

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 June 2021

Public Authority: Charity Commission

Address: PO Box 211
Bootle
L20 7YX

Decision (including any steps ordered)

1. The complainant has requested information from the Charity Commission relating to a complaint he had made to it about a particular charity. The Charity Commission stated that some of the requested information was the complainant's personal data and that it would provide him with details of how to make a Subject Access Request (SAR) for this. It refused to disclose the remaining requested information ("the withheld information"), citing sections 31(1)(g) by virtue of section 31(2) (c) and (f) and section 40(2) of the FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the Charity Commission has correctly applied section 31 of the FOIA to the withheld information. The Commissioner has not considered the application of section 40(2) as she considers that section 31 is engaged in relation to all of the withheld information

Background to the request

3. The Charity Commission first became aware of regulatory issues concerning the charity which is the subject of the complainant's request on 7 December 2018, on which date the complainant wrote to it to express his concern regarding a number of issues affecting the

operation of the charity. The complainant's concerns largely focused on alleged conflicts of interest amongst charity trustees, licensing requirements and financial mismanagement.

4. During the same period the Charity Commission was also receiving reports of concerns from other members of the public, which additionally focused on alleged mistreatment of animals in the care of the charity. A regulatory case was created to further investigate the concerns raised which fell within the Charity Commission's remit.
5. The Charity Commission contacted the charity's trustees on 20 February 2019 to request further information regarding the concerns they had received about its operations. On 23 February the complainant again wrote to the Charity Commission citing additional concerns regarding alleged fraud and other claims of mismanagement. The Charity Commission received a copy of alleged further evidence of fraud from the complainant on 19 April 2019 for its own investigation and also directed the complainant to Action Fraud.
6. The Charity Commission replied to the complainant on 2 May 2019 explaining that an investigation had taken place into the concerns raised about the operation of the charity. The Commission confirmed that it had issued advice and guidance to the charity as well as a formal action plan, and that no further regulatory action was being taken. As the complainant was still concerned, the Charity Commission re-opened the investigation. Further advice was provided to the charity and the case was closed on 16 July 2019.
7. The complainant requested a review of the Charity Commission's handling of his complaint, which escalated to a 'Stage 2' complaint (known as an assurance review). The review response to that complaint was sent to the complainant on 17 January 2020. This upheld the initial response to the complainant and clarified that the new issues raised by the complainant were not within the remit of the Charity Commission.

Request and response

8. On 27 January 2020, the complainant made the following request to the Charity Commission:-

"Please can you provide me with a copy of all information held relating to my complaint ref: C-505766 (regarding [name redacted], registered charity number [redacted]). Please include all information held relating to my initial complaint, my request for a review and my request for a stage 2 review."

9. The complainant received a response from the Charity Commission on 20 February 2020. That response stated that it held the requested information but that it was refusing to disclose it, citing sections 31 and 40(2) of the FOIA as a basis for non-disclosure. The Charity Commission also stated that some of the information was the complainant's own personal data, in respect of which he would be sent details of how to make a separate request.
10. The complainant requested an internal review on 17 March 2020 of the Charity Commission's decision, the result of which was provided to him on 15 April 2020. The reviewer upheld the original decision.

Scope of the case

11. The complainant contacted the Commissioner on 22 April 2020 to complain about the way his request for information had been handled.
12. The Commissioner has considered the Charity Commission's handling of the complainant's request, in particular its application of the above exemptions to the withheld information.
13. The complainant has been engaged in further correspondence with the Charity Commission and has now received further information within the scope of his request. This notice, at the request of the complainant, examines the application of the exemptions under the FOIA at the time of the original request.

Reasons for decision

14. Under subsection 31(1)(g) of the FOIA information is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any public authority of its functions for any of the purposes specified in subsection 31(2).

