

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 April 2025

**Public Authority:** Electoral Commission  
**Address:** 3 Bunhill Row  
London EC1Y 8YZ

### **Decision (including any steps ordered)**

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1. The complainant requested information about the registration of political parties. The Electoral Commission disclosed some information, and its final position is that the remaining information is exempt from disclosure under section 42(1) of FOIA, which concerns legal professional privilege.
2. The Commissioner's decision is that the Electoral Commission correctly applied section 42(1) of FOIA to certain information. On the balance of probabilities, the Commission holds no further information within scope of the request, but the timeliness of its response breached sections 1(1), 10(3) and 17.
3. The Commissioner does not require further steps.

### **Request and response**

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4. The complainant made the following information request to the Electoral Commission ('the Commission') on 17 May 2024:

"Under the Freedom of Information Act, I would like to request the following information regarding the Heritage Party, Northern Independence Party, and National Health Action Party:

- the assessments for registration and any post registration change of constitution or scheme (including RP1).
- party constitutions, financial schemes, and articles of association, including all revisions.

- any other documentation that was used to "determine structure."
- all internal & external correspondence regarding the above documents.

Under FOI 174-23 we asked for "The internal process documentation pertaining to the registration of political parties, including all relevant forms." A copy of REG06 was released, which appears to reference other documents that were not supplied, often with the phrase 'to be added'. We would like to have a copy of each of these referenced documents and any document that instructs staff on how to carry out an assessment of a party, which should include but not be limited to:

- "work instruction REG06w"
- "PEF06 documents"
- "Process BST"
- "this document" under 4.3.3
- "publication work instruction""

5. On 29 May 2024, the complainant wrote to the Commission. They said that they'd recently reviewed a separate Commission FOIA response [published online], which listed resources for approvals board members. They provided a screenshot of those resources. The resources included what appear to have been links to a Briefing paper, to the Commission's 'Party Registration Decision Database' and to a 'Party Registration Legal Advise [sic] Log.' The complainant said:

"I expect some of these to fall within the request for "any document that instructs staff on how to carry out an assessment of a party" and my previous request for "The internal process documentation pertaining to the registration of political parties." In particular, the briefing paper, the registration decision database, and elements of the legal advice log."

6. As FOIA permits, the Commission extended the deadline for considering the public interest test and it responded on 12 September 2024. It disclosed some relevant information and withheld the remainder under sections 40(2) and 42(1) of FOIA. Section 40(2) concerns personal data.
7. The complainant requested an internal review on 12 September 2024 and the Commission provided one on 18 October 2024. Its final position was that some information within scope of the request was exempt under both section 42(1) and section 36(2)(b) of FOIA, which concerns prejudice to the effective conduct of public affairs. The Commission also addressed other points that the complainant had raised in their request for a review and confirmed that it held no other relevant information.

8. In its submission to the Commissioner, the Commission has advised that it has withdrawn its reliance on section 36 and is relying on section 42 only. It has applied this exemption to information in three documents, and email correspondence, that are relevant to the first part of the request. The Commission says that it has disclosed the majority of the information it holds that's relevant to the request and that, other than the information it's withholding, it holds no further information.

## **Reasons for decision**

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9. Based on their complaint to the Commissioner and the Commission's final position, this reasoning focusses on the Commission's application of section 42(1) to some of the information the complainant has requested.
10. The complainant also considers that the Commission holds a "list of relevant cases, with basic details and references" (that is, judgments and decisions that would have formed the basis of regulatory actions that affect party registration) that is covered by their request and which it should disclose. This reasoning will therefore also consider whether, on the balance of probabilities, the Commission holds any further relevant information. Finally, it will consider the timeliness of the Commission's response.
11. Under section 42(1) of FOIA, information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.
12. The purpose of legal professional privilege (LPP) is to protect a person's ability to speak freely and frankly with their legal advisor in order to obtain appropriate legal advice. It recognises that a person needs to lay all the facts before their advisor so that the weaknesses and strengths of their position can be properly assessed. Therefore, LPP evolved to make sure communications between a lawyer and their client remain confidential.
13. There are two types of LPP – advice privilege and litigation privilege. The Commission considers that the information it's withholding attracts advice privilege.
14. In its submission to him, the Commission has explained that a practicing barrister authored the three documents in scope, instructed by the Commission. The barrister authored the documents for the sole purpose of providing legal advice, and they were communicated in the barrister's professional capacity.

