

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2015

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

Decision (including any steps ordered)

1. The complainant has requested information about an investigation in relation to [named charity]. The Charity Commission provided the complainant with some of the information he requested. It withheld the remaining information under section 31(1)(g) with subsection (2) (b), (c), (g) and (h) and section 40(2) and 42 of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the Charity Commission has correctly applied section 31(1)(g) with subsection 2(h) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 23 September 2014 the complainant requested information of the following description:

"Please provide the following information in relation to the costs of dealing with [named charity] ("the Charity")

1. Specifically what action did the Charity Commission take to monitor the Charity from 01 April 2010:

2. How many meetings with trustees were held who attended on behalf of both parties and what were the dates?

3. How many Books and Records inspections were conducted on the Charity between 2010 and 2013?
4. Who removed the Charity from the Charity Register in 2013 and what reason was given. If it was removed by the Commission on what grounds was the Charity removed?
5. What steps did the Commission take to confirm the existence and co-operation of each of the four trustees of the Charity in November 2009 or anytime thereafter?"
5. On 23 October 2014 the Charity Commission responded. It provided the complainant with some information but refused to provide some information under section 31(1)(g) with subsection 31(2) FOIA.
6. The complainant requested an internal review on 24 October 2014. The Charity Commission provided the outcome of its internal review on 21 November 2014. It upheld its original position. It also said it was likely section 42 and 40(2) FOIA would apply to some of the withheld information but provided no further analysis in relation to these exemptions as it said section 31(1)(g) with subsection 31(2) was applicable.

Scope of the case

7. The complainant contacted the Commissioner on 7 January 2015 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation, the Charity Commissioner confirmed that the complainant had clarified that although he referred to 1 April 2010 in his request, he meant 27 August 2010 to align with the work undertaken by the Charity Commission in the post-inquiry period. It said it was also agreed at the internal review stage, that the request was about the monitoring action and not just the costs associated with that work.
9. The Commissioner has considered whether the Charity Commission was correct to withhold the information which was withheld under section 31(1)(g) with subsection 2(b), (c), (g) and (h), section 40(2) and section 42 FOIA.

Reasons for decision

10. The Charity Commission has argued that the withheld information is exempt on the basis of section 31(1)(g) which provides that information is exempt if its disclosure would or would be likely to prejudice the exercise by any public authority of the functions set out in 31(2) of FOIA.
11. The purposes that the Charity Commission has argued would be likely to be prejudiced if the information was disclosed are the following within section 31(2):
 - (b) Ascertaining whether any person is responsible for any conduct which is improper;
 - (c) Ascertaining whether circumstances would justify regulatory action;
 - (g) Protecting the property of charities from loss or misapplication; and
 - (h) Recovering the property of charities.
12. In order for section 31(1)(g) of FOIA to be engaged, the Charity Commission must be able to demonstrate that the potential prejudice being argued relates to at least one of the interests listed above.
13. As with any prejudice based exemption, a public authority may choose to argue for the application of regulation 31(1)(g) on one of two possible limbs – the first requires that prejudice 'would' occur, the second that prejudice 'would be likely' to occur.
14. The Charity Commission has stated that they believe the likelihood of prejudice arising through disclosure is one that is likely to occur, rather than one that would occur. While this limb places a weaker evidential burden on the Charity Commission to discharge, it still requires the Charity Commission to be able to demonstrate that there is a real and significant risk of the prejudice occurring.
15. The Charity Commission explained that principally it wishes to rely on section 31(2)(h), concerning the recovery of the property of [named charity].
16. The Commissioner has sought to test the validity of these arguments by considering the following questions; Is the Charity Commission formally tasked with recovering the property of charities? What stage had the investigation reached when the request was submitted? Does the Charity Commission have powers to compel engagement in the regulatory process and, if so, do these mean the chances of prejudice occurring are effectively removed?

