

Mr Cookson

**Our reference:** RD/LS/AM/C118.579/  
**Your reference:**  
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**Date:** 19/12/2019

**Please Quote Our Reference on ALL Correspondence**

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Dear Mr Cookson,

**FOI ID 9563 – Internal Review**

I refer to your above numbered FOI request and your request for an internal review of the Council's response. In accordance with the Freedom of Information Act 2000 (FOIA), an independent senior officer review of your request has been undertaken. I have conducted the Review and am now in a position to report to you the outcome.

Initially, I will recap on the most relevant correspondence (but not all) that has been exchanged between the Council's FOI team and yourself before, moving on to deal with the substantive review.

**Request**

Your initial request dated 21 November 2019 was:

*Dear Wigan Metropolitan Borough Council,*

*I would like details of Voter Registrations for the Wigan Area since 1 September 2019 to 21 Nov 2019. I would like the information broken down into the following:*

- a) Total number of new Voter registrations during this time period?*
- b) Dates of those Registrations?*
- c) Details of how many of these new registrations have also requested Postal Votes?*

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*d) Ages of those new registered Voters as declared on the Registration forms?*

*Yours faithfully,*

*Mr John Cookson*

## **Response**

The following response to your request was attached to the FOI team's email dated 26 November 2019:

*The registration of electors is governed by the Representation of the People Act 1983 as amended. Under Section 8 of the Act, the council must appoint an officer of the council to be the registration officer for any constituency or part of a constituency coterminous with or situated in the council's area. The appointed officer for Wigan Council is our Chief Executive. The appointment of our Chief Executive as Electoral Registration Officer is separate to her appointment as Chief Executive, and although appointed by the council, the Electoral Registration Officer's responsibilities and duties are personal. An example of this is that the register of electors is deemed to be the property of the Electoral Registration Officer, not the local authority.*

*The Electoral Registration Officer does not carry out the duties on behalf of the local authority but in her own personal capacity. A list of public bodies and local authorities that are subject to the provisions of the Freedom of Information Act is available at the following website:*

*<http://www.legislation.gov.uk/ukpga/2000/36/schedule/1>*

*As you will see, the Freedom of Information Act does not list any person appointed under the Representation of the People Act 1983. It follows that the Electoral Registration Officer, Returning Officer or any other person appointed under the Act are not subject to the provisions of the Freedom of Information Act.*

On the 27 November 2019 you requested an internal review of Wigan Council's handling of your request. You went on to say that *'I believe this request falls under Wigan Council's jurisdiction and also the reply suggests this information cannot be disclosed under Freedom of Information and this needs ratification and clarification.'*

On the 28<sup>th</sup> November, you submitted the following via email in support of your request for review:

Dear Fol Request,

This is the reply from the Electoral Commission on this matter which they state the following :

*Freedom of Information*

Electoral Registration Officers are not a public authority under the Freedom of Information Act 2000 and, as such, are exempt from the disclosure requirements imposed by it.

***However, our guidance for Electoral Registration Officers states that where possible, they should disclose the requested information, provided it is already in the public domain, or the information requested does not include personal data.***

An example of non-personal data would be statistical data providing the total number of electors registered in an area.

*Electoral fraud*

Throughout the year, all police forces across the UK send us data about allegations of electoral fraud that they receive and investigate. Every year we report on the number, type, and outcome of these allegations. You can read more about this on our website here:

<https://clicktime.symantec.com/34yp2TNDE7Ljm4nYFjZwNAk6H2?u=https%3A%2F%2Fwww.electoralcommission.org.uk%2Fwho-we-are-and-what-we-do%2Four-views-and-research%2Four-research%2Felectoral-fraud-data>

*Reporting electoral fraud*

Electoral fraud happens when someone has deliberately tried to cheat at an election. It could be that someone has:

- pretended to be someone else and used their vote
- made false statements about the personal character of a candidate
- influenced someone to vote against their will

If you believe you have witnessed electoral fraud, or are concerned that it may be taking place, you should report this to Crimestoppers or the police.

Please let me know if you require any further information.

Kind Regards,

Nisia Morris

Public Information Officer

As you can see I believe grounds for this review are founded.

Yours sincerely,

John Cookson

## Outcome of the internal review

I have carried out an independent review of the handling of your request and the Council's initial response and the outcome of my review is below. In carrying out an independent review I have considered the response, the information held and discussed the matter with relevant officers. I have also considered the relevant FOIA, GDPR and DPA provisions, including any relevant case law and Information Commissioner's Office (ICO) Guidance and Decisions.

Under review is the Council's decision not to release information deemed to be the property of the Electoral Registration Officer rather than the local authority and therefore, exempt from the provisions of the Freedom of Information Act 2000 (FOIA).

Section (1)(1) of the FOIA states that :

'(1) 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.'

Section 3(2) of the FOIA sets out the legal principles that establish whether information is held for FOIA purposes

'3(2) For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority'

The ICO Guidance 'Information held by a public authority for the purposes of the Freedom of Information Act' confirms that when information is held by a public authority solely on behalf of another person, it is not held for FOIA purposes. However, information will be held by the public authority if the information is held to any extent for its own purposes. The Guidance goes on to state that Electoral Registration Officers *'have a statutory duty to compile and maintain the electoral roll. Returning officers ensure that an election is administered effectively. These officers are not public authorities under FOIA and they exercise separate functions to those of a local authority. Any information held solely on behalf of these officers by a local authority is not held for FOIA purposes.....Information that is held to any extent for a public authority's own purposes will be held for FOIA purposes'*.

Whilst on the face of it, the information requested is contained within the electoral roll which is held solely on behalf of the Electoral Registration Officer and therefore outside of the scope of the FOIA, my review did require me to investigate whether or not any of the information requested is held by the Council as a public authority for its own functions and is therefore held for the purposes of the FOIA. My review has concluded that the requested information is not held for the purposes of any Council function or service.

Following the conclusion of my Internal Review, my finding is that the information is not held by Wigan borough Council under Section 1(1)(a) of the FOIA as under section 3(2)(a) the information is only held on behalf of another person.

If you are unhappy with any aspect of this response you can complain to the Information Commissioner who is the regulator for Freedom of Information. The Information Commissioner can be contacted via <https://ico.org.uk/> or the telephone helpline number 0303 1231113.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Li', with a stylized flourish extending to the right.

Strategic Lawyer – Place