

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2016

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

Decision (including any steps ordered)

1. The complainant has requested information about correspondence and meetings concerning particular individuals. The Charity Commission has released some information and told the complainant that it holds no further information within the scope of his request.
2. The Commissioner's decision is that, on the balance of probabilities, the Charity Commission holds no further relevant information and has met its obligations under section 1(1) of the FOIA. The Commissioner does not require the Charity Commission to take any steps.

Request and response

3. On 18 February 2016, the complainant wrote to the Charity Commission and requested information in the following terms:

"This is a request for details of correspondence (emails, letters) and meetings (internal Charity Commission briefing papers, agendas and minutes) between Christopher Snowden / Mark Littlewood of the Institute of Economic Affairs concerning the Government funding of charities and whether those charities should be allowed to lobby the government, from 1st January 2014 until today:

- Paula Sussex;
- William Shawcross (acting in his capacity as a chair);

- *Sarah Atkinson;*
 - *Michelle Russell*
 - *Gwythian Prins - acting as board member"*
4. The Charity Commission responded on 10 March 2016 and said it did not hold the requested information.
 5. Following an internal review the Charity Commission wrote to the complainant on 11 April 2016. It acknowledged that it does hold some relevant information that it had previously disclosed in response to a separate FOIA request in 2014, this being an email exchange ('the email exchange') between Mr Prins and Mr Snowdon dated between May 2013 and February 2014 (giving a small overlap with the dates referenced in the current request). The Charity Commission disclosed this information to the complainant and it has also been provided to the Commissioner. The Charity Commission confirmed that it holds no further information falling within the scope of the request.

Scope of the case

6. The complainant contacted the Commissioner on 15 April 2016 to complain about the way his request for information had been handled.
7. After communicating with the Charity Commission about the complaint, the Commissioner's preliminary assessment, which she explained to the complainant, was that the Charity Commission holds no further relevant information. The complainant preferred to progress his complaint to a decision notice. He is not satisfied with the searches the Charity Commission undertook and with the fact that some relevant information may have been deleted.
8. The Commissioner's investigation has focussed on whether, on the balance of probabilities, the Charity Commissioner holds further information within the scope of the complainant's request, which it has not disclosed to the complainant.

Background

9. The complainant has explained to the Commissioner that in February 2016 the Government announced that *“Organisations receiving government grants will be banned from using these taxpayer funds to lobby government and Parliament.”*
10. In its press release, the Government stated that the policy had originated from research conducted by the Institute of Economic Affairs (IEA). In response the Charity Commission put out a statement that it had not been consulted on the policy announced in February, or involved in its development.
11. The complainant considers that by meeting Mr Snowdon (from the IEA), Mr Prins (Charity Commission Board member) was involved in developing the proposal, albeit at an early stage. The Commissioner notes that the complainant's request does not refer to a specific meeting between these individuals ie one that was known to have taken place on a particular date.
12. The complainant says that the email exchange disclosed in 2014 showed that Mr Shawcross (Charity Commission Chair) had asked Mr Prins to look into the issue of *“state funded charities lobbying Government”*, an issue that he says both the Charity Commission and IEA have worked on since. The complainant considers it strange that communication between the two organisations appears to have suddenly stopped after February 2014.

Reasons for decision

13. Section 1(1) of the FOIA says that any person who makes a request for information to a public authority is entitled to be informed in writing whether the authority holds the information and, if it does, to have the information communicated to him or her.
14. The Charity Commission's submission to the Commissioner has detailed the searches it carried out in response to the complainant's request.
15. CeRIS is the Charity Commission's document management programme. The Charity Commission says that it undertook a search of CeRIS using its 'Easy Search' facility, using the search terms 'Christopher Snowdon' and 'Mark Littlewood' and selecting 'files and documents' as the type of objects to be searched against. It says this is the main search function

used by all users and was therefore a reasonable search for the case officer to take. This search did not return any relevant results.

16. CRM is the Charity Commission's case management programme, which manages information about Commission cases and is used to store correspondence. The Charity Commission says that a search of 'contacts' was undertaken using the search terms 'Snowdon' and 'Littlewood' and a search of 'cases' under the organisation the Institute of Economic Affairs was also undertaken. Both searches provided no relevant results.
17. The Charity Commission says it undertook a search of the email accounts of Paula Sussex, William Shawcross, Michelle Russell and Sarah Atkinson using appropriate search terms. No relevant results were identified. The Charity Commission says that Mr Prins does not use his Charity Commission email account.
18. Following the complainant's request for an internal review, the Charity Commission says it traced the email exchange he had referenced, using the case number he provided. The Charity Commission says the case was stored as a 'FOI Miscellaneous' case and was not linked to the Institute of Economic Affairs. The email exchange is stored in CeRIS as an attachment to an email from Mr Prins with the title 'correspondence from Chris SnowdonFOI'. The Charity Commission has hypothesized that the fact that the name of this file does not include a space between 'Snowdon' and 'FOI' may account for it not being identified through the earlier search, as could the fact that the name 'Chris' is used rather than 'Christopher'.
19. The Charity Commission says that it contacted Mr Prins to request that he search his private records to determine if any further information is held. This is discussed below.
20. The Charity Commission has told the Commissioner that it has undertaken further searches in response to the Commissioner's investigation.
21. The Charity Commission says that it considers that the search of CeRIS that it initially undertook was reasonable and typical. However, it has told the Commissioner that it recognizes that the only way to ensure all relevant documents are captured on CeRIS is for the Charity Commission's IT department to conduct a 'Service Level Request'. It says it would be disproportionate to conduct such a search in response to every FOI request it receives because of the staff time needed. The Charity Commission says that given the serious concerns the complainant has raised, it has now undertaken a Service Level Request search of CeRIS. The Charity Commission has confirmed to the Commissioner that the only information retrieved from this search that

is relevant to the request is the email exchange that the complainant already has.

