer, the Consultant is not obliged to accept such contracts or services. The Consultant is not obliged to make their services available except for the performance of its obligations under this Agreement. For the avoidance of doubt, neither party intends to imply or create mutuality of obligations either during or following the Agreement.
- 2.12 The Consultant will at their own expense provide all materials (including tools, communications, safety equipment, computer hardware and software ensuring it contains

up to date security and anti-virus protection) that may be necessary to execute the Services or may be reasonably required to do so and as agreed between the Consultant and the Client.

- 2.13 The Consultant may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that the Client will not be liable to bear the cost of such functions.
- 2.14 The Consultant shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements).
- 2.15 Breach of clause 2.14 shall be deemed a material breach of this agreement.

3 Fees

- 3.1 The Client shall pay the Consultant a fee of £400 per day, plus VAT. On the last working day of each month during the Engagement the Consultant shall submit to the Client an invoice which gives details of the days the Consultant or any Substitute has worked, the Services provided and the amount of the fee payable (plus VAT, if applicable) for the Services during that month.
- 3.2 In consideration of the provision of the Services, the Client shall pay each invoice submitted by the Consultant in accordance with clause 3.1 within 30 days of receipt.
- 3.3 The Client shall be entitled to deduct from the fees (and any other sums) due to the Consultant any sums that the Consultant may owe to the Client at any time.
- 3.4 Payment in full or in part of the fees claimed under clause 3 or any expenses claimed under clause 4 shall be without prejudice to any claims or rights of the Client against the Consultant in respect of the provision of the Services.

4 Expenses

- 4.1 The Client shall reimburse all reasonable expenses properly and necessarily incurred by the Consultant in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment.
- 4.2 If the Consultant is required to travel abroad in the course of the Engagement, the Consultant shall be responsible for any necessary insurances, inoculations and immigration requirements.

5 Other activities

- 5.1 Nothing in this agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:
- 5.1.1 such activity does not cause a breach of any of the Consultant's obligations under this agreement;
- 5.1.2 the Consultant shall not engage in any such activity if it relates to a business which is similar to or in any way competitive with the Business of the Client

without the prior written consent of the Client; and

- 5.1.3 the Consultant shall give priority to the provision of the Services to the Client over any other business activities undertaken by the Consultant during the course of the Engagement.

6 Confidential information and Client property

- 6.1 The Consultant acknowledges that in the course of the Engagement they will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause 6.

- 6.2 The Consultant shall not (except in the proper course of their duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use their best endeavours to prevent the publication and disclosure of) any Confidential Information. This restriction does not apply to:

6.2.1 any use or disclosure authorised by the Client or required by law; or

6.2.2 any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.

- 6.3 At any stage during the Engagement, the Consultant will promptly on request return all Client Property in their possession to the Client.

7 Data protection

- 7.1 The Consultant consents to the Client holding and processing data relating to them for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Consultant including, as appropriate:

7.1.1 information about the Consultant's physical or mental health or condition in order to monitor sickness absence;

7.1.2 the Consultant's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with equal opportunities legislation; and

7.1.3 information relating to any criminal proceedings in which the Consultant has been involved for insurance purposes and in order to comply with legal requirements and obligations to third parties.

- 7.2 The Consultant consents to the Client making such information available to those who provide products or services to the Client such as advisers, regulatory authorities, governmental or quasi-governmental organisations and potential purchasers of the Client or any part of its business.

- 7.3 The Consultant consents to the transfer of such information to the Client's business contacts outside the European Economic Area in order to further its business interests.

- 7.4 The Consultant shall comply with the Client's data protection policy and relevant obligations under the Data Protection Act 1998 and associated codes of practice when processing personal data relating to any employee, worker, customer, client, supplier or

agent of the Client.

8 Intellectual property

8.1 The Consultant hereby assigns to the Client all existing and future intellectual property rights (including, without limitation, patents, copyright and related rights) and inventions arising from the Services for the Client. The Consultant agrees to promptly execute all documents and do all acts as may, in the opinion of the Client, be necessary to give effect to this clause 8.

8.2 The Consultant hereby irrevocably waives all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which they have or will have in any existing or future works.

8.3 The Consultant irrevocably appoints the Client to be its attorney in its name and on its behalf to execute documents, use the Consultant name and do all things which are necessary or desirable for the Client to obtain for itself or its nominee the full benefit of this clause. A certificate in writing, signed by any director or the secretary of the Client, that any instrument or act falls within the authority conferred by this agreement shall be conclusive evidence that such is the case so far as any third party is concerned.

9 Insurance and liability

9.1 The Consultant shall have personal liability for and shall indemnify the Client for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant or any Substitute engaged by the Consultant of the terms of this agreement including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive Insurance Policies.

9.2 The Consultant shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to the Client and that the level of cover and other terms of insurance are acceptable to and agreed by the Client.

9.3 The Consultant shall on request supply to the Client copies of such Insurance Policies and evidence that the relevant premiums have been paid.

10 Termination

10.1 Notwithstanding the provisions of clause 1.2, the Client may terminate the Engagement with immediate effect without notice and without any liability to make any further payment to the Consultant (other than in respect of amounts accrued before the Termination Date) if at any time the Consultant:

10.1.1 commits a material breach of this agreement;

10.1.2 is negligent or incompetent in the performance of the Services; or

10.1.3 commits any fraud or dishonesty or acts in any manner which in the opinion of the Client brings or is likely to bring the Consultant or the Client into disrepute or is materially adverse to the interests of the Client.

