

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 June 2011

Public Authority: The Charity Commission
Address: PO Box 1227
Liverpool
L69 3UG

Summary

The complainant asked the Charity Commission for all its documents relating to the Global Warming Policy Foundation (the "GWPF"). The Charity Commission provided some documents but withheld a bank statement which showed the name of an individual who had donated money to the GWPF. It argued that this information was exempt from disclosure under section 40(2) and section 41(1) of the Freedom of Information Act 2000. The Commissioner finds that the Charity Commission was correct to apply section 40(2) to this bank statement and has not considered its application of section 41(1).

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 2 August 2010 the complainant requested the following information from the Charity Commission:

'A copy of all documents which would have to be released under the Freedom of Information Act relating to the Global Warming Policy Foundation'.

He specifically requested:

- *'The first and the successful application forms for the Charity;*
 - *Any internal discussion about whether GWPF should be granted Charity status; and*
 - *Any information supplied as to donations and financial support for the new Foundation'.*
3. On 18 August 2010 the Charity Commission responded to this request. It provided him with the following information:
- A letter from [name of law firm redacted] dated 6 August 2009.
 - The registration application form.
 - The Certificate of Incorporation and Memorandum and Articles of Association.
 - An email from the Charity Commission to [name of law firm redacted] dated 19 August 2009.
 - A letter from [name of law firm redacted] dated 28 October 2009 enclosing a conflicts of interest policy.
4. Information considered to be the personal data of third parties was redacted under section 40(2) of the Act.
5. The Charity Commission informed the complainant that the letter of 6 August 2009 stated that a copy of a bank statement would follow shortly. It confirmed that this was received on 12 August 2009. However as this document contained personal information, the Charity Commission considered it to be exempt under section 40(2) of the Act.
6. On 24 August 2010 the complainant requested an internal review into one aspect of the above response. He referred to the bank statement of 12 August 2009 and asked it to be provided to him with the name, account number and sort code redacted so that no individual could be identified.

7. The complainant indicated that he would be satisfied with this response. However, he also asked the Charity Commission to apply the full public interest test to its use of section 40(2). In particular, he requested that it should refer to the guidance issued with reference to the case *House of Commons v IC & Leapman, Brooke and Thomas (EA/2007/0060)*.
8. The complainant asked the Charity Commission to consider his arguments under the headings of:
 - (1) Legitimate public interest.
 - (2) Necessity.
 - (3) Unwarranted prejudice.
9. On 28 September 2010 the Charity Commission provided the complainant with a review of its response.
10. It upheld its original decision and explained it had decided against disclosing the bank statement with all exempt information redacted. It considered that all the information in the bank statement was either personal data or confidential and was therefore exempt.
11. The Charity Commission provided its arguments under section 40(2) and explained why it considered the name of the individual who had donated money to the charity to be exempt.
12. The Charity Commission also provided arguments as to why the identity of the donor to the charity was exempt from disclosure under section 41(1) (information provided in confidence).

The Investigation

Scope of the case

13. On 6 October 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - He wished to see the bank statement of the individual (or just the name of the individual) who had made a donation to the GWPF.
 - He wished to establish the identity of this individual and argued that the public interest in releasing the document outweighed the impact this might have on the GWPF.

Chronology

14. On 31 January 2011 the Commissioner wrote to the complainant. The complainant asked the Commissioner a number of questions, which he answered.
15. On 18 February 2011 the complainant notified the Commissioner of the points he wished to be considered.
16. On 21 February 2011 the Commissioner wrote to the complainant and addressed the points he had raised.
17. On 1 March 2011 the Commissioner asked the Charity Commission to comment on points raised by the complainant.
18. On 15 March 2010 the Charity Commission submitted its final arguments.

Analysis

Exemptions

Section 40(2)

19. The full text of section 40 is available in the Legal Annex at the end of this Notice.
20. The Charity Commission has argued that the name of the donor to the GWPF is exempt from disclosure under Section 40(2) of the Act.
21. Section 40(2) of the Act specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the Data Protection Act 1998 (the "DPA") states that personal data must be processed fairly and lawfully.
22. 'Personal data' is defined under section 1(1) of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.
23. The name of an individual on a bank statement is clearly personal data as it relates to identifiable living individual.

24. In considering whether disclosure of the name of the donor would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- the consequences of disclosure;
 - the data subject's reasonable expectations of what would happen to their personal data; and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Consequences of disclosure

25. The Charity Commission is concerned that there is significant media interest in the GWPF and that release of the donor's identity would bring significant media scrutiny of the donor's private affairs.
26. The Charity Commission has not provided any evidence to suggest that release of such information would cause unwarranted damage or distress to that person other than to suggest disclosure would bring unwanted media attention.
27. The complainant has argued that if the donor believes in the aims and objectives of the charity then they can only benefit from being publicly identified as a beneficiary to the charity. He has also argued that if the individual concerned has no connection to the oil industry or other vested interests, the media would have little interest in their identity.
28. However, the Commissioner considers that an individual's right to privacy is an important consideration in this instance. The issue of climate change is a contentious topic and the identification of an individual who has donated a significant amount of money to this particular charity may lead to unwarranted interference in their private life. The individual concerned may have personal reasons for wanting their identity withheld.

