

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2022

Public Authority: Charity Commission for England and Wales
Address: Charity Commission
PO Box 211
Bootle
L20 7YX

Decision (including any steps ordered)

1. The complainant requested information relating to concerns which the Charity Commission for England and Wales ("the Charity Commission") had received about how decisions were made within the Lythan Institute ("the charity"). The sole trustee for the charity is Fylde Borough Council ("the Council"). The Charity Commission refused to provide the information and relied on section 31(law enforcement) and section 40 (personal information) of FOIA as its basis for doing so.
2. The Commissioner's decision is that the Charity Commission has correctly applied section 31(1)(g) of FOIA and the public interest favours maintaining the exemption. He does not require the Charity Commission to take any further steps.

Request and response

3. The complainant wrote to the Charity Commission as part of a broader concern about the charity and requested information in the following terms:

"(1) what the concerns expressed are, and

(2) whether the Commission considers that they have any substance."
4. The Charity Commission responded and originally withheld part 1 of the request under section 40(2) of FOIA and 31(1)(g) of FOIA by virtue of subsection 31(2):

- (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 and
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration.

In relation to part 2 of the request the Charity Commission confirmed that it did not hold the information as there was no recorded information that specifically addressed this part of the request.

5. Following an internal review, the Charity Commission maintained its position in relation to section 40(2) and 31(1)(g) of FOIA but amended its position in relation to the purposes listed in subsection 31(2) as follows:
 - (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; and
 - (g) the purpose of protecting the property of charities from loss or misapplication.
6. In the internal review request, the complainant accepted that the Charity Commission did not hold recorded information in relation to part 2 of his request. Therefore this aspect of his request is not in issue.

Reasons for decision

7. The following analysis sets out why the Commissioner has concluded that the Charity Commission was entitled to rely on section 31 of FOIA in this particular case. In doing so the Commissioner has considered the arguments presented by the complainant in his internal review request.
8. Section 31(1)(g) of FOIA says that information is exempt information if its disclosure would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).

9. The Charity Commission has stated that its statutory objective and functions are derived from section 14 and 15 of the Charities Act 2011 and they include (but are not limited to) increasing public trust and confidence in charities, promoting compliance by charity trustees with their legal obligations, identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking appropriate remedial or protective action in connection with misconduct or management therein.
10. The Charity Commission has stated that the withheld information relates to matters of regulatory interest in furtherance of the above functions and contends that the disclosure of the information would be likely to prejudice section 31(1)(g) by virtue of subsection 31(2) (c), (f) and (g) of FOIA. In this case the complainant has requested to be informed of the concerns received by the Charity Commission relating to how decisions are made by the charity.
11. The Charity Commission has argued that if it becomes known that it releases information which may be regarded as sensitive or confidential, this is likely to impact detrimentally on the willingness of others to voluntarily supply information to the Charity Commission. It also argues that there would be a significant inhibition of the Charity Commission's ability to gather information and hamper its effectiveness and efficiency as a regulator. The Charity Commission states that to fulfil its regulatory objectives and functions and use its powers to protect charities from misconduct or mismanagement and protect charity property, it needs to be able to have candid, open and honest conversations with those who raise concerns with it.
12. The Commissioner accepts that the Charity Commission is formally tasked with regulatory functions under the Charities Act 2011. He agrees that disclosing the information would be likely to prejudice the Charity Commission's statutory objectives and functions and that there is a need for a safe space for the Charity Commission to reach decisions and promote public trust in its ability to handle information confidentially.
13. Having considered all the circumstances in this case, the Commissioner has therefore decided that section 31(1)(g), with subsections 31(2) (c), (f) and (g), is engaged. He has gone on to consider the public interest.

Public interest test

Public interest in disclosure

14. The Charity Commission acknowledges that it has an important public role as a regulator in demonstrating to the public that charities are effectively managed and protected. It recognises that disclosure can assist public trust and confidence in charities. It also accepts its wider

duty to be transparent and accountable for the decisions it makes, how it operates and spend public funds.

Public interest in maintaining the exemption

15. The Charity Commission have argued that the disclosure of information would be likely to impact the voluntary supply of information from third parties. It considers that there will be a significant inhibition on the Charity Commission's ability to gather information, even in other cases, if it routinely discloses information considered to be sensitive or confidential by third parties.
16. The Charity Commission is formally tasked with protecting charities against misconduct or mismanagement in their administration. 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 third parties. It would be difficult for the Charity Commission to be aware of all relevant regulatory issues if individuals or third parties were not prepared to fully disclose information, including confidential information voluntarily.

Conclusion

17. The Commissioner acknowledges the complainant's arguments; however, he considers that the balance of the public interest lies in withholding the information to enable the Charity Commission to perform its statutory objectives and functions and operate effectively and efficiently as a regulator. The Commissioner considers that there is greater public interest in individuals being prepared to engage fully and frankly with the Charity Commission in the supply of information without fearing that the information would be put in the public domain in response to a FOIA request.
18. As the Commissioner has found that section 31(1)(g) of FOIA applies to the entire request and the public interest favours maintaining this exemption, it has not been necessary for the Commissioner to consider the Charity Commission's application of section 40(2) to the information.

Right of appeal

19. 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

20. 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.
21. 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

Esi Mensah
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF