

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 June 2024

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

Decision (including any steps ordered)

1. The complainant has requested the Charity Commission (CC) to disclose a serious incident report (RSI) submitted by The Prince of Wales Charitable Foundation and any pre-investigation assessment undertaken by CC. They also asked for the number of other RSIs submitted by this charity between 2011 and 2016. CC refused to disclose the RSI and associated correspondence relating to its assessment in accordance with section 31(1)(g) of FOIA. In terms of its correspondence and assessment, CC also relied on section 41 of FOIA. For the latter, the number of other RSIs submitted between 2011 and 2016, CC refused to confirm or deny holding this information under section 31(3).
2. During the Commissioner's investigation CC disclosed some information to the complainant but made redactions under section 40 of FOIA for some personal data. It also withdrew its application of section 31(3) of FOIA to the latter part of the request and provided a response under FOIA. No further complaint was made about these parts of the request.
3. The Commissioner's decision is that CC is entitled to refuse to disclose the remaining withheld information under section 31(1)(g) of FOIA. He therefore does not need to consider section 41 of FOIA.
4. The Commissioner does not require further steps to be taken.

Request and response

5. On 15 June 2023, the complainant wrote to CC and requested information in the following terms:

“The Serious Incident Report submitted to the Charity Commission by The Prince of Wales’s Charitable Foundation (PWCF). It was reported to have been sent on 27 June 2022 in response to media coverage of a series of large cash donations: <https://www.thirdsector.co.uk/charity-linked-prince-charles-sends-serious-incident-report-regulator-cash-claims/governance/article/1792838>

 - Any pre-investigation assessment undertaken by the regulator when deciding not to trigger an inquiry into PWCF, reported to be around 20 July 2022: <https://www.bbc.co.uk/news/uk-62011791>. Please include any supporting documents considered as part of the assessment.
 - The number of Serious Incident Reports submitted to the Charity Commission by the trustees of the PWCF between the start of 2011 and the end of 2016. If there were none submitted, please confirm this.”
6. CC responded on 7 July 2023. In relation to items one and two CC confirmed that it holds the requested information but considers it is exempt from disclosure under section 31(1)(g) of FOIA. It also stated that section 41 of FOIA applied to item two of the request. Regarding item three, CC refused to confirm or deny holding the information in accordance with section 31(3) of FOIA.
7. The complainant requested an internal review on 4 August 2023.
8. CC carried out an internal review on 23 January 2024, following a complaint to the Commissioner that it had not responded. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner for a second time on 1 February 2023 following the receipt of CC’s internal review response to confirm that they remained dissatisfied with the way their request for information had been handled.
10. During the Commissioner’s investigation CC disclosed some of the information to the complainant and confirmed that it now wished to rely on section 40(2) of FOIA to withhold the personal data of the author of a letter. It continued to withhold all remaining information under section

31(1)(g) and 41 of FOIA. In relation to item three, CC confirmed that it no longer wished to rely on section 31(3) of FOIA and issued a fresh response to the complainant advising them of this and confirming that it did not receive any RSIs between 2011 to 2016.

11. The Commissioner considers item three has been resolved. The complainant has also confirmed that they have no complaint over CC's use of section 40(2) of FOIA.
12. He will therefore now concentrate on the remaining withheld information and consider the application of section 31(1)(g) of FOIA first, as this has been applied to all remaining withheld information. He will only go on to consider section 41 if section 31(1)(g) is found not to apply to any of the withheld information for item two of the request.

Reasons for decision

Section 31 – law enforcement

13. Section 31(1)(g) states that information is exempt from disclosure 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 31(2).
14. CC is specifically concerned that disclosure would be likely to prejudice its statutory functions, which fall under the following section 31(2) subsections–
 - (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.
15. The exemption is also subject to the public interest test.
16. CC listed the functions and objectives that are relevant to the purposes of this exemption and which it stated would likely be prejudiced from disclosure:
 - s.14.1 Charities Act (CA) 2011 – the public confidence objective;
 - s14.3 CA 2011 – the compliance objective;

- s14.5 CA 2011 – the accountability objective;
 - s15(1)2 CA 2011 – Encouraging and facilitating the better administration of charities;
 - s15(1)3 CA 2011 – Identifying and investigating apparent misconduct or mismanagement;
 - s15(1)5 CA 2011 – Obtaining, evaluating, and disseminating information in connection with the performance of any of the Commission’s functions or meeting any of its objectives; and
 - s15(2) CA 2011 – Give such advice or guidance with respect to the administration of charities as it considers appropriate.
17. It confirmed that the Commissioner has previously accepted that CC is tasked with regulatory functions under the CA 2011.
18. CC argued that disclosure would be likely to harm its functions because the information was generated and obtained by CC in performance of its regulatory functions under the CA 2011.
19. The withheld information consists of the RSI report and correspondence and sensitive information obtained by the charity. CC explained that the reporting on serious incidents serves three main purposes. It ensures trustees are fulfilling their duties by addressing risks to the charity. Timely reporting allows CC to provide regulatory advice and guidance to trustees, ensuring compliance with legal obligations. And thirdly, it helps CC to assess scale and effects of incidents across charities, identify trends and understand sector-wide risks. It advised that this knowledge enables it to alert charities and provide trustees with necessary support.
20. It said that the withheld information falls within CC’s regulatory remit and functions set out in section 31(2) of FOIA and more specifically listed in paragraph 16 above. CC confirmed that it fulfils its objectives and functions by ensuring that trustees comply with their legal duties and that the reported incidence is appropriately managed. Through SRI reporting it becomes aware of the risks that charity is facing, and it advised how it would be difficult to obtain this information as efficiently by other means. Through interaction with the charity and gathering relevant information, CC fulfils its legal obligations to ensure that the reported incident is appropriately managed.
21. CC explained how it is the independent regulator of charities and its aim is to ensure that charities are accountable, well run and meet their legal obligations. The nature of its role therefore means that it will be entrusted with sensitive information. CC considers that it would not be

appropriate to disclose such information into the public domain, as to do so would be likely to harm its functions.

22. When considering if disclosure would be likely to be prejudicial to CC functions, it considers a number of factors, including whether the information has already been put in the public domain either by the charity or, if there has been an official acknowledgement of its existence, by CC. In this particular case, it is publicly known that the charity submitted an RSI to CC on 27 June 2022 and that CC interacted with the charity following that RSI as part of its regulatory responsibilities. Apart from this information and the charity's revised gift acceptance policy, all remaining correspondence and sensitive information is not in the public domain.
23. CC argued that if it became known that it routinely disclosed copies of RSIs and subsequent correspondence between CC and charity trustees, where this information is not already in the public domain, this would be likely to be prejudicial to CC functions and its ability to perform those functions effectively. The information within the RSI and other data shared with CC is sensitive and covers the charity's risk assessment, internal risk management process, governance oversight, names of individuals acting on behalf of donors of the charity and sensitive issues discussed privately by the trustees during their meetings. It was provided in confidence to CC solely for the purposes of the CC regulatory functions.
24. If disclosure took place of such sensitive information, shared on a confidential basis, it would be likely to undermine charities' confidence in reporting matters to CC promptly or possibly at all and in sharing sensitive material. This would mean that the Commission would not become aware of as many serious incidents or, if it became aware, it would be at a later stage which would be likely to undermine CC's ability to provide regulatory advice (and, where appropriate, take stronger regulatory action) if the trustees of a charity were not responding to the incident in a way that was consistent with their legal duties.
25. CC commented how it regulates over 168,000 registered charities. Even if a small percentage altered their behaviour following disclosure under FOIA, there would be a real and significant impact on CC's ability to carry out the functions described in section 31(2) of FOIA. It confirmed that the likelihood of this risk occurring is high given the reduction in the

number of RSIs received by CC, as noted in its 2022-23 annual report¹. This referenced that:

“in 2022-23, we assessed 2,969 new serious incident reports (3,451 in 2021-22). This represents a decrease in the reporting of new serious incident reports for the third year in a row”.

26. CC argued that its ability to regulate effectively depends on the free flow of information to and from the charities it regulates. It needs to receive information from an appropriate wide range of third parties when deciding whether or what regulatory action to take. Although it has formal information gathering powers set out in section 52 of the CA 2011, obtaining information from charities by way of a formal order is considerably more burdensome and would mean that CC would likely receive less information and deal with fewer cases. This would likely impact CC's ability to function effectively, in particular meet its obligations under section 16(4) and (5) of the CA 2011. Under section 16(4) of the CA 2011, in performing its functions CC must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed). Under section 16(5) of the CA 2011, in performing its functions CC must, in appropriate cases, have regard to the desirability of facilitating innovation by or on behalf of charities.
27. Disclosure of the withheld information could deter trustees from generating comprehensive internal documents and from sharing sensitive details with CC. This would be likely to harm CC's functions, as a thorough review of all relevant documents is essential for effective decision-making. If trustees of charities were to alter their behaviour and stop including detailed information in internal documents, CC may risk being uninformed about important details necessary for informed decision-making.
28. CC acknowledged the charity's high profile and connection to King Charles III. It stated His Majesty is a founder, not a trustee or a decision maker of the charity. As clarified by the charity on its website, the trustees are responsible for the oversight of the charity and therefore must act in accordance with their fiduciary duties and the general law about what furthers the charity's purposes. However, it stated that the charity's connection to His Majesty should not be the sole determining

¹ [Charity Commission Annual Report and Accounts 2022-23 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

factor for the disclosure of the requested information. Instead, it is important to assess the impact of disclosure on both CC and the charity.