Reasonable Expectations

29. The Information Tribunal in the case of *The Corporate Officer of the House of Commons v IC and Norman Baker MP (EA/2006/0015 & 0016)* stated that where individuals carry out public functions or spend public funds they must have a greater expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives.

30. However, the Charity Commission has explained that the individual concerned has not chosen a career in the public eye and has specifically requested that his/her identity remains anonymous.
31. The complainant has questioned how the Charity Commission has decided who is a public figure. However, the Commissioner is satisfied that the information in question consists of information about a private individual making a donation to charity in a private capacity. It is held by the Charity Commission for its purpose of regulating charities and there is no suggestion that the donation came from public funds.
32. The Commissioner also considers that in principle there is a strong argument in favour of withholding the identity of an individual, whether a public or a private figure, in circumstances where a private donation has been made anonymously and there is no expectation that the identity of the donor will be released.
33. The Decision Notice for the case FS50109038 is relevant here. In that case, the Commissioner found that the personal data of particular donors to the Tate Gallery, including their names, should not be disclosed under section 40(2) of the Act.
34. In this case, it is an important consideration that consent has not been granted for the disclosure of the individual's name. The Commissioner concludes that it would be unfair to release a name into the public domain where the individual has no expectation that their identity would be revealed.

The balance between the rights and freedoms of the data subject and the legitimate interests of the public

35. It could be argued that there is a legitimate public interest in knowing who is funding the GWPF. The complainant has argued that the GWPF will enjoy significant tax benefits from being a registered charity and should therefore be subject to public scrutiny.
36. The complainant has pointed out that there is currently no means of finding out who is funding the GWPF. MPs in the House of Commons have been refused this information and Trustees have declined to provide it.
37. He has argued that the charity has stated that it has been formed for educational purposes while also issuing clear statements of climate change denial. It has stated that it does not accept funding from oil companies or individuals who have benefitted from the oil industry. The

complainant believes that public scrutiny is the best method of ensuring that this is the case.

38. He has argued that the public has a right to know if this individual is related in any way to the oil industry. If this is the case, the charity could be in violation of its agreements with the Charity Commission and also declarations made to Companies House. He believe disclosure is the most reasonable and proportionate way of addressing legitimate public interest.
39. The Commissioner considers that there may be a legitimate interest in allowing the public to know who is donating money to the GWPF. To disclose the name would promote openness and accountability in the affairs of the charity. However, the GWPF is not a public authority for the purposes of the Act and is therefore not subject to it.
40. In addition, the Charity Commission has argued that the GWPF has a Protocol on the Acceptance of Gifts which clearly states they will not accept gifts from donors connected to the oil industry. It has argued that there is nothing to suggest a breach of this protocol and therefore it is not convinced that disclosure is necessary in this case.
41. The Commissioner considers the fact that the charity has a Protocol on the Acceptance of Gifts should serve to reassure the public that the charity is not accepting donations from an oil company. The Charity Commission itself regulates charities and has a role in checking that charities are run for public benefit and not for private advantage. It also seeks to ensure that charities are independent and that their trustees take their decisions free of control or undue influence from outside.
42. The Charity Commission has also pointed out that it is not part of its role to investigate the links any donor might have to a particular industry or to research a donor's shareholding interests. Should it be suggested that a donation may have been provided in contravention of a charity's own protocol, the Charity Commission would expect the trustees of the charity to deal with the issue.
43. The complainant has expressed scepticism about the GWPF's position and argued that its website states that it does not accept donations from those with a 'substantial' interest in the oil industry; however the Commissioner does not consider that the complainant's desire for full public scrutiny is outweighed by the rights of the individual involved.

Conclusions

44. In view of the above arguments, the Commissioner does not consider that it would be fair to disclose the name of the donor. He is therefore satisfied that providing the name of the donor would contravene the first principle of the DPA,
45. As the Commissioner is satisfied that section 40(2) has been correctly applied to the requested information, he has not gone on to consider section 41(1).

The Decision

46. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

47. The Commissioner requires no steps to be taken.

Right of Appeal

48. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

49. 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.

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

Dated the 28th day of June 2011

Signed

**Faye Spencer
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"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."

Personal information

Section 40(1) provides that –

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

Section 40(2) provides that –

"Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied."

Section 40(3) provides that –

"The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

Section 40(4) provides that –

"The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data)."

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

“In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.”

The Data Protection Act 1998

Schedule 1 – the Data Protection Principles

1. “Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in schedule 3 is also met.”