

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 18 March 2022

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 on evidence it received and processes it followed in relation to issues of regulatory interest it had with the charity. The Charity Commission confirmed information was held but considered it exempt under sections 31(1)(g) with 31(2)(a), (c) and (f) of the FOIA.
2. The Commissioner's decision is that the Charity Commissioner has correctly engaged the section 31 exemption and the public interest favours maintaining the exemption. He requires no steps to be taken.

Request and response

3. On 18 January 2021 the complainant made a request to the Charity Commission for information in the following terms:

"I am writing to request documentation, meeting minutes and statements relating to the following statements:

"Based on the information we have seen, I understand that the charity terminated its working arrangement with the partner, when certain matters came to a head, which made the charity's relationship with the partner unsustainable. We were satisfied that the charity made a reasonable decision and has the full support and authorisation of the local government, to undertake the Sabah project."

1. Specifically, please provide the documentary evidence provided by IAPWA UK to the Charity Commission that resulted in the Charity Commission deciding that IAPWA UK acted appropriately in terminating a long term funding contract of many years without discussion or notice of any sort given to the local society.
 2. Please provide the documentary evidence and statements provided by IAPWA UK that they have an agreement with ANY local authority or government in Sabah, Borneo, Malaysia.
 3. Please provide all processes and procedures that the Charity Commission went through to confirm the legitimacy of the evidence and statements provided by IAPWA UK, both the evidence against the local society AND the evidence that IAPWA UK can legally work in Malaysia.
 4. Please provide all additional evidence received by the Charity Commission when they sought to confirm IAPWA UK allegations about the local partner, and IAPWA UKs ability to work legally in Malaysia.
 5. Please provide the documentation and guidelines that state the charity commission must not contact partner charity abroad to collect, or confirm evidence or to discuss alleged wrong doing, by either party."
4. The Charity Commission responded on 12 February 2021. For parts 1-4 of the request it stated that the information was exempt under section 31(1)(g) with sections 31(2)(a), (c) and (f) of the FOIA. For part 5 the Charity Commission stated it did not hold documentation or guidelines stating it must not contact a partner charity abroad to collect or confirm evidence or discuss alleged wrongdoing.
 5. The complainant requested an internal review on 1 March 2021. The complainant argued that the section 31 exemption was not engaged and in the event that it was the Charity Commission had not given due consideration to the public interest in disclosure of the information. The complainant accepted part 5 of the request had been answered.
 6. The Charity Commission conducted an internal review and responded on 1 April 2021 and upheld its decision to refuse to disclose the information at parts 1-4 of the request under section 31 of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 26 March 2021 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of his investigation to be to determine if the Charity Commission has correctly refused to provide the information it holds in relation to parts 1-4 of the request under section 31 of the FOIA.

Reasons for decision

Section 31 – law enforcement

9. Section 31(1) of the FOIA states that:

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),”
10. The relevant subsections of section 31(2) that the FCA argues are applicable here are:

(a) the purpose of ascertaining whether any person has failed to comply with the law,

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

(f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration.
11. The exemption can be engaged on the basis that disclosing the information either “would” prejudice the regulatory function, or the lower threshold that disclosure only “would be likely” to prejudice that function. For the Commissioner to be convinced that prejudice “would” occur, he must be satisfied that there is a greater chance of the prejudice occurring than not occurring. To meet the threshold of “would be likely to” occur, a public authority does not need to demonstrate that the chance of prejudice occurring is greater than 50%, but it must be more than a remote or hypothetical possibility.
12. The Commissioner’s approach to the prejudice test is based on that adopted by the Information Tribunal in Christopher Martin Hogan and

Oxford City Council v the Information Commissioner EA/2005/0026 and 0030. This involves identifying the applicable interests within the exemption, establishing that the prejudice is real, actual or of substance, and showing there is a causal link between the disclosure and the prejudice claimed.

13. As background the Commissioner considers it is important to explain the legislative background to the Charity Commission's functions. The Charity Commission is a non-ministerial government department that is the registrar and regulator for charities in England and Wales. It is governed by and derives its powers from the Charities Act 2011 ("the Act").
14. The Charity Commission's statutory objectives and functions are set out in section 14 of the Act. Its objectives include increasing public trust and confidence in charities, promoting compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities and promoting the effective use of charitable resources.
15. The Charity Commission considers that disclosure of the information it holds would be likely to prejudice the following functions as set out in the Act:
 - Section 15(1)(2) – encouraging and facilitating the better administration of charities; and
 - Section 15(1)(3) – 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.
16. The information in this case relates to the IAPWA UK (International Aid for the Protection & Welfare of Animals UK); a UK based charity. The issue at hand, in the simplest terms, relates to the decision by the charity to change one of its international operational partners. The Charity Commission received allegations about the conduct of the charity and its trustees and investigated the matter.
17. The requested information is mainly information provided by the charity about the allegations made which were of regulatory interest to the Charity Commission. The interest was in furtherance of the functions specified in sections 14 and 15 of the Act.

