

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2011

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

Decision (including any steps ordered)

1. The complainant requested information regarding a NOtoAV campaign advert published in the Guardian newspaper in March this year.
2. The Information Commissioner's decision is that the Electoral Commission does not hold the requested information.
3. The Information Commissioner does not require the Electoral Commission to take any further remedial steps.

Request and response

4. On 13 April 2011, the complainant wrote to the Electoral Commission and requested information in the following terms:
*"As you say, you are aware of the advert in question. Could you please therefore, supply me with the following:

all documentation as regards any discussions and decision held and made by The Electoral Commission relating to the NOtoAV Campaign advert found in the Guardian Newspaper 28/03/11 (or relating to the same advert in any other newspaper)."*
5. The Electoral Commission responded on 17 May 2011. It stated that it did not hold any information relevant to the request.
6. In cases where the Electoral Commission has stated that no information is held, it operates a policy that there is no internal review process and advises applicants to appeal directly to the Information Commissioner.

Scope of the case

7. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He did not accept the Electoral Commission's position that no information relating to his request was held.
8. The Information Commissioner has therefore considered whether the requested information is held by the Electoral Commission.

Reasons for decision

9. Section 1(1) of FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

10. The Information Commissioner made a series of enquiries to the Electoral Commission with regard to what information it held and how this would be recorded and searched for.
11. Before answering the Information Commissioner's enquiries, the Electoral Commission provided some relevant background to the information requested. It also explained its role with regards to the referendum that took place earlier this year on the parliamentary voting system under the Political Parties, Elections and Referendums Act 2000 (PPERA).
12. The Electoral Commission stated:

"In a referendum held under PPERA, such as the parliamentary voting system referendum, the Commission is responsible for the following functions:

- *Commenting on the intelligibility of the referendum question proposed by the Government.*
- *Registering organisations or individuals who want to campaign in the referendum.*

- *Monitoring spending on referendum campaigning, in line with the referendum spending limits imposed by PPERA.*
- *Considering applications for designation as lead campaign groups for each referendum outcome.*
- *Ensuring that designated organisations (if appointed) have access to certain assistance.*
- *Reporting on the administration of the referendum and referendum campaign spending.*

In this referendum, the Commission was also responsible for promoting public awareness of the referendum, its subject matter, and how to vote in it. It is important to note that the Commission does not have the power to regulate political advertising.

Given these limits on the Commission's powers, the Commission was unlikely to have taken any decisions in relation to the Guardian advertisement. For the same reason, it is unlikely that there would have been any discussions within the Commission about this advertisement. It is therefore not surprising that the searches carried out by the Commission for the information requested did not identify any information relevant to the request."

13. The Electoral Commission then went on to provide details of the searches it had carried out. It explained that under its freedom of information (FOI) policy, the team responsible for the business area to which the FOI request relates is responsible for locating the relevant information and drafting the response. It explained that this had been done at the time of the request by the Communications Directorate as they would have dealt with any related public awareness activity and would therefore be the most likely department to hold the requested information.
14. On receipt of the Information Commissioner's correspondence, the Electoral Commission carried out a second comprehensive search as well as re-visiting its audit trail for the previous search. The second search undertaken by the Communications Directorate did not locate any requested information. Manual and electronic records were searched; this included a search of all paper files held dating back to 28 March 2011, a department-wide search of Microsoft Outlook items since the date of publication of the advert, and a search of the X Drive (the Commission-wide electronic document storage system) along with the Head of Campaigns and Corporate Communication's personal drive (also on the document storage system). However, after this comprehensive search of electronic and hard copy records, no requested information was retrieved.

15. The Electoral Commission confirmed that no information of the nature requested would be stored locally on personal laptops and that all work-related documents are saved on the shared drive or employees' personal drives on the Electoral Commission's network. The Electoral Commission also provided a list of 16 search terms that were used and explained that the vast majority of information was held electronically, including hard copies of letters from the public and general referendum campaign materials that are also scanned on to the document storage system.
16. The Information Commissioner made enquiries regarding any information which may have been held but destroyed prior to the request and the Electoral Commission's document retention policy. The Electoral Commission informed the Information Commissioner that it did not have any record of the requested information having ever been deleted or destroyed and provided a copy of its 'retention and disposal policy' for the Information Commissioner's attention.
17. With regard to any business purpose or statutory requirements for the Electoral Commission to hold the requested information, it referred the Information Commissioner back to its remit and explained that there would be neither a business purpose nor a statutory requirement to hold or retain the information. The Electoral Commission did explain that it would produce a report regarding the referendum under section 5 of PPERA and therefore there would be a business purpose for retaining information relating to the referendum to inform the report. However, the Electoral Commission reminded the Information Commissioner that its remit did not extend to the advertisements used by the two campaigns and that the report would be solely concerned with the administration of the referendum.
18. The Information Commissioner accepts, on the established test of the balance of probabilities, the Electoral Commission's position that the requested information is not held. He has considered the details of the searches undertaken and the way in which information is recorded at the Electoral Commission, along with the fact that its statutory powers do not cover the regulation of political advertising campaigns. He accepts that it is highly unlikely, given the remit of the Electoral Commission, that information of the nature requested would be held, and takes the view that the searches carried out were relevant and thorough. No information was located by the searches nor was any evidence found to suggest that information had been held and destroyed prior to the request.

Right of appeal

19. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
Group Manager
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