

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 December 2022

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

### **Decision (including any steps ordered)**

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1. The complainant has requested copies of certain correspondence held by the Charity Commission about a particular charity.
2. The Charity Commission refused to provide the requested information, citing section 31(1)(g) (law enforcement), and section 40(2) (personal information), of FOIA.
3. The Commissioner's decision is that the Charity Commission is entitled to rely on section 31(1)(g) of FOIA, as its basis for withholding all the information relevant to the request.
4. The Commissioner does not require the Charity Commission to take any steps as a result of this decision notice.

### **Request and response**

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5. On 22 June 2022 the complainant requested the following information:
  - "1. Any letter you have received from 1st May 2022 to date from Essex County Council reporting concerns with the Essex Parc charity (Charity Number 1065854) or confirm that no such letter was received.
  2. Any letter sent from the Charity Commission to the trustees or chair of trustees of Essex Parc charity (Charity Number 1065854) from 1st May 2022 to date or confirm that no such letters have been sent."

6. On 17 August 2022 the Charity Commission responded to the complainant, confirming it was to withhold the requested information under sections 31(1)(g) and 40(2) of the FOIA.
7. The complainant requested an internal review on 19 August 2022. The Charity Commission's response of 16 September 2022 upheld its original decision to withhold all of the requested information.

## Reasons for decision

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8. Section 31(1)(g) of the FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the exercise of any public authority of its functions for any of the purposes specified in subsection 31(2).
9. The purposes listed in section 31(2) that the Charity Commission has cited to be relevant to its application of section 31(1)(g) are:
  - c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment may exist or arise;
  - f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration;
  - g) the purpose of protecting the property of charities from loss or misapplication.
10. The Charity Commission explained to the complainant that its statutory objectives and functions are derived from section 14 and section 15 of the [Charities Act 2011](#). It said that:

"These 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 their charities, and taking appropriate remedial or protective action in connection with misconduct or management therein."

11. The Charity Commission advised the complainant that disclosure of the requested information at a time when the matter was still ongoing would be likely to prejudice its functions. It went on to say that if information obtained during its regulatory engagement was released into the public domain, then charities, individuals and other parties would become reluctant to co-operate or enter into open and frank discussions during the course of its work for fear that this information would be disclosed.
12. The Charity Commission also said that it would not be able to provide a 'safe space' where concerns can be raised or open and frank discussions can take place, and that this would have a detrimental and chilling effect on its ability to regulate charities. It states that this would hinder its role as an efficient regulator of charities in England and Wales.
13. The Commissioner notes that the Charity Commission is formally tasked with regulatory functions under the Charities Act 2011. Having considered the withheld information he agrees that its disclosure would be likely to prejudice the Charity Commission's statutory objectives and functions as described, and that there is a need for a safe space to allow it to reach decisions and promote public trust in its ability to handle information confidentially.
14. Having considered all the circumstances in this case, the Commissioner has decided that section 31(1)(g), with subsections 31(2) (c), (f) and (g), is engaged. He has therefore gone on to consider the public interest.

#### Public interest test

15. The Charity Commission stated that it considered the following public interest arguments to support disclosure of the withheld information:
  - There is a legitimate public interest in knowing how the Charity Commission spends public funds:
  - It would help to educate and inform the public by detailing how the Charity Commission handles regulatory issues, and would provide a full picture of how it fulfils its statutory functions and duties.

16. The Charity Commission has said that it considered the following arguments in support of withholding the information:
  - It would have a detrimental impact to the public's confidence in its ability to handle matters carefully and sensitively.
  - Charities and other parties would be reluctant to come forward in the future for fear of their identities and communications being disclosed. If this occurred, the Charity Commission may not be able to identify and deal with certain issues falling within its regulatory remit.
  - It would undermine the trust underpinning how the Charity Commission engages with charities, third parties and the sector in general, and this would prevent it from exercising its relevant functions as efficiently and effectively as possible.
17. The Charity Commission confirmed that it considers the balance of the public interest to favour withholding the requested information in this case.
18. The Commissioner considers that there is always some public interest in the disclosure of information. This is because it promotes the aims of transparency and accountability which, in turn, promotes greater public engagement and understanding of the decisions taken by public authorities. It can also improve the wider public's confidence of the decisions made by a public authority, and provides an assurance that it is acting properly and in accordance with its statutory obligations.
19. The Commissioner notes that this is a matter that relates to the conduct of a charity and the expenditure of a large amount of money; in the Commissioner's opinion, it would not be unreasonable for the public to expect a greater degree of transparency and openness about such matters.
20. Furthermore the Commissioner is aware that this is a matter which has attracted some public and [media attention](#).
21. However, the Commissioner considers that there is a strong public interest in ensuring that the Charity Commission is able to perform its statutory objectives and functions effectively. He is satisfied that the disclosure of the requested information would prejudice the Charity Commission's ability to operate efficiently as a regulator, and that this would not be in the public interest.

22. The Commissioner concludes that section 31(1)(g) of the FOIA is engaged in respect of all the withheld information, and that the public interest favours maintaining this exemption in this case.
23. This conclusion means that the Charity Commission was not obliged to disclose the information in question. It is not necessary for the Commissioner to also consider the citing of section 40(2).

## Right of appeal

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24. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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 .....**

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