

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 June 2024

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

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the risks and issues recorded in the 'strategic risk register' as referenced in the Charity Commission of England and Wales's annual reports and accounts 2022/23. The Charity Commission of England and Wales ("CCEW") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the CCEW was entitled to aggregate the requests under section 12(4) of FOIA and is entitled to rely on section 12(1) of FOIA to refuse the requests.
3. The Commissioner also considers that CCEW has complied with its obligations under section 16(1) of FOIA to provide adequate advice and assistance. However, CCEW has breached section 10(1) FOIA as it failed to respond within the statutory time for compliance.
4. The Commissioner does not require any further steps to be taken.

#### Request and response

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5. On 20 August 2023, the complainant wrote to the public authority and requested information in the following terms:  
  
“(1) With reference to the 'strategic risk register' that is referenced multiple times in the annual reports and accounts 2022/23 (hyperlink available here: <https://assets.publishing.service.gov.uk...>), I can see what seem to be some themes but I'd like to request the 'top 20' risks

and issues as they are recorded in your strategic risk register alongside: (a) assessments of initial probability/likelihood and impact (including any keys, scales and accompanying information for explaining what these assessments mean in practice), (b) date(s) of initial identification, where available/known/recorded, (c) initial compound/overall ratings and residual/current compound/overall ratings, (d) list of mitigations, controls, (e) recorded senior responsible officials/owners (insofar as this is disclosable) etc. in place for each of those risks and issues as they are recorded in the strategic risk register

(2) With reference to the 'Accounting officer's statement of effectiveness' in the annual reports and accounts 2022/23 which states "I have reviewed the effectiveness of the Commission's governance structures, risk management and internal controls. Taking into account: [...] assurance letters from each of my directors summarising the effectiveness of their systems of governance, risk management and control; [...]" - please can you share copies, insofar as they are disclosable, of the aforementioned 'assurance letters from each of [the Accounting Officer's] directors'."

6. On 3 November 2023, CCEW responded. It relied on section 12 of FOIA to refuse the request and stated that it did not hold some of the information in relation to parts 1(a) and 1(b) of the requests as follows:

"Providing information requested in item 1a and 1b of your request would require more than 24 staff hours. This is because the Commission does not hold a single record that outlines the initial assessment and initial date of identification of the strategic risks. While the strategic risk register contains current assessment, initial assessments and date of identification are not included.

Therefore, reviewing several documents dating back to 2019 is needed."

7. On 3 November 2023, the complainant requested an internal review of his request as follows:

"Putting aside the fact that you don't want to share those 7 strategic risks I'd requested (presumably because you've said you plan to publish them in the summer of 2024), I can see you've made no effort to respond to part 2 of my request with respect to the assurance letters."

8. On 7 December 2023, CCEW upheld its position at internal review. It explained that it had aggregated the time required to locate, retrieve and examine information for parts 1 and 2 of the request stating:

“We treated your initial email as containing two separate requests – that is, items numbered 1 and 2 – under section 12(4) of the FOIA. I am sorry that we failed to explain that we had combined them, and that section 12 applied to both 1 and 2. When combined together, it would take us over the costs limit to confirm whether we held the information. The estimated cost of complying with any of the requests is taken to be the estimated total cost of complying with all of them.”

9. Additionally, CCEW stated that any refined request would be treated as a new and separate request under FOIA.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 11 December 2023 to complain about the way their request for information had been handled stating:

“I disagree with their combining the two separate requests and subsequently not even providing an estimate of time required for (2). It seems unnecessarily evasive.”.

11. The Commissioner has noted that the complainant revised their request for information and sent a new request under FOIA to CCEW on 10 December 2023. CCEW have since disclosed some information for both request 1 and 2 in this regard.
12. The Commissioner therefore considers the scope of this case to be to determine if the public authority correctly cited section 12(1) FOIA in response to the original request of 20 August 2023. He has also considered whether CCEW complied with its duty to provide advice and assistance under section 16 of FOIA.

### **Reasons for decision**

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#### **Section 12(4) – Aggregation of related requests**

13. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”) can be satisfied.
14. Section 12(4) of FOIA states:

"The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."

15. Regulation 5 of the Fees Regulations states:

"(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concern or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which –

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

16. The Commissioner has reviewed the complainant's requests aggregated by CCEW, which were submitted on 20 August 2023 on one item of correspondence and is satisfied, that as the requests were made by the same complainant and within 60 working days of each other, they fulfil the criteria at regulations 5(1)(a) and 5(2)(b).

17. The Commissioner must now consider whether both requests relate, to any extent, to the same or similar information. The Commissioner's view on aggregating requests can be found in the guidance on requests

where the cost of compliance exceeds the appropriate limit<sup>1</sup>. Paragraphs 44 and 45 state:

“Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate “to any extent” to the same or similar information. This is quite a wide test, but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts, but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.”

18. The Fees Regulations’ wording of “relate, to any extent, to the same or similar information” makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
19. Having reviewed the wording of both requests made within a 60-day period, the Commissioner is satisfied that there is an overarching theme in that although in addition to being submitted on one single letter or item of correspondence, they both request information contained in the annual reports and accounts 2022/23 and strategic risk register.
20. The Commissioner, therefore, finds that CCEW was entitled to rely on section 12(4) of FOIA to aggregate both requests.

## **Section 12 – cost of compliance**

21. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
22. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”)
23. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450

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<sup>1</sup> [costs of compliance exceeds appropriate limit.pdf \(ico.org.uk\)](#)

for all other public authorities. The appropriate limit for the public authority is £450.

24. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the public authority.
25. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
26. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence. The task for the Commissioner in a section 12 matter is to determine whether CCEW made a reasonable estimate of the cost of complying with the request.
27. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
28. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

### **The public authority's position**

29. The Commissioner asked the CCEW to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
30. CCEW explained to the Commissioner that all information about strategic risks and the Strategic Risk Register (SRR) is held electronically on the Commission's Electronic Document Records Management System (EDRMS). This is a live document that is regularly

updated to monitor risks that could affect the Commission's functions, internal controls, and administration.

31. CCEW in its internal review responses to the complainant stated:
32. "As we explained in our initial response, the Commission does not hold a single record that outlines the initial assessment and initial date of identification of the strategic risks. While the strategic risk register contains current assessment, initial assessments and date of identification are not included. Therefore, reviewing documents dating back to 2019 is needed, including Board and other committee papers. We think this would take more than 24 hours work because we estimate that there are over 600 Board papers alone to consider. Allowing for 5 minutes per document, this would mean it would take us about 50 hours to confirm whether we hold the information."
33. In its submission to the Commissioner CCEW confirmed that it had searched its EDRMS to locate relevant documents, including records of meetings where strategic risk is mentioned using key words and restricting searches to Corporate Office and Governance folders (Corporate Office and Governance/Board/Board Committees/Board Committee Risk/2019/2020/2021/2022)
34. For the above reasons, to provide the information requested in item 1a and 1b would require 87 hours of staff time or 3.61 days if working continuously without breaks.
35. However, CCEW conducted a dip sampling exercise which revealed additional documents for review and varying review times for different documents due to their page lengths revising its calculations to those provided to the complainant on both 03 November 2023 and 07 December 2023.
36. CCEW determined that it that would now take an average of 4 minutes per paper to review 1300 records which equates to 87 hours staff time. (1300 x 4 minutes per record or a total of 5,200 minutes divided by 60 minutes = 87 hours). CCEW provided a breakdown of its calculations and sampling exercise as follows:

"In 2019, a total of 70 Board papers were identified as potentially falling within the scope of the request 1a and 1b. We opted to randomly review the Board meeting papers in March and April 2019 to assess the time needed to review.

In Board Meeting March 2019 – there were 12 papers for this meeting, which averaged 4 minutes per paper. The time varied due to the differing length of the individual papers with 8 minutes taken to read through an 18-page document to 1 minute for an agenda.

In April 2019's Board meeting, we found 16 papers. Through a sampling exercise, we calculated that it required an average of more than 3 minutes per paper to review.

In 2022, a total of 52 Board papers were identified as potentially falling within the scope of the request 1a and 1b.

We opted to randomly review the Board meeting papers in March and June 2022 to assess the time needed to review these papers.

In March 2022's Board meeting, we found 10 papers.

In June 2022's Board meeting, we identified 17 papers.

37. CCEW also stated:

"Alternatively, if the Commission opted for the lowest estimated review time of 2 minutes per document, providing the information requested in request 1a and 1b would still exceed the cost limit as it would take 43.3 hours for the Commission to provide the requested information."

### **The Commissioner's view**

38. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
39. The Commissioner notes that, even if CCEW's alternative estimate was slightly high, for it to comply with the request without exceeding the cost limit, it would need to review the revised estimate of 1300 documents following its dip sampling exercise in under a minute, which the Commissioner does not consider feasible.
40. The Commissioner considers that CCEW estimated reasonably that it would take significantly more than the 18 hours / £450 limit to respond to the request. CCEW was therefore correct to apply section 12(1) of FOIA to the complainant's request.

### **Procedural matters**

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#### **Section 16 – advice and assistance**

41. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45



code of practice<sup>2</sup> in providing advice and assistance, it will have complied with section 16(1).

42. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requestor refine the request so that it can be dealt with under the appropriate limit in line with section 16 of FOIA.
43. On 3 November 2023, CCEW advised the complainant that they currently only have 7 strategic risks in the annual reports and accounts for the period 2023 to 2024 which they intend to publish during the summer of 2024. It offered the following advice and assistance to the complainant to refine the request as follows.

“Item 1a of the request, as advised above, we do not hold a single document that records the initial and current assessment of probability/likelihood of impact. You may therefore wish to consider asking for the current assessment instead, removing any reference to the initial assessment.

For Item 1b of the request, for the same reasons mentioned above, it may be advisable to remove references to the initial date of identification of strategic risks. Regarding item 1c of the request, please clarify what you mean by "initial compound/overall ratings and residual/current compound/overall ratings".

44. The complainant subsequently revised his request and CCEW provided copies of information for items 1, 1d, 1e and 2 on 14 February 2024.
45. The Commissioner is therefore satisfied that CCEW met its obligations under section 16 of FOIA.

### **Section 10 - time for compliance**

46. Section 10(1) provides that:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

47. Section 1(1) provides that:

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<sup>2</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

"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.

48. The original request was made on 20 August 2023 and a response was not provided by CCEW until 3 November 2023. The Commissioner therefore finds that the CCEW breached section 10(1) in failing to provide a response within 20 working days.

## **Right of appeal**

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49. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

50. 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.
51. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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