17. The Charity Commission's role as the regulator of charities is set out at section 14 of the Charities Act 2011, which describes five statutory objectives. In addition, section 15 of the Charities Act expresses the Charity Commission's general statutory functions. These include encouraging the better administration of charities and investigating apparent misconduct and mismanagement in the administration of charities with the option that remedial or protective action is taken in this respect.
18. The Charity Commission explained that the information that has been withheld commences immediately following the publication of the Charity Commission's Statement of Results of Inquiry (SORI) report on 27 August 2010. It said that it publishes a SORI when it closes a statutory inquiry into a charity and this is its public statement about the inquiry and any regulatory action it has taken. It said that a SORI can also include any additional work that the Charity Commission will do following publication of the SORI. It said that its approach when drafting a SORI is that it is in the public interest to report on the outcome of an inquiry and a rigorous process is undertaken of deciding what information can be disclosed in the SORI. It said in this case the Charity Commission produced an Action Plan for the trustees of [named charity] to comply with after the substantive stage of the statutory inquiry had completed and much of this was already published in the SORI. It said that the aim was to monitor the actions of [named charity] and for its monitoring team to engage with the trustees. The request was for information in this post-inquiry period.
19. It explained that [named charity] was removed from the Register of Charities in September 2013 as it had ceased to exist pursuant to section 34(1)(b) of the Charities Act 2011. However the Charity Commission retains a regulatory interest. Further information is contained within the confidential annex to this Notice.
20. Given the nature of the withheld information, and based on the Charity Commission's arguments contained in this Notice and in the confidential annex, the Commissioner considers that the Charity Commission is formally tasked with investigating apparent misconduct and mismanagement in the administration of charities with the option that remedial or protective action is taken, which would include the recovery of charity property. It considers that the information covers the post-inquiry stage of the investigation in question and the Commissioner is satisfied that the matter was not therefore fully completed. Whilst the Commissioner does consider that the Charity Commission has the power to compel a Charity to engage in this post-inquiry process, it has previously been established that that Charity Commission is able to fulfil its functions more effectively if information

is voluntarily supplied. The Commissioner therefore accepts that disclosure would be likely to result in the prejudicial effects to the Charity Commission's purposes described at sections 31(2)(h) of FOIA. As section 31 is a qualified exemption, the next step is for the Commissioner to consider whether in all of the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest test

Arguments in favour of disclosing the information

21. The Charity Commission has recognised that there is a public interest in it operating transparently and in being held to account in its public task of regulating charities.
22. It also acknowledged that it has an important public role as regulator in demonstrating to the public that charities and their assets are being properly managed and protected. It confirmed therefore that there is a public interest in public money being properly protected.
23. It argued that the information it had disclosed to the complainant and the already published SORI went some way to meet the public interest arguments in this case.

Arguments in favour of maintaining the exemption

24. The Charity Commission has argued it is less likely to be able to effectively ensure that public money is properly protected if its post-inquiry monitoring stage is compromised by curtailment of voluntary disclosure. It said that this would not be in the public interest.
25. It said that disclosure of the withheld information would be likely to prejudice its ability to gather information and evidence which would have a negative impact upon its ability to carry out its statutory functions.

Balance of the public interest

26. The Commissioner considers that there is a strong public interest in the Charity Commission operating openly and being accountable in its effectiveness in carrying out its statutory functions. Furthermore he considers that there is a public interest in assuring that public money is

being effectively protected by the bodies that are tasked to ensure this. The Commissioner has viewed the information that has been disclosed to the complainant in response to this request and accepts that this does go some way to meeting the public interest arguments in favour of disclosure.

27. The Commissioner does also consider that there is a strong public interest in not disclosing information which would be likely to impede the Charity Commission's ability to carry out its functions effectively. Therefore disclosing information which would be likely to frustrate the voluntary flow of information would not be in the public interest.
28. On balance, the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption. Section 31(1)(g) with subsection (2)(h) FOIA was correctly applied in this case to the withheld information. The Commissioner has not therefore gone on to consider the application of any of the other exemptions any further.

Right of appeal

29. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.
31. 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

**Pamela Clements
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