The purposes listed in section 31(2) which the Charity Commission has cited are:

- c) ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise;
 - f) protecting charities against misconduct or mismanagement in their administration.
15. In order for a prejudice-based exemption such as section 31 to be engaged, there must be at least a likelihood that disclosure would cause

prejudice to the interest or interests that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice-based exemption:

- The harm the public authority states would, or would be likely to, occur if the information was disclosed must be relevant to the applicable interests protected by the exemption;
 - The public authority must be able to demonstrate there is a causal relationship between the potential disclosure of the information and the prejudice which the exemption is designed to protect. This prejudice must be real, actual or of substance; and
 - The public authority should establish whether the level of likelihood of prejudice it is relying on is the lower threshold of 'would be likely to prejudice' or the higher threshold of 'would prejudice' and be able to demonstrate this.
16. The Commissioner has first considered whether the Charity Commission is formally tasked with functions for any of the purposes set out in section 31(2).
 17. In its submission to the Commissioner, the Charity Commission has provided some information on its statutory objectives and functions that are set out in sections 14 and 15 of the Charities Act 2011.
 18. These objectives relate to increasing public trust and confidence in charities and promoting compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities. The Charity Commission's functions include encouraging and facilitating the better administration of charities and identifying and investigating apparent misconduct or mismanagement in the administration of charities, and taking remedial or protective action in connection with misconduct or mismanagement in the administration of charities.
 19. Under Section 15(2) of the Charities Act 2011 the Charity Commission may, in pursuance of its function of "encouraging and facilitating the better administration of charities," provide advice or guidance with respect to the administration of charities as it considers appropriate. This was the approach taken by the Charity Commission in this particular case.

11. Therefore the Commissioner accepts that the Charity Commission is formally tasked with the functions as set out in section 31(2)(c) and (f) of the FOIA and has now gone on to consider the likelihood of prejudice occurring to the exercise of these functions if the withheld information were to be disclosed, and the causal link between disclosure and the occurrence of such prejudice.
12. The Charity Commission pointed out that, as a publicly funded regulator with finite resources, it is a risk-based regulator and operates a "risk framework" which assists the Commission's casework teams in deciding when and how to engage with a charity. Complaints about charities are assigned a priority rating based on a manual assessment by a case officer (a judgement is made by the case officer using the risk framework).
13. The Charity Commission stated that it receives a high volume of complaints concerning registered charities (of which there are several hundred) and must direct its resources towards addressing the highest risks, i.e. those which have the potential to cause the greatest harm to public trust and confidence, or which may affect the ability of trustees to comply with their duties. Although no, or limited, action may be taken at the time of a complaint, this is continuously assessed and may change as further information is provided and the level of risk changes.
14. The Charity Commission is of the view that, if a precedent were to be set that the Commission would be required to publicly disclose the evidence it has accumulated on regulatory issues within its remit, this would be likely to prejudice the ability of the Commission to continue operating its risk framework, as charities would become aware of evidence held by the Charity Commission, which would in turn enable them to destroy evidence/evade further detection. Such an outcome would significantly inhibit the Commission's ability to take targeted, proportionate action in line with the risk framework, and would be likely to prejudice the Commission's ability to effectively regulate the charities sector and to promote public trust and confidence.
15. The Charity Commission stated that, in this particular case, the complaints received about the charity were given a low risk rating against the risk framework, however an investigation was commenced due to the local profile of the charity. If details of the decision-making process in cases such as this were to be disclosed, the Charity Commission is of the view that these would serve to tip off other charities as to the Commission's threshold of engagement and potentially enable them to evade detection. The case information contains decisions made by the case officer as to the appropriate action,

and whether further complaints would prompt a re-assessment of the case. This decision-making process underpins the work of the Charity Commission and would be likely to prejudice the ability of the Commission to take targeted regulatory action in the future.

16. The Charity Commission also considers that being required to disclose deliberations, information and evidence acquired in the course of an investigation would inhibit the decision-making process undertaken by case officers. If there was an expectation of disclosure of information concerning an investigation being managed by a case officer, that officer's decisions would be likely to be affected by the potential public perception of a particular decision, and any further recriminations that may arise from a charity or a group of charities that are involved in regulatory action. Charity Commission staff require a safe space in order to deliberate on issues and to reach decisions in the best interests of a charity and its beneficiaries, and of the public as a whole. Such decisions can be difficult and are highly unlikely to be universally popular in many scenarios. It is the Charity Commission's view that disclosure of the withheld information would be likely to prejudice the ability of its staff to have full and frank discussions with colleagues in order to be sure that they are taking the correct regulatory action and in turn prejudice the Charity Commission's ability to make consistent and good quality regulatory decisions.
17. Having perused the withheld information and considered the arguments put forward by both the complainant and the Charity Commission, the Commissioner accepts that disclosure of the withheld information would meet the lower threshold of prejudice, i.e. that it would be likely to cause prejudice to the functions of the Charity Commission (as set out in the relevant sections of the Charities Act 2011).
18. The Commissioner therefore concludes that the Charity Commission has correctly engaged sections 31(1)(g) by virtue of 31(2)(c) and (f) of the FOIA and that these were correctly applied at the time of the request. The Charity Commission disclosed further information to the complainant subsequent to his complaint to the Commissioner as the charity itself had made some details public via social media. The Commissioner has not gone on to consider section 40(2) as she is of the view that all of the withheld information falls within the exemption as set out in section 31(1)(g) by virtue of sections 31(2)(c) and (f) of the FOIA.
19. As the exemption at section 31 is a qualified exemption, the Commissioner has gone on to consider the public interest arguments both in favour of disclosure and of maintaining the exemption.

Public interest arguments in favour of disclosure

20. The complainant made a number of points regarding the public interest being in favour of disclosure of the withheld information. The Commissioner does not consider it appropriate to reproduce those points in this notice, however she has taken them into account in her analysis.
21. The Charity Commissioner accepts that there is a strong public interest in public authorities being transparent and accountable regarding their decisions, and indeed it considers that they have a wider duty to do so.
22. The Charity Commission also accepts that disclosure of the withheld information would help inform public debate on issues of regulatory significance, and would demonstrate that the Charity Commission is effectively and efficiently regulating the charity sector.
23. The Charity Commission also accepts that disclosure of the withheld information would help to educate and inform the public by detailing how the Commission handles regulatory complaints and concerns, providing a fuller picture of the Commission's statutory functions and duties.

Public interest arguments in favour of maintaining the exemption

24. The Charity Commission argues that disclosure in this case would set a precedent which would require routine disclosure of details of its investigations, which would inhibit the ability of its staff to make free and frank deliberations regarding complaints, potentially leading to poorer quality regulatory decisions. This would clearly not be in the public interest.
25. The main public interest argument put forward by the Charity Commission in favour of maintaining the exemption is that disclosure would impact upon the relationship of trust between the Charity Commission and the charity sector. If charities recognised that the Charity Commission routinely disclosed details of regulatory engagement concerning them, this would undermine the trust which underpins how it engages with charities, and would also serve to undermine public trust and confidence as a whole.

Balance of public interest arguments

26. The Commissioner accords significant weight to the public interest in public authorities such as the Charity Commission being transparent and accountable. She also considers that there is a public interest in educating and informing the public as to how the Charity Commission handles regulatory complaints and concerns.

27. The Commissioner does not accord particular weight to the Charity Commission's argument that disclosure would set a precedent requiring routine disclosure of details relating to its investigations. The Commissioner considers each complaint made to her under the FOIA on a case-by-case basis and obviously there will be different circumstances and concerns in every case. It would never be the case that routine disclosure of such information would be 'required.'
28. The Commissioner does accord significant weight to the argument that disclosure would undermine public trust and confidence by impacting upon the relationship the Charity Commission has with the charity sector. She accepts that disclosure of the details of the investigations may make charities less co-operative with the Charity Commission and also perhaps enable them to evade detection if they are familiar with the risk framework and how complaints are assessed. A less than good quality investigative and regulatory process in investigating charities would clearly not be in the public interest.
29. The Charity Commission has informed the Commissioner that it is committed to being as transparent as possible where regulatory action is taken. Where there are high risk investigations and inquiries, the Charity Commission is committed to publishing Regulatory Case Reports, Statements of Results of Inquiry, and further updates and reports in the public interest. This is how the Charity Commission achieves its objective of promoting public trust and confidence.
30. The Commissioner accepts that the public interest in transparency and accountability, as well as the public being aware of how the Charity Commission handles regulatory complaints and concerns, is met by the pro-active publication referred to in paragraph above. As she considers it important and very much in the public interest to maintain public trust and confidence in the Charity Commission, she has concluded that, on balance, the public interest in all the circumstances of this case is in favour of maintaining the exemption.

Right of appeal

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

32. 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.
33. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF