

The Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 31 May 2023

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

Decision (including any steps ordered)

1. The complainant has requested, from the above public authority ('the public authority'), information about a named charity ('the charity').
2. The public authority's final position was to refuse to disclose any information within scope of the request, citing sections 31(1)(g), 40(2) and 41 of FOIA (the exemptions for 'law enforcement', 'personal information' and 'information provided in confidence' respectively).
3. The Commissioner's decision is that section 31(1)(g) is engaged and should be maintained. He has also found that the public authority breached section 17(1) of FOIA as it did not refuse the request within the required timeframe.
4. The Commissioner does not require any further steps as a result of this decision notice.

Request and response

5. The request that is the focus of the present case was conveyed to the public authority on 27 October 2022. The public authority had refused the

complainant's original request (see paragraph 6 below) under section 12 of FOIA ('cost of compliance'), so the complainant refined it:

"In making my request for a copy of material held by [the public authority] and created since 2017 in relation to [the charity], I was seeking information concerning [the charity] only. Accordingly, I was not seeking information it may have provided that was wholly about other charities ... I am particularly interested in any material generated, or received, by [the public authority] since 2017 in connection with any investigation or compliance query of [the charity]".

6. For context only, the original request was:

"I am making a request under the Freedom of Information Act for a copy of material held by [the public authority] and created since 2017 in relation to [the charity].

To be clear, I am not requesting material filed by [the charity] as a charity to [the public authority] as part of its routine regulatory filings and which are already publicly available by searching on the charity register.

I am particularly interested in any material generated, or received, by [the public authority] since 2017 in connection with any investigation or compliance query of [the charity]".

7. The public authority initially responded to the refined request on 13 December 2022, citing sections 31(1)(g), 40(2) and 41 of FOIA. The complainant was dissatisfied with that response (see below), and the public authority provided a further response (10 March 2023) citing the same exemptions and addressing a number of concerns that the complainant had raised about the 13 December 2022 response.

Scope of the case

8. The complainant contacted the Commissioner on 17 January 2023 to complain about the way their refined request for information had been handled. The complainant set out their concerns and directed the Commissioner to their own previous correspondence regarding section 31 of FOIA. They asked the Commissioner to "examine the latest way in which [the public authority] has addressed my FOIA request".
9. The Commissioner outlined the complainant's concerns to the public authority.

10. As already noted above, the public authority issued a further response dated 10 March 2023. However the complainant remains dissatisfied. They confirmed to the Commissioner (21 April 2023) that they “still disagree with the exemptions” cited. They are also unhappy about delays they have experienced.
11. The Commissioner considers that the scope of the case is to consider whether the public authority was correct to withhold the information within scope of the complainant’s refined request under the exemption(s) the public authority has cited.
12. The public authority is applying section 31(1)(g) to all of the withheld information. In certain places, it has additionally applied sections 40(2) or 41.
13. The complainant referenced a sentence from the public authority’s 10 March 2023 response and said that the public authority is only applying section 31(1)(g) to **some** of the withheld information. However in its submissions to the Commissioner, when commenting on the withheld information, the public authority had focused on section 31(1)(g) in relation to all of it. Furthermore, the Commissioner asked the public authority to clarify this, in light of the complainant’s comments. It confirmed that it has applied section 31(1)(g) to all of the information.
14. In the analysis below, the Commissioner will therefore consider section 31(1)(g) first. He will only go on to consider the other exemptions cited by the public authority if he finds that section 31(1)(g) does not apply.
15. The Commissioner has not seen the withheld information. However he considers that he is able to give a decision without seeing it, based on the type of information requested; the public authority’s comments about the withheld information, in its submissions; and previous decision notices issued by the Commissioner about requests made to the public authority.

Reasons for decision

Section 31(1)(g)

16. Section 31(1)(g) provides that information is exempt from disclosure if its disclosure under FOIA would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in section 31(2).
17. Those purposes include “ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise” (31(2)(c)); “protecting charities against misconduct or

mismanagement (whether by trustees or other persons) in their administration" (31(2)(f)); and "protecting the property of charities from loss or misapplication" (31(2)(g)).

18. The public authority referenced the above three purposes in its 10 March 2023 refusal.

The public authority's position

19. The public authority told the complainant (10 March 2023) that disclosing the relevant information "would be likely to have an impact on the charity directly" and a "wider impact across the sector on the voluntary supply of information to the regulator". Any partial disclosure "may give a false impression of any recent engagement" with the charity, thereby potentially damaging the charity's reputation; and routinely disclosing details of regulatory engagements "would likely risk inhibiting [the public authority's] ability to gather information".
20. Whilst it acknowledged some factors favouring disclosure, including transparency and accountability, it decided that the balance of the public interest lay against disclosure.

The complainant's position

21. The complainant considers that the public authority's application of section 31(1)(g) is "preposterous" because, in their view, charities have to engage with the regulator regardless of whether information is made public. The complainant also argues that the public authority's reliance on section 31(1)(g) is inconsistent with its previous disclosures of information about other charities. The complainant has cited several of their own previous FOIA requests dating to 2006, 2007 and 2008, and a more recent FOIA request and disclosure referenced in a journalistic article.
22. The complainant considers that there is particular public interest in concerns about the charity, and highlighted two journalistic articles about the charity.

The Commissioner's position

23. The complainant is seeking information about a specific charity, particularly information created or received by the public authority since 2017 in connection with any investigation or compliance query relating to that charity.
24. The Commissioner notes that there are many previous decision notices on his website relating to complaints about requests made to the public authority and refused under section 31(1)(g). He has listed some of the most recent examples below. In each case the public authority cited

section 31(1)(g) with section 31(2)(c), (f) and (g), as it has in the present case. A very brief summary of the information requested follows each case reference:

- IC-181436-F1D8¹ (information about an investigation).
 - IC-176604-N1Z5² (information about complaints received about a charity).
 - IC-192359-M9W5³ (copies of correspondence about a charity).
 - IC-172619-F6F1⁴ (concerns received about a charity).
 - IC-166256-L1Z6⁵ (information regarding whistleblowing concerns).
 - IC-171369-P2P8⁶ (correspondence between the public authority and a charity).
 - IC-117974-T5Y9⁷ (information about a specific charity).
25. The Commissioner has selected the above examples in light of the wording of the complainant's request, and to highlight the types of information to which section 31(1)(g) has been correctly applied by the public authority.
26. In each of these examples, the Commissioner upheld the public authority's application of section 31(1)(g) and did not need to consider the other exemptions it had often cited in addition to section 31(1)(g).
27. The Commissioner considers that it is appropriate simply to refer the complainant to previous decision notices on his website, such as those cited in paragraph 24 above. This is because of the similarities between

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023649/ic-181436-f1d8.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023625/ic-176604-n1z5.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4023315/ic-192359-m9w5.pdf>

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022811/ic-172619-f6f1.pdf>

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022675/ic-166256-l1z6.pdf>

⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022156/ic-171369-p2p8.pdf>

⁷ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022532/ic-117974-t5y9.pdf>

the present case and previous cases such as those listed at paragraph 24 (in terms of the type of information being requested, and the exemption(s) cited). There is no need to repeat here the same detailed comments about the public authority's regulatory functions; the Commissioner's finding that disclosure would likely harm the public authority's exercise of its functions, for the purposes specified in section 31(2)(c), (f) and (g); the relevant public interest considerations, including the weight of the public authority's point that disclosure would likely have a chilling effect on the voluntary supply of information to the public authority; and the Commissioner's determination regarding the balance of the public interest.

28. The Commissioner also draws attention to his published guidance⁸ which emphasises (at pages 33 – 34) the public interest in not deterring the voluntary supply of information, in the context of investigations and co-operation between organisations being regulated and the regulator. His guidance⁹ (at pages 6 – 8) also refers specifically to the public authority, regarding section 31(1)(g).
29. In a relatively recent previous decision notice¹⁰ (at paragraphs 29 – 30), the Commissioner noted that the public authority's pro-active publishing of (for example) case reports and inquiry results, where there are high risk investigations and inquiries, meets the public interest in transparency and accountability. That point is relevant to the present case too.
30. Therefore, as in the decision notices referenced at paragraph 24, the Commissioner finds that section 31(1)(g) is engaged and should be maintained. As he is satisfied that the withheld information is exempt under section 31(1)(g) he does not need to consider the other exemptions cited.

Procedural matters

31. The public authority responded to the complainant's refined request 33 working days after receiving it. The Commissioner finds a breach of

⁸ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

⁹ https://ico.org.uk/media/for-organisations/documents/1197/impact_of_disclosure_on_voluntary_supply_of_information_foia.pdf

¹⁰ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2620031/ic-39105-p4n1.pdf>

section 17(1) of FOIA, because the public authority did not refuse the request within 20 working days.

Right of appeal

32. 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

33. 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.
34. 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

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