

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 October 2024

**Public Authority Address:** Charity Commission for England and Wales  
PO Box 211  
Bootle  
L20 7YX

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information relating to an allegation about a specific charity. The Charity Commission refused to confirm or deny whether the requested information was held, citing section 31(3) (law enforcement) and section 40(5) (personal information) of FOIA.
2. The Commissioner's decision is that the Charity Commission was correct to rely on section 31(3) of FOIA to neither confirm nor deny whether it held the requested information.
3. The Commissioner does not require further steps.

#### **Request and response**

---

4. On 6 March 2024, the complainant wrote to the Charity Commission and requested information in the following terms:  

"We (Name of charity redacted) would like to make a Freedom of Information request for information relating to what we understand to be serious recently made allegations against the Charity and the Trustees of the Charity to the Charity Commission."
5. The public authority responded on 5 April 2024. It refused to confirm or deny whether it held any information that would fall within the scope of the request, citing section 31(3) and section 40(5).

6. The complainant requested an internal review on 16 April 2024.
7. Following an internal review the Charity Commission wrote to the complainant on 30 May 2024. It upheld its previous position.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 8 July 2024 to complain about the way their request for information had been handled. The Commissioner understands the complainant is affiliated with the charity in question.
9. The Commissioner considers that the scope of his investigation is to consider whether the Charity Commission was correct to neither confirm nor deny whether it held any relevant information.
10. The Commissioner will consider the Charity Commission's application of section 31(3) first. Depending on his findings, he may go onto consider section 40(5).

### **Reasons for decision**

---

#### **Neither confirm nor deny ('NCND')**

11. When it receives a request for information under FOIA, a public authority must do two things. It must first confirm whether or not it holds the requested information; this is commonly known as 'the duty to either confirm or deny'. If the public authority confirms it holds the requested information, it must disclose it unless an exemption under FOIA applies.
12. However, there are exemptions from the duty to either confirm or deny. In these instances the public authority must issue a neither confirm nor deny response ('NCND'), leaving it ambiguous as to whether the requested information is held.
13. NCND responses are used in circumstances when even confirming or denying if information is held, would, in itself, give away exempt information.
14. The decision to use a NCND response will not be affected by whether a public authority actually does, or doesn't, hold the requested information.
15. The main focus for the Commissioner when considering NCND is theoretical; he needs to consider the consequences of confirming or

denying whether the information is held. A public authority will need to use NCND responses consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an inference as to whether information is, or isn't, held.

### **Section 31(3) – law enforcement**

16. Section 31(3) of FOIA states that:

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”

17. Section 31(1)(g) states that:

“Information...is exempt information if its disclosure under this Act would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).”

18. The Charity Commission has issued an NCND response because it believes that confirming or denying whether it holds the requested information would be likely to prejudice its ability to carry out its statutory objectives and functions as set out in section 14 and 15 of the Charities Act 2011.<sup>1</sup>

19. Sections 14 and 15 of the Charities Act outline the role of the Charity Commission and the Commissioner notes the crossover with the functions listed in section 31(2), by virtue of section 31(1)(g) of FOIA, which is the ability ‘to protect charities against misconduct or mismanagement (whether by trustees or other persons) in their administration’, and ‘protect property of charities from loss or misapplication.’

20. The Charity Commission is concerned that:

“The request is in relation to whether the Commission holds information regarding concerns raised about a specific charity. The Commission is of the view that the confirmation and release of this type of information (if such information was held) would provide a distorted picture of the charities that would likely to threaten the trust that those organisations have with our ability to handle such information/communications carefully and sensitively.”

---

<sup>1</sup> [Charities Act 2011](#)

21. It's elaborated that:

"Charities could potentially receive large numbers of innocuous or false concerns raised against them and releasing such information (if held) would, in our view, likely lead to negative perceptions of charities. It could also potentially affect their fundraising ability which could in turn unfairly threaten a charity's future viability."

22. It has gone onto say that, if this trust is compromised, third parties might be reluctant to engage with the Charity Commission in the future for fear of any such interaction being disclosed to the world at large. In turn, this could affect the Charity Commission's ability to meet its statutory objectives and functions according to the Charities Act 2011.
23. The Commissioner notes that the Charity Commission issues a press release whenever it opens a statutory inquiry into a charity.<sup>2</sup> However, it doesn't make the details of any allegations public.
24. It is important to note that disclosure under FOIA is disclosure to the world at large. Whether or not the complainant, who is somehow affiliated with the charity in question, believes they are aware of any such allegation against the charity is irrelevant here.
25. Because the charity is named in the request, confirming the information is held would confirm that such an allegation about the charity has been made. Denying the information is held would confirm that no such allegation about the charity has been made. Bearing in mind that NCND responses need to be provided consistently to avoid inferences being made, the Commissioner agrees that complying with the duty to confirm or deny, in this instance, has the potential to disclose to the world at large information that isn't in the public domain. In turn, this could damage the trust stakeholders' place in the Charity Commission, and prejudice its ability to exercise its functions under the Charities Act 2011.
26. The Commissioner has considered his handling of a previous, similar request<sup>3</sup> in this investigation. Since he's decided the exemption is engaged, the Commissioner will go onto consider the balance of the public interest test.

---

<sup>2</sup> [Charity Commission alerts, decisions, reports and statements - GOV.UK](#)

<sup>3</sup> [ic-280497-z8z2.pdf](#)

## **The public interest test**

27. The Commissioner concurs with the Charity Commission that:

“Disclosure of the requested information (if held) would help to inform public debate on issues of regulatory significance, and demonstrate that the Commission is effectively and efficiently regulating the charity sector.”

28. However, the Commissioner also agrees with the Charity Commission that the public interest, in this instance, would be better served by preserving the stakeholders’ trust in the Charity Commission and allowing it to perform its statutory functions as robustly and efficiently as possible. To do so, the Charity Commission was correct to issue an NCND response in this instance.

29. Since the Commissioner has determined that the Charity Commission was correct to neither confirm nor deny whether the information was held in line with section 31(3), he doesn’t need to go onto consider its application of section 40(5).

## Right of appeal

---

30. 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)

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**