29. It confirmed that it considered the age of the information requested (two years) and maintains its decision that disclosure could likely harm CC's ability to carry out its functions by prejudicing its ability to gather important information necessary for fulfilling its statutory objectives in the future. It said that this is particularly the case as the charity is high profile and so the disclosure of sensitive information shared with CC as part of the regulatory activity would be more likely to be subject to intense press scrutiny and speculation. This would be likely to undermine the general confidence charities have in CC's ability to keep their communications private. It argued that it is likely that this would make trustees of this charity, as well as trustees of other charities more generally, more circumspect when responding to future regulatory requests from CC.
30. In terms of the internal correspondence between CC staff, CC stated that it needs to be able to debate options in private in order to reach a decision which can sometimes be made public and scrutinised, just like in this case.
31. However, disclosure of the internal discussions among staff regarding suitable measures and supporting evidence would be likely to impact on the safe space CC staff need to reach an impartial and appropriate decision without public interference. Additionally, disclosure would also reveal sensitive information shared with CC in the performance of its duties.
32. It referred to the Commissioner's guidance on section 31² and how this acknowledges that private thinking space is required to explore all aspects of a case without the interference from the public and how it is an important process to preserve.
33. It noted the complainant's arguments in their internal review that disclosure would not affect CC's ability to carry out its regulatory functions due to the high-profile status of the charity and the likelihood of enhanced public scrutiny. However, it stated that it maintains its position that disclosure would be likely to cause harm to its functions for the reasons previously explained.

² [Law enforcement - section 31 | ICO](#)

34. The Commissioner accepts the potential prejudice claimed by CC, which clearly relates to the interests the exemption contained at section 31(1)(g) is designed to protect.
35. The Commissioner is also satisfied that the prejudice being claimed is "real, actual or of substance", and that there is a causal link between disclosure of the withheld information and the prejudice claimed.
36. He notes that the RSI process allows charities or third parties to raise any concerns or issues with CC on a confidential basis and enables CC to become aware of the most serious risks for individual charities and assess risks for the sector more generally. The process heavily relies on the free flow of information between trustees and CC and CC has explained how difficult it would be to obtain the information it needs to assess risk, assist and consider any action if it had to obtain it via other means. It has explained that it does have legal powers to obtain information, but this is not as efficient or as effective as the current ways of working. Trustees and third parties need to be able to approach CC with full confidence that they can do so on a private basis and entrust CC with its sensitive information.
37. It confirmed how the contents of the withheld information are sensitive and cover the charity's risk assessment, management process, governance and often sensitive issues discussed privately by the trustees at meetings. If it were to disclose this information to the world at large it would be likely to prejudice its ability to carry out and fulfil its functions. It would be likely to undermine charities' confidence in reporting such matters to CC promptly or possibly at all and in sharing such sensitive information with it, for the fear that this would be shared with the general public. Disclosure would be likely to change the nature of those communications and the behaviour of charities generally to the detriment of CC.
38. This would mean that CC would not be made aware of as many serious incidents or where they are informed to receive less detailed and free and frank information. This would be likely to hinder its ability to carry out its statutory functions and provide regulatory advice and support where needed. It would also be likely to hinder CC's ability to identify issues falling within its regulatory remit within charities and across the sector as a whole. CC has already demonstrated by referring to its annual reports that the number of RSIs reports has decreased for the third time in row.
39. Similarly, with regards to CC's internal correspondence on the matter, disclosure would be likely to prejudice the safe space its needs to debate options and reach an impartial and appropriate decision. Interference from the public would be likely to hinder that process and its ability to

reach the most appropriate decision in a swift and effective manner. The correspondence would also contain a lot of the sensitive information trustees and third parties have shared in confidence and as stated above disclosure of this information would be likely to deter them from providing such detailed information in the future. It would also be likely to erode public trust in CC's ability to handle information confidentially.

40. For the above reasons, the Commissioner has concluded that section 31(1)(g) of FOIA is engaged.

Public interest test

41. CC stated that considering the charity's high profile because of its association with His Majesty and the regulatory issue addressed in the RSI, it accepts that disclosure would assist the public in understanding its compliance with its regulatory duties and standards. It argued that this favours disclosure and reflects the points the complainant has made about the expectation of closer public scrutiny as a result of its association to His Majesty.
42. It stated that there is a public interest in understanding how CC regulates charities in cases involving large cash donations from foreign sources to ensure that correct process is followed, and proper and accurate due diligence is made by the charity. Disclosure would aid the public in assessing CC's effectiveness as a regulator in responding to the concerns raised.
43. However, it considers the public interest rests in maintaining the exemption. It explained how RSIs are an important regulatory tool. Not only do they alert CC to potential risks occurring across the charity sector, but they also encourage charities to report issues and concerns at an early stage. This enables CC to ensure that trustees are complying with their legal duties much more efficiently and effectively. Disclosing the withheld information would be likely to prejudice this regulatory tool especially given the charity's prominence in this particular case, as this would be more likely to attract public attention. It argued that these are strong arguments in favour of maintaining the exemption.
44. CC said that it routinely provides updates to the public about its regulation actions. It considers this goes some way to meeting the public interest in CC being transparent, accountable and open about how it handles regulatory concerns. CC commented that when its regulation in a specific case meets its public interest criteria set out in its policies, it will publish statements about its work. In this case it disclosed its plan to review the information provided by the charity and it also published the result of its investigation.

45. Considering the potential impact of disclosure on the public's trust in CC's ability to manage sensitive information, it argued that it is not in the public interest if charities and third parties are hesitant to engage in transparent discussions with CC or refrain from creating detailed internal documents such as minutes of meetings and sharing sensitive information with CC. It stated that damaging the foundation of trust between CC, charities and third parties, and the sector as a whole, is not in the public interest. Instead, there is a stronger public interest in CC being able to perform its statutory objectives and functions effectively.
46. It stated that His Majesty is a founder, not trustee of the charity and so does not participate in its operational affairs. The primary public interest is to ensure that the trustees fulfil their duties rather than disclosing sensitive information solely because of the charity's connects to him. It also argued that the public interest in the administration of the charity is already met by the publication of key information by the charity, such as its annual reports and internal policies.
47. As CC plays a vital role in regulating the charity sector's compliance with the law, it concluded by saying that it is important for the public interest that its staff can interact with internal stakeholders, review cases and information, and make informed decisions without external interference.
48. For these reasons CC reached the decision that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption.
49. The Commissioner acknowledges the public interest arguments in favour of disclosure, as outlined by CC. Disclosure of the withheld information would enable the public to scrutinise the information supplied by the charity in its RSI and how CC handled this. It would enable the public to assess more closely how the matter was considered and handled by CC and whether it felt this was in line with CC's policies, procedures and statutory functions. He accepts that His Majesty's connection to the charity will raise its profile and inevitably attract more public interest and curiosity.
50. However, CC has explained how His Majesty does not participate in its operational affairs and how the primary public interest is in ensuring that the trustees of this charity and any other fulfil their fiduciary duties. It has been accepted that disclosure of the withheld information would be likely to hinder CC's ability to carry out its regulatory functions and erode public interest in CC's ability to keep sensitive information shared confidential. CC has also explained how its ability to carry out its regulatory role effectively heavily relies on the free flow of information from trustees and third parties and on the ability of them to come forward at a very early stage with issues and concerns. If disclosure

took place, it would be likely to alter the behaviour of those trustees and third parties and result in more reluctance to approach CC and supply the detailed and sensitive information CC needs to perform its functions efficiently. Such consequences are not in the wider interests of the public. Instead, the Commissioner considers there is a greater public interest in maintaining the free flow of information and contact so CC can continue to operate as effectively and as resourcefully as possible. The Commissioner notes that the number of RSIs has already declined in the last three years. It is not in the public interest to disclose information which would be likely to add to this or would be likely prejudice CC's ability to operate efficiently as a regulator.

51. CC has explained that it publicly announced its plan to review the information provided by the charity at the time and also disclosed to the public the result of its investigation, when this was determined. He agrees with CC that this does go some way to meeting the public interest arguments in favour of disclosure.
52. For the above reasons, the Commissioner is satisfied that the public interest rests in maintaining the exemption.
53. As he has concluded that section 31(1)(g) applies, there is no need for the Commissioner to consider CC's application of section 41 of FOIA.

Other matters

54. The Commissioner notes that it took CC five months to complete its internal review. The Section 45 Code of Practice advises all public authorities to carry out internal reviews in 20 working days, and certainly no later than 40 working days from receipt.
55. The Commissioner would like to remind CC of the importance of the Section 45 Code of Practice and in carrying out efficient and timely internal reviews.

Right of appeal

56. 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

57. 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.
58. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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