

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 September 2015

Public Authority: The Charity Commission

Address: PO Box 1227

Liverpool

L69 3UG

Decision (including any steps ordered)

1. The complainant has requested communications between two named organisations and the Charity Commission's Chief Executive, Chairman, Legal Director, Director of Investigations, Monitoring and Enforcement and the Chief Operating Officer. 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)(a), (c), (f) and (g) and section 40(2) and 41 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 3 June 2015, the complainant requested information of the following description:

(Since 2013) Communications between, on the one hand, [named organisation] and/or [named organisation], and on the other hand, any of the following: the Charity Commission's chief executive, chairman, legal director, director of investigations, monitoring and enforcement, and chief operating officer.

5. On 1 July 2015 the Charity Commission responded. It refused to disclose the requested information under section 31(1)(g) with subsection (2)(a), (b),(c) and (f) and section 41 FOIA.

6. The complainant requested an internal review on 1 July 2015. The Charity Commission sent the outcome of its internal review on 28 July 2015. It upheld its original position but also applied section 40(2) FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 31 July 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 it was relying upon section 31(1)(g) with subsection (2)(a), (c), (f) and (g) and section 40(2) and 41 of the Freedom of Information Act 2000 (FOIA).
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(a), (c), (f) and (g), section 40(2) and section 41 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 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):
 - (a) the purpose of ascertaining whether any person has failed to comply with the law,
 - (c) ascertaining whether circumstances would justify regulatory action;
 - (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
 - (g) protecting the property of charities from loss or misapplication;

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 Commissioner has primarily considered the application of section 31(2)(f) in this case.
16. The Commissioner has first considered whether the Charity Commission is formally tasked with protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration?
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 protecting charities from misconduct and mismanagement and protecting the property of charities from loss or misapplication.
18. The Charity Commission explained that the withheld information contains concerns raised by a particular source. It argued that if it became known that the Charity Commission may release the content of concerns raised by sources relating to potential misconduct/mismanagement of charities, this is likely to impact detrimentally on the willingness of charities and members of the public to voluntarily supply information to the Charity Commission. This would inhibit its ability to gather information and therefore its efficiency in protecting charities against misconduct.
19. The Charity Commission went on to say that it relies on trustees, professional advisors, experts and members of the public to bring to its attention particular concerns about charities. It said that it does not have the resources to undertake the kind of detailed research provided

by these sources. Even though the Commission focuses its resources in accordance with its published Risk Framework, its resources are such that such detailed analysis would not be always be possible without a concern first being raised.

20. The Charity provided further arguments contained in 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 protecting charities against misconduct or mismanagement. Its ability to fulfil this function effectively is dependent upon the willingness of sources coming forward to raise concerns. 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)(f) 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. There is a public interest in knowing how the Charity Commission operates and spends public money. The public have a legitimate interest in the internal workings of the Charity Commission and how senior personnel at the Commission interact with [named organisations].

Arguments in favour of maintaining the exemption

24. There is a public interest in an effective regulator being able to efficiently regulate the charity sector. It has set out why it believes that releasing the withheld information would have a negative impact on the Commission's ability to regulate charities.

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 and in particular how it interacts with [named organisations].

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)(f) 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

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