

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 April 2019

Public Authority: Charity Commission
Address: PO Box 211
Bootle
L20 7YX

Decision (including any steps ordered)

1. The complainant has requested the Charity Commission (the commission) to disclose all independent examinations of the Therfield Regulation Trust. The commission responded, confirming that it does not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the commission does not hold the requested information. She therefore does not require any further action to be taken.

Request and response

3. On 27 July 2018, the complainant wrote to the commission and requested information in the following terms:

"I write to you to ask for information I understand you hold or is held on your behalf or you have legal access to using FOI and EIR.

The information I seek relates to Direction 3 of CC32

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672779/CC32 -
_Independent examination of charity accounts.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672779/CC32_-_Independent_examination_of_charity_accounts.pdf)

and the charity The Therfield Regulation Trust number 277881.

Direction 3 requires the independent examiner to hold information on your behalf:

The examiner must keep a record of their examination and the conclusions reached which is sufficient to allow a third party unconnected with their work to conclude that they have followed the Directions (including Directions 1 and 2).

I request all information held on your behalf or to which you have access relating to the records described in direction 3 and kept by the independent examiner of the accounts of the Therfield Regulation Trust. I seek the information about these records relating to not just the most recent examination but all examinations for which records are kept.”

4. The commission responded on 20 August 2018. It stated that it does not hold the requested information. However, the commission did provide the complainant with a link to its charities register which it believed holds information of interest.
5. The complainant requested an internal review the same day.
6. The commission carried out an internal review and notified the complainant of its findings on 19 September 2018. It again stated that it does not hold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 26 September 2018 to complain about the way his request for information had been handled. He stated that the records described in direction 3 of CC32 are kept on behalf of the commission by the independent examiner and therefore the commissioner can access the requested information via FOIA. He questioned what would be the point of the charity commission direction to keep records if they were not accessible to it.
8. The Commissioner’s investigation has therefore focussed on whether, on the balance of probabilities, the commission holds the requested information.

Reasons for decision

Is the requested information held?

9. The Commissioner asked the commission a series of questions to establish whether, on the balance of probabilities, the requested information is held.
10. The commissioner explained that the requirement to engage an independent examiner to scrutinise accounts is placed upon all charities with a minimum income of £25000. The independent examination is a form of external scrutiny that provides a check on specific matters and, amongst other things, serves to maintain public confidence in the financial management of the charities. It stated that the commission does not have control over the examiner or the report.
11. It went to say that in compliance terms the independent examination is required of charities courtesy of section 145 of the Charities Act 2011, which states that:

“...[if the charity’s] gross income in that year exceeds £25,000, the accounts of the charity for that year must, **at the election of the charity trustees**, be—

 - (a) examined by an independent examiner, that is, an independent person who is reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts, or
 - (b) audited by a person within section 144(2)(a) or (b).”
14. The commission advised that whilst it is therefore a requirement in charity law for charities to employ an independent examiner, it is up to the discretion of the charity as to who to employ for the task. The information created from the examination (in accordance with the ‘Directions’) is held by the independent examiner as a record on behalf of the charity to demonstrate that the charity is compliant with section 145, as well as wider compliance with charity law. It argued that it does not determine which individual/organisation is engaged by a charity to act as the independent examiner and does not have control over the report.
15. It explained further that whilst the independent examiner is employed by the charity to ensure compliance with charity law, their independence is also important as they are duty bound to report matters of concern to the commission. It stated that this is explained at 3.5-3.7 of Direction 3 and the duties for independent examiners to report matters of ‘material

significance' to the commission is in law at section 156 and 159 of the Charities Act 2011. It went on to say that if the legal duty to report matters to the commission does not arise, then the independent examiner has no requirement to inform the commission of the conclusions and examination they have undertaken at all.

16. The commission therefore said that independent examiners are instructed by law as to when they are required to report matters to the commission, in order for the commission to fulfil its regulatory functions; such as, for example, identifying and investigating misconduct/mismanagement in charities (section 15(1), Charities Act 2011). It confirmed that the commission plays no role in engaging an independent examiner on behalf of a charity and this is fully the responsibility of the charity concerned. Both parties are subject to charity law, as previously explained, and no agency arrangement exists between the commission and either party. The obligations on both parties are statutory requirements, and only when a legal duty to report to the commission arises would the independent examiner be duty bound to disclose their examination and conclusions to the commission, and only then if this information is relevant to the matters of 'material significance' identified.
17. The commission therefore stated that for these reasons it is its firm view that the requested information is held by the independent examiner and on behalf of the charity for the purposes of helping to ensure that they and the charity they represent are complying with charity law.
18. The Commissioner specifically asked the commission to confirm who contracted the chosen examiner in this specific case and to explain where the information would be held, if it was.
19. The commission confirmed that it was the charity which contracted the chosen examiner; not the commission. It explained that key records (including accounts and annual reports) concerning a charity are stored in a specific folder for that charity within its EDRM system. It went on to say that this system links in to its case management system (CRM), which is also used for external correspondence. Information concerning the independent examinations of a charity would be stored within these areas if the commission were to hold them.
20. It said that searches of these areas have been conducted as part of the handling of this request and no relevant information was found within them. It stated that this type of information would not be held elsewhere so no further searches were carried out. The commission again reiterated that records of the independent examiner's examination and conclusion are not routinely held by the commission. They would only be held where matters of 'material significance' arose during the

examination and the examiners would be duty bound by charity law to inform the commission of those matters, which may include details of the examination and conclusion. It confirmed that this has not been the case with the charity in question so the requested information is not held and it would therefore have no reason to have access to it.

21. The Commissioner is satisfied that the commission has explained in detail why the requested information is not held. The commission has explained in what circumstances the requested information could be held and that such circumstances are not applicable to the charity in question. It has also confirmed where such information would be held if it was and conducted satisfactory searches of these records to establish that it does not hold the requested information. She is satisfied in this particular case that the commission has no statutory or business need to hold this information for its own purposes (because no matters of 'material significance' were identified by the independent examiner, which would then make them duty bound to report such matters to the commission and potentially supply the requested information). The commission has explained that it is the charity's responsibility to contract an independent examiner and in this particular case the requested information is held by the charity itself and the examiner concerned.
22. For these reasons the Commissioner is satisfied that, on the balance of probabilities, the commission does not hold the requested information. No further action is therefore required.

Right of appeal

12. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

13. 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.
14. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF