

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 January 2023

Public Authority: Charity Commission
Address: 102 Petty France
London
SW1H 9AJ

Decision

1. The Commissioner's decision is that the Charity Commission is entitled to withhold the name of the corporate trustee of a specific charity under section 38 and section 40(2) FOIA, which concern health and safety and personal data respectively.

Request and response

2. With regard to a named charity ('the charity'), the complainant made the following information request to the Charity Commission on 22 October 2021:

"Please provide me with the names of the current trustees of this charity."
3. The Charity Commission's final position to the complainant, outlined in correspondence of 16 May 2022, was to rely on section 40(2) of FOIA and section 41(1) (information provided in confidence) to withhold information within scope of the request ie the name of the charity's corporate trustee.
4. The Charity Commission subsequently confirmed to the Commissioner that it is also relying on section 38 to withhold the information.

Reasons for decision

5. This reasoning covers the Charity Commission's reliance on sections 38 and 40(2) of FOIA. The Commissioner will also consider the Charity Commission's reliance on section 41, if necessary.
6. The Charity Commission has provided the Commissioner with the following background and context.
7. In 1997, the Charity Commission granted the charity a dispensation under Regulation 10(3) of the Charities (Accounts and Reports) Regulations 1995 dispensing with the requirement for it to disclose the names of any person who is a trustee of the charity. It did so because it was satisfied that disclosing the names of any of the trustees could lead to them being placed in personal danger. At this time the trustees were individuals.
8. In 2004, the individual trustees were replaced with a sole corporate trustee.
9. In 2011, the Commission reviewed the dispensation and decided to continue it as it continued to be satisfied that disclosing the name of the corporate trustee could lead to the individual directors of the trustee being placed in personal danger.
10. The Charity Commission contacted the charity on 13 December 2022 to ascertain if its trustee and the directors of the trustee still considered there was a need for the name of "the charity" [the Commissioner understands this to be a typo, and that the Charity Commission meant the name of the charity's corporate trustee] to be withheld from the public. The charity responded on behalf of the corporate trustee and its directors strongly urging the Charity Commission not to disclose the name of the corporate trustee as this will lead to the identification of the individual directors. Given the information provided by the charity in support of its position the Charity Commission is satisfied that the need for the trustee dispensation remains.
11. In their request for an internal review the complainant had noted that they had formerly accessed the name of the charity's corporate trustee [at that point] from the Charity Commission's website and, with that information, had been able to access further details about this trustee from the Companies House website.
12. The Charity Commission has said in its submission that, whilst the name of the corporate trustee and the name of its directors is on the Companies House website, it is satisfied that this does not mean that the fact that they are directors of the corporate trustee is in the public

domain. The Information Commissioner's guidance on 'Information in the Public Domain' makes clear that information which is publicly available is not necessarily in the public domain. The guidance states that information is in the public domain only if it is "easily, readily and realistically accessible to the public". The Charity Commission has referred to *Attorney-General v Greater Manchester Newspaper Ltd* [2001] EWHC QB 451 and noted that the High Court held that for information to be considered as being in the public domain, the public should have direct, rather than indirect, access to it.

13. The Charity Commission says that the only way that a person could ascertain that a particular company listed on the Companies House website was the corporate trustee of the charity in this case is if they knew the name of the corporate trustee and/or a person was extremely persistent about trying to locate it. There are no searches you could do of the Companies House website which would reveal which of the more than 800,000 companies listed on the website is the corporate trustee of the charity.
14. The Commissioner understands that the complainant has previously accessed the name of the corporate trustee from accounts information that was available on the Charity Commission's website. With that name they were able to find the corporate trustee on the Companies House website and to access other information about the trustee. However, the corporate trustee name formerly available from the Charity Commission's website is no longer available there. The Commissioner has reviewed the charity's accounts from 2018 to 2021 currently published on the Charity Commission's website and notes that each set of these accounts refers to the dispensation the Charity Commission granted to the charity not to name its corporate trustee and its name is not published.
15. The Commissioner appreciates that the complainant may have formerly accessed the name of a corporate trustee. However, he is satisfied that at the time of the request any previously available information was no longer available. Without that specific information it would not be possible – without an unreasonable level of persistence – for the general public more broadly to identify further information about the charity's corporate trustee.

Section 38 – health and safety

16. Section 38(1) of FOIA says that information is exempt information if its disclosure would or would be likely to (a) endanger the physical or mental health of any individual, or (b) endanger the safety of any individual. Section 38 is subject to the public interest test.

17. The Charity Commission is withholding the name of the charity's corporate trustee under section 38. This is because it says it would be possible to identify the corporate trustee's individual directors if the name of the corporate trustee was disclosed. The Charity Commission considers that disclosing the information "would or would be likely to" endanger the personal safety of the directors of the corporate trustee. It says that if it discloses the name of the corporate trustee, the names of the directors of that body can easily be found on the Companies House website. The Charity Commission continued the dispensation in respect of the name of the charity's trustee because it was satisfied that disclosing it could lead to the directors of the charity being placed in personal danger.
18. The Charity Commission has confirmed that it was and is satisfied that the reason the directors could be placed in personal danger is because of the nature of the work that the charity does. The charity is one that protects British Jews from antisemitism and related threats – it has therefore been established to counter terrorism and racism. The charity provides security advice and training for Jewish communal organisations, schools and synagogues. The charity also collates information about antisemitism. Information collated by the charity shows that antisemitism is still a significant issue in Britain. Anti-Jewish hate incidents hit a record high in the UK in 2021, with reports of antisemitism in person and online rising above the previous 2019 peak. Whilst reports in 2022 have decreased there were still 786 anti-Jewish hate incidents recorded by the charity from January to June 2022. Given this and given the nature of the work that this charity does the Charity Commission says that it considers the directors of the corporate charity would be or would be likely to be in personal danger if their identity as directors of the charity's corporate trustee became publicly known.
19. For the reasons explained above, the Charity Commission also confirmed that it does not consider that the identity of the charity's corporate trustee is in the public domain.
20. The Charity Commission's submission is not quite clear on whether it is relying on section 38(1)(a) or 38(1)(b) (or both) or on whether it considers that the envisioned endangerment 'would' or 'would be likely to' happen – it cannot be both.
21. Given its reference to "personal safety" the Commissioner will consider the Charity Commission's reliance on section 38(1)(b). And in the absence of evidence that the envisioned endangerment would be more likely than not to happen, he will consider whether such endangerment would be likely to happen.

22. The Commissioner accepts that the actual harm which the Charity Commission considers would be likely to occur if the withheld information was disclosed relates to the applicable interests section 38(1)(b) is designed to protect, because it relates to physical harm.
23. The Commissioner recognises that a public authority will not necessarily be able to provide evidence in support of a causal link between disclosure and the envisioned endangerment, because the endangerment relates to events that have not occurred. However, there must be more than a mere assertion or belief that disclosure would be likely to lead to endangerment: there must be a logical connection between disclosure and the likely endangerment in order to engage the exemption.
24. In this case, the Commissioner is satisfied that the Charity Commission has demonstrated a causal link between the potential disclosure and the stated likely endangerment. Given the charity's role and the level of incidents of antisemitism – in person and online – being reported in Britain at the time of the request and currently, the Commissioner accepts that disclosing the name of the charity's corporate trustee to the world at large has the potential to endanger the safety of the trustee's directors. Accordingly, he is satisfied that section 38(1)(b) is engaged on the basis that there is a real and significant likelihood of the physical endangerment occurring.
25. Regarding the public interest, the Charity Commission has acknowledged that there is a public interest in promoting accountability and transparency about individuals who lead charities and are responsible for spending public money. This would weigh in favour of disclosure.
26. But the Charity Commission considers the public interest in this case is outweighed by the public interest in non-disclosure for the following reasons:
 - The individuals object to the disclosure of the information.
 - The Charity Commission is satisfied the disclosure would endanger the physical safety of the directors.
 - The danger is to the physical safety of the individuals.
 - There is also a danger of the directors being threatened and intimidated which may dissuade them from continuing as directors of the corporate trustee. This may in turn dissuade others from acting as directors and may lead to the inability of the charity to function.

- There is a public interest in encouraging people to volunteer to be trustees of charities or directors of corporate trustees – they perform a voluntary and in most cases unpaid role and they should not be dissuaded from taking on such roles through the risk of them becoming the target of threats and intimidation or physical danger.
 - The charity publishes annual accounts and reports which detail what the charity has done with the public money it has received so the charity can still be held accountable for decisions it makes without the need to publish the name of the corporate trustees or its directors.
 - If any member of the public has concerns about the way the charity is operating, or its decisions, they still can complain to the charity by using the charity's contact details that can be found on the Register or by making a complaint to the Charity Commission even though the name of the trustee is not publicly known.
 - The Charity Commission knows the identity of the trustee and its directors so the Charity Commission has oversight of them if any concerns are raised about their decisions.
27. As the Charity Commission has noted, knowing the name of the corporate trustee or the identity of specific directors is not necessary to raise a concern with either the charity or the Charity Commission about how the charity is operating. Moreover, the charity actively publishes accounts and reports annually. The ability to submit a complaint and the information the charity publishes is sufficient to address the general public interest in transparency. No concern about the charity or its trustee or the trustee's directors has been brought to the Commissioner's attention that is so significant that it warrants risking the individual directors' physical safety by, in effect, identifying them by disclosing the name of the corporate trustee. The Commissioner is therefore entirely satisfied that the public interest favours withholding this information in this case.
28. Although he has found that section 38(1)(b) is engaged, for the sake of completeness the Commissioner has also considered the Charity Commission's reliance on section 40(2).