18. The Commissioner has previously accepted¹ that the Charity Commission has a statutory basis for undertaking the functions at sections 31(2)(c) and (f) of the FOIA. With regard to the function at section 31(2)(a) the Commissioner also accepts that section 15(1)(3) of the Act provides the Charity Commission with an obligation to investigate alleged misconduct or mismanagement and take appropriate remedial action and this is in line with the function at section 31(2)(a) of the FOIA - the purpose of ascertaining whether any person has failed to comply with the law. The Commissioner must now consider if the Charity Commission has demonstrated that disclosing the specific information in question would be likely to prejudice these functions.
19. The Charity Commission considers that disclosure of the information would be likely to prejudice its functions because if it became known that it released all correspondence concerning a particular case either while the case was ongoing or shortly after it has closed, and whilst the outcomes of that cases were being worked through, this would be likely to impact detrimentally on the willingness of charity trustees to voluntarily supply information to the Charity Commission. This would in turn significantly inhibit the Charity Commission's ability to gather information.
20. It argues that in order to consider whether the Charity Commission needs to use its powers and protect charities from misconduct or mismanagement and protect charity property it needs to have an open and candid dialogue with charity trustees and others. The Charity Commissioner does have formal information gathering powers including in section 52 of the Act but asking for information by issuing orders is more administratively bureaucratic than making a request in an email or over the 'phone. It argues if it could only obtain information from charities by way of a formal order it would receive far less information and be able to deal with far fewer cases which would be likely to prejudice its ability to function effectively.
21. The Charity Commission further argues that this would be contrary to its statutory duty under section 16 of the Act to have regard to the need to use its resources in the most efficient, effective and economic way. It considers it is at its most effective when it can communicate openly and freely with charities and such communications cannot happen if it only obtains information by using its powers.

¹ [fs_50535948.pdf \(ico.org.uk\)](#)

22. The Charity Commission further argues that voluntary disclosure is a known issue for charity trustees as it regularly receives correspondence that makes it clear that they do not expect onward disclosure of information they provide.
23. The Commissioner has viewed the withheld information and notes that it demonstrates that the charity willingly cooperated with the Charity Commission to enable it to assess whether there were any regulatory concerns. The Charity Commission has provided the Commissioner with some additional arguments, the details of which are not included in this notice as they may reveal information about the Charity Commission's assessment in this case. To briefly summarise, the Charity Commission has argued the information it holds is sensitive for a number of reasons, a position the Commissioner agrees with. It also argued the timing of the request was relevant – the case the information relates to had concluded but only recently and there were still live issues.
24. Finally, the Charity Commission states it regulates over 168,000 registered charities and even if only a small percentage of these altered their behaviour if the information were disclosed under the FOIA then there would be a real and significant impact on its ability to carry out its functions at section 31(2)(a), (c) and (f).
25. Taking into account all of these arguments and accepting the Charity Commission has the functions it has described that are relevant to the exemption; the Commissioner accepts that disclosing the requested information would be likely to prejudice the Charity Commission's ability to ascertain whether any person has failed to comply with the law, whether circumstances requiring regulatory action exist or may arise, and to protect charities against misconduct or mismanagement.
26. The Commissioner recognises that most of the Charity Commission's arguments relate to the chilling effect that may occur as a result of disclosure on its interactions with the sector it regulates in various different ways.
27. The Commissioner accepts the Charity Commission's arguments that its ability to regulate effectively depends on a free flow of information to and from the charities it regulate. Whilst charities which are found to have been mismanaged or committed wrongdoing should expect to be punished (and have that punishment made public where appropriate), there must be a mechanism to allow for open and frank discussions between charities and the regulator to allow for thorough investigations and charities to be able to approach the regulator with full confidence that they do so in confidence whilst an investigation is ongoing and until such time as any action, if any, is taken. The Charity Commission has

demonstrated that it has a policy² setting out how it reports on its regulatory work.

28. The Commissioner is therefore satisfied that the chance of prejudice to the appropriate functions occurring is more than hypothetical and the harms identified are actual and of substance. Given that there is a clear link between disclosure of the requested information and the potential harms, the Commissioner is satisfied the section 31(1)(g) exemption, in conjunction with subsections 31(2)(a), (c) and (f), is engaged.
29. Whilst the Commissioner is satisfied the exemption is engaged he must still consider the public interest test.

