

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2021

Public Authority: The Charity Commission
Address: PO Box 211
Bootle
L20 7YX

Decision (including any steps ordered)

1. The complainant requested correspondence and guidance exchanged with a particular Oxford College. The Charity Commission initially withheld the requested information but, during the Commissioner's investigation, disclosed some of the information it held.
2. The Commissioner's decision is that the Charity Commission did not disclose all the non-exempt information it held within 20 working days of receiving the request and therefore breached section 10 of the FOIA.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 10 October 2020, the complainant requested information of the following description:

"I would like to make the following FOI requests:

"FO1 1

"The Charity Commission aissued [sic] c 2011 a guiding document in a case of benefits to trustees of Oxford and Cambridge colleges is is called [sic] 'Private Benefits and Managing Conflicts of Interest for Trustees Best practice guidance for the Colleges within the Universities of Oxford and Cambridge.'

"In this document under the section Benefit committees and just before the section_Options for including, or providing for, a benefits committee in the governing documents there is the following text

'These are recommendations and not requirements. We have included in this guidance an example in annexe A of the structure of a benefits committee which reflects our recommendations.'

"Please send to me a copy of Annex A.

"FOI 2.

"Circa 2010-2011 All Souls College of the faithful departed Oxford, ('ASC') a charity, had extensive communication with you on this issue of trustee benefits. The officer from the Charity Commission described herself to ASC as "a medieval historian and prides herself on understanding the origins and powers of institutions such as [ASC]"

"I would like to see all the communication between ASC and the CC in this matter at the time. Unfortunately I do not have the name or reference no of this communication but I do know it was a woman.

"FOI3

"In 2020 I made a complaint regarding ASC conduct and use of charity Monies. The matter was investigated under your ref ref LW/C-520024/1138057/RC by [name]. I would like to see the communication between ASC and yourselves in this regard."

5. After seeking some clarification to identify the relevant information, the Charity Commission responded on 3 November 2020. It denied holding some of the requested information but confirmed it held the remainder. However, it refused to provide the remainder and relied on section 31 of the FOIA in order to do so.
6. The complainant requested an internal review on 4 November 2020. The Charity Commission sent the outcome of its internal review on 2 December 2020. It upheld its original position. However, in subsequent correspondence, it clarified that the function it was seeking to protect was "the purpose of protecting the property of charities from loss or misapplication" by virtue of section 31(2)(g) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 9 December 2020 to complain about the way his request for information had been handled.
8. Having viewed the withheld information during the course of her investigation, the Commissioner informed the Charity Commission that it appeared unlikely that section 31 would apply to all the information being withheld. The Charity Commission revisited its approach and, on 22 September 2021, disclosed some of the withheld information – although it maintained its stance that the remaining material was exempt.
9. The Commissioner wrote to the complainant on 23 September 2021 to explain that, in her view, section 31 would be engaged in respect of the remaining information and that the balance of the public interest was likely to favour maintaining the exemption. The complainant accepted this outcome, but was unhappy that it had taken so long for him to receive the information. In particular, he felt that that the Charity Commission should have resulted in some disclosure of information.
10. The Commissioner considers that the scope of her investigation is to look at the procedural handling of the request.

Reasons for decision

11. Section 10 of the FOIA requires a public authority to communicate all non-exempt information “*promptly and in any event not later than the twentieth working day following the date of receipt.*”
12. Whilst the Charity Commission did accept, during the Commissioner’s investigation, that not all of the information it held was exempt and disclosed this information without being explicitly asked to do so, this happened after the 20 working day timeframe had expired.
13. The complainant argued that the Charity Commission’s internal review ought to have picked up on the fact that not all the information was exempt. He argued that, had it done so, an investigation by the Commissioner may not have been necessary and he would have received the information earlier.
14. The Commissioner accepts that it would have been desirable if the Charity Commission’s internal review had resulted in the partial disclosure of information – it is of course the role of an internal review to revisit the original response and correct any obvious deficiencies.

However, she considers that it would have been more desirable still if the Charity Commission had disclosed the information at the first time of asking and notes that, even if the internal review had resulted in partial disclosure, this would still have been a procedural breach of the FOIA.

15. The Commissioner therefore records a breach of section 10 of the FOIA in the way that the Charity Commission responded to the request.

Other matters

16. When seeking a decision notice, the complainant was very critical of the quality of the Charity Commission's internal review and invited the Commissioner to comment further.
17. The Commissioner has already noted that it would have been desirable if the Charity Commission had disclosed, at the internal review stage, the information it eventually disclosed during the course of her investigation. However, as it is not clear to the Commissioner exactly what information was available to the Charity Commission at that time, she has no reason to doubt that the internal review was not carried out in good faith. Furthermore, she notes that the Charity Commission is far from being the only public authority that discloses information during the course of her investigations. The Commissioner encourages all public authorities to revisit their response as part of the investigation and, particularly where circumstances have changed since the request was first submitted, to disclose information where it is appropriate to do so.

Right of appeal

18. 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

19. 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.
20. 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

Roger Cawthorne
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