Section 40 – personal data

29. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles.

30. In this case, the complainant has requested the names of the trustees of a specific charity. In response to this request, the Charity Commission is withholding the name of the corporate trustee, for the reasons explained above.
31. The Charity Commission has explained again that disclosing the name of the corporate trustee would enable a person to identify its directors by looking up the name of the corporate trustee on the Companies House website. Disclosing the corporate trustee name would therefore disclose personal data about the directors, namely that they are directors of the corporate trustee of this charity. The name of the corporate trustee is therefore information relating to identifiable individuals.
32. The Commissioner is satisfied, first, that the requested information – that is, the name of the corporate trustee - can be categorised as the trustee directors' personal data. This is because the information relates to those directors and it would be possible from the Companies House website to identify the directors from this information.
33. The Commissioner has gone on to consider whether disclosure would contravene a data protection principle.
34. The most relevant data protection principle in this case is principle (a) of the UK General Data Protection Regulation (GDPR) which states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.
35. In the case of an FOIA request, personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
36. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
37. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” lawful bases for processing listed in the Article applies.
38. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”

39. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:
- **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
40. In their wider request to the Charity Commission, the complainant indicated that they were requesting the information as they are updating a book they have written on the history of Jewry in modern Britain. In their complaint to the Commissioner, the complainant has noted that the charity in question receives "significant sums of UK taxpayers' money, which it distributes to Jewish organisations throughout the UK, on behalf of the UK government." In the complainant's view it is therefore in the public interest that the identity of the current trustee or trustees of the charity who make these distribution decisions should be a matter of public record.
41. In its submission to the Commissioner the Charity Commission has also noted that there is an interest in transparency and accountability of those who have overall responsibility for a charity and charitable funds.
42. With regards to updating their book, which, from information available online, appears to be about Jewry generally and not the specific charity in question, it is not clear to the Commissioner why it would be necessary to include (or update) in this book the names of specific trustees of the charity at one particular point in time. However, the Commissioner will accept that to meet the general public interest in transparency disclosure would be necessary.
43. Finally, it is necessary to balance the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subjects (the trustees in this case) would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
44. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that disclosure may cause
 - whether the information is already in the public domain
 - whether the information is already known to some individuals
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
45. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as the individuals' general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
46. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to those individuals.
47. The Charity Commission has identified the following factors against disclosure:
- The Charity Commission is satisfied that disclosing the information could place the directors of the corporate trustee in personal danger.
 - The Charity Commission has granted the charity a dispensation under the Regulations that dispenses it from the need to disclose the name of the corporate trustee in its accounts.
 - The information is not in the public domain (see earlier for the reasons for this) and should not be known to anyone outside the charity or the Charity Commission.
 - The corporate trustee applied for the continuation of the trustee dispensation on the basis that disclosing the identity of the trustee would make its directors vulnerable and possibly in personal danger.
 - The charity has not since 2011 disclosed the name of its trustee or any of its directors in any publicly available document.
 - The data subjects (ie the corporate trustee's directors) object to the information being disclosed.
 - The Charity Commission does not disclose the name of trustees that have been granted a dispensation under the Regulations and so its directors would have a reasonable expectation that this information would not be disclosed.

48. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the directors' fundamental rights and freedoms. In the circumstances – because of the dispensation the Charity Commission granted to the charity and because it relates to the directors' physical safety - the Commissioner is satisfied that disclosing the name of the corporate trustee would be against the trustee directors' reasonable expectations and cause the directors unwarranted damage and distress. The Commissioner therefore considers that there is no Article 6 basis for processing and so disclosing the information would not be lawful.
49. Because he has found that the requested information is exempt under both section 38 and section 40, the Commissioner does not consider it necessary to also consider the Charity Commission's reliance on section 41 of FOIA.

Right of appeal

50. 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: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

51. 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.
52. 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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