Public interest arguments in favour of disclosure

30. The Charity Commission accepts that it has an important public role as a regulator in demonstrating to the public that charities are being properly managed and protected and this is reflected in its statutory objective to increase public trust and confidence. However, it again points to its policy on reporting on regulatory work as an example of its duty to encourage best regulatory practice including transparency. It states it does not routinely publish statements about all its regulatory cases but will do so where it is in the public interest or would increase public trust and confidence in charities. The Charity Commission did not consider this case met the criteria for making a public statement.
31. The Charity Commission does acknowledge there is a strong public interest in public authorities being transparent and accountable regarding their decisions but again it did not consider this case met the criteria for making a public statement.
32. The Charity Commission recognises that disclosing the withheld information may help inform the public by detailing how it handles regulatory complaints and concerns, providing a fuller picture of its statutory functions and duties. However, again, it did not consider this case would provide any wider lessons for the charitable sector or the public.
33. The complainant argues that the Charity Commission is charged with ensuring charities are regulated and there is an expectation that it will ensure its statutory objectives are met. As such the public have an

² [How the Charity Commission reports on its current regulatory work - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612222/How_the_Charity_Commission_reports_on_its_current_regulatory_work.pdf)

interest in how the Charity Commission makes its decisions when engaging with a charity.

34. The complainant further argues that public have an interest in the information and knowing that the Charity Commission performs its duty of regulation with honesty and integrity and that it appropriately considers the evidence it receives during an investigation.
35. Anyone who donates to charity, has an interest in knowing that any donations they make are being used legally by charities and that those charities are being held to account by the regulatory body.
36. The complainant considers that how the Charity Commission have reached the conclusion regarding the evidence presented and the process it has used to validate the evidence is in the public interest under transparency, accountability, and the suspicion of wrongdoing by the public body. They argue the public needs to see the evidence presented to the Charity Commission to understand what evidence led to the Charity Commission's decision and how the evidence was acquired.

Public interest arguments in favour of maintaining the exemption

37. The Charity Commission argues that disclosure of the information would be likely to impact on the voluntary supply of information between itself and charity trustees. If charities recognised that the Charity Commission routinely disclosed details of regulatory engagement concerning them this would risk inhibiting the Charity Commission's ability to gather information. It argues that as it is formally tasked with protecting charities against misconduct or mismanagement and in order to consider whether it needs to use its powers and protect charities from misconduct or mismanagement it needs to have open and candid dialogue with charity trustees and others. The Charity Commission considers this would be strongly against the public interest.

Balance of the public interest test

38. When conducting the public interest test in respect of a prejudice-based exemption, the Commissioner generally acknowledges that by accepting the exemption is engaged he also accepts there is a public interest in preventing that prejudice occurring. How much weight is given to this will depend on the severity of the prejudice and the likelihood of it occurring.
39. The Commissioner recognises there will almost always be a public interest in transparency within public authorities. As a public authority, the Charity Commission should be accountable for the way it operates.

40. The Commissioner refers to his own guidance on the section 31 exemption³ which states that private thinking space (safe space) to explore all aspects of a case without interference from the public is an important process that need to be preserved. The Commissioner's guidance also states that even if a provider of information to a regulatory body or investigating authority is not a confidential source, there is still a public interest in not discouraging others from cooperating with public authorities and supplying them with information they need on a voluntary basis.
41. In this case the Commissioner appreciates that this issue involves an investigation by the Charity Commission into allegations made against a charity. It is not unreasonable therefore to argue that disclosing information about the evidence collected by the Charity Commission and that shows the process of investigation would be of some public interest in showing that the Charity Commission is dispensing its statutory functions appropriately.
42. That being said, the Commissioner considers the arguments for maintaining the exemption are compelling.
43. There is a considerable public interest in having a strong and effective regulator, able to take decisive action where necessary and with a variety of tools at its disposal. The Charity Commission has clearly, and in detail explained why disclosing the requested information would reduce its ability to carry out its regulatory functions effectively. In particular the Commissioner attributes significant weight to both the chilling effect and safe space arguments as it is clear that a regulator should be afforded the time and space to investigate matters appropriately and with full cooperation from all parties. There is a time and place for transparency and publication and the Charity Commission has demonstrated it is not only aware of this but has a clear publication process when it is deemed appropriate to do so.
44. In this case the Commissioner does not consider that there is a wide enough public interest in the disclosure of this information to outweigh the public interest in withholding the information, particularly at the time of the request when investigations had concluded but the Charity Commission has stated there were still live issues.
45. The Commissioner is therefore satisfied that disclosing the information would be likely to have the prejudicial effects identified by the Charity

³ [law-enforcement-foi-section-31.pdf \(ico.org.uk\)](https://ico.org.uk/law-enforcement-foi-section-31.pdf)

Commission. Section 31(1)(g) with sections 31(2)(a), (c) and (f) are therefore engaged and the public interest favours maintaining the exemption.

Right of appeal

46. 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

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

47. 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.
48. 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

Jill Hulley
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