10.2 The rights of the Client under clause 10.1 are without prejudice to any other rights that it

might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant as having brought the agreement to an end. Any delay by the Client in exercising its rights to terminate shall not constitute a waiver of these rights.

11 Obligations on termination

11.1 On the Termination Date the Consultant shall:

11.1.1 immediately deliver to the Client all Client Property which is in their possession or under their control; and

11.1.2 irretrievably delete any information relating to the Business of the Client stored on any magnetic or optical disk or memory and all matter derived from such sources which is in their possession or under their control outside the premises of the Client. For the avoidance of doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information, and as such, must be deleted from personal social or professional networking accounts.

12 Status

12.1 The relationship of the Consultant to the Client will be that of independent contractor and nothing in this agreement shall render them an employee, worker, agent or partner of the Client and the Consultant shall not hold themselves out as such.

12.2 The Consultant shall be fully responsible for and indemnify the Client against any liability, assessment or claim for:

12.2.1 taxation whatsoever arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law and including any associated penalties or interest; and

12.2.2 any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant or any Substitute against the Client arising out of or in connection with the provision of the Services.

12.3 The Client may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Consultant.

13 Notices

13.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or by first class prepaid post or by fax to the relevant party at its registered office. Any such notice shall be deemed to have been received: if delivered personally, at time of delivery; if by first class post 48 hours from the date of posting; and if by fax, at the time of transmission.

14 Entire agreement

14.1 Each party on behalf of itself acknowledges and agrees with the other party that:

14.1.1 this agreement together with any documents referred to in it constitutes the

entire agreement and understanding between the Consultant and the Client and supersedes any previous agreement between them relating to the Engagement (which shall be deemed to have been terminated by mutual consent);

14.1.2 in entering into this agreement neither party has relied on any Pre-Contractual Statement; and

14.1.3 each party agrees that the only rights and remedies available to it or arising out of or in connection with any Pre-Contractual Statement shall be for breach of contract. Nothing in this agreement shall, however, operate to limit or exclude any liability for fraud.

15 **Variation**

No variation of this agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

16 **Third party rights**

16.1 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

17 **Governing law and jurisdiction**

17.1 This agreement shall be governed by the law of England and Wales.

17.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

18 **Interpretation**

18.1 The definitions and rules of interpretation in this clause apply in this agreement (unless the context requires otherwise).

Board: the board of directors of the Client (including any committee of the board duly appointed by it).

Business of the Client: elections.

Business Opportunities: any opportunities which the Consultant becomes aware of during the Engagement which relate to the Business of the Client or which the Board reasonably considers might be of benefit to the Client.

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Commencement Date: 11 August 2015

Client Property: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs of the Client or its customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant's use by the Client during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant on the computer systems or other electronic equipment of the Client, or the Consultant during the Engagement.

Confidential Information: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client for the time being confidential to the Client and trade secrets including, without limitation, technical data and know-how relating to the Business of the Client or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts, including in particular (by way of illustration only and without limitation) resident's data, and including (but not limited to) information that the Consultant creates, develops, receives or obtains in connection with this Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Engagement: the engagement of the Consultant by the Client on the terms of this agreement.

Insurance Policies: Commercial general liability insurance cover/employer's liability insurance cover/professional indemnity insurance cover/public liability insurance cover.

Intellectual Property Rights: patents, rights to Inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

Invention: any invention, idea, discovery, development, improvement or innovation made by the Consultant in connection with the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

Pre-Contractual Statement: any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the Engagement other than as expressly set out in this agreement or any documents referred to in it.

Services: the services provided by the Consultant in a consultancy capacity for the Client as more particularly described in the Schedule

Substitute: a substitute appointed under the terms of clause 2.3.

Termination Date: 31 December 2015

18.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.

- 18.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 18.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 18.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 18.6 The Schedule to this agreement forms part of (and is incorporated into) this agreement.

Schedule Services

Details of the work to be carried out

The Client will be required to produce guidance and supporting resources for Returning Officers, Counting Officers and Electoral Registration Officers in connection with the May 2016 elections, the EU referendum and electoral registration services.

The location(s) where the services are to be performed

Work will normally be carried out at 5 Top of the Bank, Thurstonland, Huddersfield, HD4 6XZ.

Occasionally, work will require the Consultant to attend at the Client's offices.

Reporting procedure

The Client will report to Ailsa Irvine, Head of Guidance and Performance. The Client will update the Head of Guidance and Performance on progress with allocated work at least once every week by way of a scheduled telephone meeting.

Key Milestones

Key milestones will be established and agreed for each individual piece of work.

Executed as a deed by The Electoral Commission acting by Ailsa Irvine, Head of Guidance and Performance of the Electoral Commission, in the presence of:

[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]

Head of Guidance and Performance
The Electoral Commission

Executed as a deed by for Legal & Electoral Consultancy Services Limited acting by Michelle Chard, a director, in the presence of:

[Redacted]

JOHN HENEGHAN
5 TOP OF THE BANK
RYE STONLAND
HUDDERSFIELD
HD4 6XZ.

[Redacted]

.....
Director