22. The Charity Commission says it has asked Mr Prins to assist with its searches and asked him to search through his Charity Commission email, his personal emails relating to Charity Commission business and his diary records to see if he holds any further correspondence with the individuals referred to in the request. Mr Prins has told the Charity Commission that he holds no information falling within the scope of the request.
23. Mr Prins explained that he no longer holds the aforementioned email exchange as this had been deleted as part of his regular administration of his personal email account. He said that in addition to the email exchange, he was sent a copy of a report by Mr Snowden by post but confirmed that he no longer holds this information. The date on which he disposed of this particular information is not known. Mr Prins also confirmed that he holds a paper copy of the email exchange filed in his own papers in relation to the previous FOIA request. The Charity Commission says Mr Prins' failure to identify the limited amount of information he holds falling within the scope of the complainant's request was an honestly made administrative oversight.
24. The Charity Commission says that Mr Shawcross has now undertaken a search of his personal emails and has confirmed that no information falling within the scope of the request was identified.
25. To summarize its position, the Charity Commission has told the Commissioner that it considers that the initial searches it undertook were reasonable and thorough but acknowledges that there were shortcomings in its response to the request.
26. The Charity Commission says it regrets that its search of CeRIS did not retrieve the particular email exchange, which it says may be partly due to the way in which the document was named when stored in CeRIS under an earlier FOIA file. It has also told the Commissioner that it recognizes that Mr Prins and Mr Shawcross could have been asked to search their personal email accounts and diaries when the request was received, to ensure that all information potentially held by the Charity Commission was considered from the outset. Finally, the Charity Commission has said that it would be better for records management generally if Board members only used the Charity Commission email accounts to conduct Charity Commission business.
27. In response to these matters, the Charity Commission has told the Commissioner that it intends to issue Board members with iPads to make it easier for the Charity Commission's email systems to be

accessed at all times. The Commission also says that its new Head of Information Rights is going to consider further guidance about carrying out standard searches including guidance on when it would be proportionate to carry out a Service Level Request search.

28. In his arguments to the Commissioner, the complainant has said that in order to respond to the separate FOIA request in 2014, the Charity Commission had retrieved the email exchange between Mr Prins and Mr Snowden. He had drawn this to the Charity Commission's attention and, at internal review, the Charity Commission had then located where it holds this information.
29. The complainant notes that Mr Prins no longer holds what he has called the 'primary' email chain from 2014; that is, the email between Mr Prins and the Charity Commission's FOI officer who handled the 2014 request, and that the Charity Commission does not hold this particular information either. The complainant is not satisfied that this information has apparently been deleted from Mr Prins' and the Charity Commission's accounts without explaining, or being asked to explain, why this happened.
30. In response to this point, the Commissioner notes that Mr Prins has said he deleted whatever relevant information he held, as part of his routine administration of his personal email account. The date of deletion is not known. The Commissioner notes that the request that generated the response was submitted approximately two years ago. She does not consider it unreasonable that Mr Prins may have undertaken some housekeeping of his personal email account in the intervening period and that, as a consequence, he no longer holds this particular information electronically. The Commissioner must therefore accept Mr Prins' position that having undertaken a search, Mr Prins no longer holds in electronic form the 'primary' email, the email exchange or any further relevant information. The Charity Commission holds a copy of the email exchange in its corporate records and this information has been disclosed to the complainant.
31. The Commissioner notes that Mr Prins did then locate a paper copy of the email exchange (a version of the information that the Charity Commission has disclosed to the complainant). She agrees with the Charity Commission that there were shortcomings in its original response to the complainant, related to this and the other matters referred to at paragraph 26. It is to be hoped that the measures the Charity Commission has told the Commissioner it now intends to put in place will improve its records management processes. In turn, this is likely to improve the public's confidence in the Charity Commission's handling of FOIA requests in the future.

32. In this case, because of the shortcomings referred to, the complainant is sceptical about the Charity Commission's position that it holds no further information relevant to his request.
33. The Charity Commission says it has undertaken further searches as a result of the Commissioner's investigation. It has confirmed that the only relevant information that it holds is the email exchange previously disclosed in 2014, and that it holds no further information falling within the scope of the complainant's request.
34. The Commissioner cannot make a decision on whether an authority *should* hold particular information. The complainant appears to have conjectured that particular meetings may have taken place, and written communications may have passed between particular parties between January 2014 and February 2016. However, he has not provided the Commissioner with any concrete evidence that they have.
35. The Commissioner's investigation has to focus on whether or not recorded information is held at the time of any request for it. She has considered the complainant's arguments in this case, and the Charity Commission's submission. The Commissioner considers that the searches the Charity Commission has undertaken have been acceptable. On the balance of probabilities, she is prepared to accept that the Charity Commission does not hold any further relevant information.

Right of appeal

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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: 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.

Signed

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