

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 January 2023

Public Authority: Charity Commission for England and Wales

Address: PO Box 211

Bootle

L20 7YX

Decision (including any steps ordered)

1. The complainant has requested information about complaints received by the Charity Commission for England and Wales ("the Commission") about the Animal Protection Services ("the charity"). The Commission disclosed some information but refused to provide the remainder of the information relying on section 31(law enforcement) of FOIA as its basis for doing so.
2. The Commissioner's decision is that the Commission has correctly applied section 31(1)(g) of FOIA and the public interest favours maintaining the exemption. He does not require the Commission to take any further steps.

Request and response

3. The complainant wrote to the Commission and requested information in the following terms:
4. "Under the freedom of information act I request the following information held on the six complaints you acknowledge you have received about Animal Protection Services charity no 1186401
 - 1) can you confirm if six is the total number of complaints received or the number you deemed as a complaint
 - 2) Of the six complaints how many were in relation to how the charity conducted itself?
 - 3) Of the six complaints you how many did you take action on?
 - 4) Of the six complaints what action did you take against the charity?"

5. The Commission initially responded to the question 1 of the complainant's request but refused to disclose information relating to question 2,3 and 4. It relied on section 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.
 - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper.
 - (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.

6. Following an internal review, the Commission amended its position to rely on section 31(1)(g) of FOIA by virtue to subsection 31(2):
 - (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.

Scope of the case

7. The complainant contacted the Commissioner on 17 June 2022 to complain about the way their request for information had been handled. During the Commissioner's investigations, he requested further information about the Commission's position in relation to question 2 and 3.

8. On 23 December 2022, the Commission provided its response to the Commissioner. It stated that due to the passage of time and information that has been released into the public domain since the complainant submitted their request, it no longer wished to rely on section 31(1)(g) of FOIA to withhold information pertaining to question 2 and 3. It advised the Commissioner that the withheld information had been disclosed to the complainant. However, the Commission maintained its

original position to withhold information pertaining to question 4 under section 31(1)(g) by virtue of section 31(2)(c), (f) and (g).

9. The Commissioner considers the scope of his investigation to be to establish whether the Commission is entitled to withhold the information under section 31(1)(g) by virtue of subsection 31(2)(c), (f) and (g) of FOIA.

Reasons for decision

10. The following analysis sets out why the Commissioner has concluded that the Commission was entitled to rely on section 31 of FOIA in this particular case.
11. 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).
12. The Commissioner accepts that the Commission is formally tasked with certain regulatory functions under the Charities Act 2011.
13. The Commissioner agrees that disclosing details of the action it has taken against a particular charity, would be likely to prejudice the Commission's functions, for the reasons it has given. First, the Commission contends that if the specific details of the handling of issues which may be subject to regulatory engagement by the Commission are routinely disclosed, charities, and other parties, would be reluctant to co-operate or enter into open and frank discussions with the Commission in the course of its work. Secondly, disclosure would prejudice the consideration and assessment of any regulatory action the Commission might take, and this would adversely affect the Commission's ability to regulate efficiently and effectively.
14. The Commission says that in order to consider whether it needs to use its powers to protect charities from misconduct or mismanagement and protect charity property, it needs to have open and candid exchange of information with those who raise concerns with the Commission. It says that, if others are unwilling to voluntarily supply information, this would have a detrimental impact that would significantly inhibit the Commission's ability to gather information and hamper its ability to be an effective and efficient regulator.
15. 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

16. The Commission recognises that there will always be some public interest in disclosure of information to promote transparency and accountability of public authorities. It states:

“The Commission accepts and acknowledges that it has an important public role as a regulator in demonstrating to the public that charities are being properly managed and protected and this is reflected in the Commission’s statutory objective to increase public trust and confidence. We recognise that disclosure can assist public trust and confidence in charities. This factor favours disclosure. Public authorities such as the Charity Commission have a wider duty to be transparent and accountable for the decisions they make. There is a genuine public interest in knowing how the Commission operates and spends public money”.

17. However, in its argument in favour of withholding the information, the Commission states:

“Disclosure would likely impact on the voluntary supply of information between the Commission and third parties. If it is recognised that that Commission routinely disclosed details which third parties may consider confidential or sensitive, this risks significantly inhibiting its ability to gather information in other cases, not just specifically in this case. The Commission is formally tasked with protecting charities against misconduct or mismanagement in their administration. In order to consider whether the Commission needs to use its powers and protect charities from misconduct or mismanagement it needs to have open and candid dialogue with third parties. This factor strongly favours withholding the information. The wider public interest is not serviced by the disclosure of the withheld information. Disclosure would negatively impact upon the relationship of trust that the Commission has with the charity sector and inhibit the free and frank exchange of information with other parties”.

18. The complainant believes that the requested information should be disclosed as in their view, there is a strong public interest that cannot be outweighed by the reasons provided by the Commission.

The Commissioner’s Conclusion

19. The Commissioner has reviewed both the complainant’s requests and the public authorities’ responses. The Commissioner is satisfied that there is greater, wider public interest in the Commission being a robust and efficient regulator of the charity sector through withholding certain information in this case. He is satisfied that the disclosure of the requested information would prejudice the Commission’s ability to

operate efficiently as a regulator, and that this would not be in the public interest

20. Therefore, the Commissioner concludes that section 31(1)(g) of FOIA is engaged to all the withheld information and the public interest favours maintaining the exemption in this case.

Right of appeal

21. 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

22. 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.

23. 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
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Wycliffe House
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Wilmslow
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