15. Regarding the email correspondence, the Commission confirmed that this is communications between a Commission lawyer and internal clients for the purposes of requesting and providing legal advice.
16. The Commissioner has reviewed the information being withheld and he's satisfied that it can be categorised as legal advice that attracts LPP. The Commission was therefore correct to apply section 42(1) of FOIA to it. However, section 42 is subject to the public interest; even though the information attracts LPP it may still be disclosed if there's sufficient public interest in its disclosure.

### **Public interest test**

17. In their request for an internal review, the complainant argued that the Commission can't reasonably maintain the right to critique and refuse applications while withholding information that would help applicants understand the law and required standards, especially when such information should already be public.
18. The complainant said that they understood that the Commission holds legal advice from counsel for cases it has fought and for internal understanding of its functions. They accepted that advice related to specific cases will automatically be exempt. But they disputed this for advice on internal operations. The complainant considered that this type of advice pertains to how a public authority should function and was paid for with public funds.
19. The Commission considers that the public interest test that it applied in its original response, and the weight attached to the principle of legal professional privilege demonstrates that the scales weigh in favour of the information being withheld.
20. The Commissioner appreciates the complainant has an interest in the information they've requested but he agrees with the Commission that the balance of the public interest favours withholding it. LPP carries with it a very strong inherent protection due to the nature of the information that it covers, and the function that it plays in administering justice. The arguments for disclosure in this case aren't sufficiently strong to overturn that protection.
21. The Commissioner's decision is therefore that the Commission is entitled to apply section 42(1) of FOIA to the information it's withholding and the public interest favours maintaining this exemption.

## Procedural matters

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22. Under section 1(1) of FOIA a public authority must (a) confirm whether it holds the information an applicant has requested and (b) communicate the information if it's held and isn't exempt from disclosure.
23. Under section 10(1) the authority must comply with section 1(1) within 20 working days following the date of receipt of the request. And under section 17(1) it must provide a refusal notice in respect of any exempt information within the same time scale.
24. Sections 10(3), 17(2) and 17(3) of FOIA concern extending the period for complying with the request in order to consider the public interest test associated with a qualified exemption that the authority intends to apply. The Commissioner considers that an additional 20 working days is a reasonable extension.
25. The authority should still issue a refusal notice within the 20 working day requirement and explain which exemption it's relying on. It must also explain that it needs more time to consider the public interest test and give an estimate of the date on which it's likely to make a final decision.
26. In this case, the complainant submitted their request on 17 May 2024. On 17 June 2024, the Commission issued a refusal notice advising the complainant that it needed more time to consider the public interest test. This met the 20 working day deadline under section 10(1), but the Commission didn't cite any specific exemption and then didn't go on to provide its second refusal until 12 September 2024.
27. The Commissioner therefore finds that the Commission didn't comply with sections 1(1), 10(3) of FOIA or the relevant subsections of section 17.
28. Finally, as noted the complainant considers that the Commission holds further information within scope of their request; namely a "list of relevant cases [judgements and decisions], with basic details and references." They consider that the Commission should disclose this list to them.
29. In their request for information, the complainant didn't request such a list. They requested information that was used to "determine structure" and information that instructed staff on how to carry out assessments. The Commission's position was that it had disclosed information that was relevant.

30. The Commissioner nonetheless put the complainant's point to the Commission and asked it to explain how it was certain that it didn't hold any other relevant information.
31. The Commission first advised that it didn't consider that there was a dispute between the amount of information it had located and the amount of information that the complainant believes the Commission may hold.
32. However, it said, its Party Registration team is responsible for assessing party constitutions and financial schemes. That team carried out a thorough electronic search of its records to identify information within the scope of the original request. The Commission confirmed that most of the requested information has already been disclosed and the only information within scope that has been withheld are the three documents [and email correspondence] discussed.
33. The Commissioner questioned the Commission further on this element of the complaint, and the matter of a 'list'. If the Commission held the 'building blocks' to such a list – ie it could compile the names and details of relevant cases without the need for any specialist expertise or judgement – then it could be said to hold this information, albeit the complainant hadn't referenced any 'list' in their request.
34. The Commission confirmed that it holds a document that's relevant to the request – a 2010 Commission for Equality and Human Rights judgement - and that it had disclosed this document in its original response to the request. It also says that, in relation to court judgments, there are relevant court judgements that provide direction to the Commission's registration decisions but that, again, it has already disclosed this information through its internal review response. The Commission has noted that all these judgements are in the public domain but says it had provided them to the complainant in order to be transparent.
35. The Commissioner has considered the terms of the complainant's request, the Commission's response and the information that it has disclosed. He considers that the Commission has satisfactorily addressed the complainant's request, as that request is framed, and that, on the balance of probabilities, it holds no other information that's relevant to that request.

## Right of appeal

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36. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**