

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

### **Decision notice**

**Date:** 26 April 2024

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

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

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1. The complainant has requested information about a specific charity. The Charity Commission refused to provide the requested information, citing section 31(1)(g) (law enforcement).
2. The Commissioner's decision is that the Charity Commission is entitled to withhold the information under section 31(1)(g) (law enforcement).
3. The Commissioner doesn't require the public authority to take any steps.

#### **Request and response**

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4. On 25 May 2021 the complainant wrote to the Charity Commission and requested information in the following terms:  

"1. Please confirm whether the Commission has exonerated or approved the PC of their use of charity funds on the aforementioned legal fees?

2. If so, please provide a copy of your letter by return, and please explain why when no s115 authority was granted and in their own words unlikely to recover funds did the Commission exonerate the PC? As you are aware, to pursue Charity Proceedings and use Charity funds the party seeking s115 authority needs to show a good chance to succeed so charity funds are not wasted on legal fees. The Commission's own guidance states "Charitable funds must be spent on furthering charitable purposes and not, for example, on: legal costs

defending claims that have no merit or reasonable prospects of success.”

3. Please respond to the previous constitutional breaches regarding the AGM & Election.

Please treat the above as a FOI Request if need be.”

5. The Charity Commission responded on 19 May 2023. It refused to provide the requested information, citing section 31(1)(g).
6. The complainant requested an internal review on 26 May 2023.
7. The Charity Commission provided its internal review outcome on 19 December 2023. It's final position was:
  - Part 1 of the request – It confirmed that the Charity Commission considered the trustees of the charity's actions were 'taken in good faith, considering the circumstances of the time.'
  - Part 2 of the request - It continued to withhold a copy of the letter requested under section 31(1)(g).
  - Part 3 of the request – It confirmed that details of all regulatory concerns about the Charity had already been shared with the complainant in a letter dated 3 May 2023. However, details of any regulatory advice given to the charity as a result of such concerns was also being withheld under section 31(1)(g).

### **Scope of the case**

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8. At the time of raising their complaint with the Commissioner, the complainant had several concerns.
9. Firstly, that the internal review outcome failed to address part 1 of the request. However, looking at the response the Charity Commission provided and the wording of part 2 of the request, the Commissioner is satisfied the complainant's question at part 1 has been answered.
10. Secondly, the complainant is concerned that the Charity Commission's internal review outcome 'ignored our request for an explanation' as requested in part 2 of the request. However, FOIA doesn't require a public authority to provide opinions or explanations, or justify any decisions its made where the requestor disagrees with such decisions. Therefore, this request for an explanation isn't a valid request under FOIA.

11. Therefore, all that remains for the Commissioner to consider is whether the Charity Commission was correct to withhold the remaining information, that is the regulatory advice it provided to the charity in question, under section 31(1)(g).

## Reasons for decision

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12. Section 31(1)(g) 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 purposes specified in subsection 31(2).'
13. The Charity Commission has withheld the requested information because it believes its disclosure would be likely to prejudice its statutory functions under sections 14 and 15 of the Charities Act 2011.<sup>1</sup>
14. The Charity Commission 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,
  - (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration."
15. The Charity Commission's role is to increase public trust and confidence in charities and promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities. Part of its role is to identify and investigate apparent misconduct or mismanagement in the administration of charities and take appropriate informal or regulatory action.

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<sup>1</sup> [Charities Act 2011 \(legislation.gov.uk\)](http://legislation.gov.uk)

16. Specifically, under section 15(2) of the Charities Act 2011 the Charity Commission may, in pursuance of its function of "encouraging and facilitating the better administration of charities," provide advice or guidance with respect to the administration of charities as it considers appropriate.
17. This was the approach taken by the Charity Commission in this particular case, to provide written guidance to the charity as a result of the complaints that it investigated.
18. In order for section 31(1)(g) to be engaged appropriately, the Charity Commission must demonstrate a causal link between the withheld information and the prejudice to its statutory functions as outlined in paragraph 14.
19. In its internal review outcome, the Charity Commission explained:

"The regulatory case that relates to your request was closed fairly recently and considering the advice the trustees of [Redacted] must follow, the Commission may need to engage with the trustees and exercise its functions to regulate and take further regulatory action, if needed. To be effective and efficient when exercising its functions, the Commission requires the trustees to be willing to co-operate fully and openly."
20. The Charity Commission also drew the complainant's attention to a previous decision<sup>2</sup> of the Commissioner's, where he agreed 'where cases are recently closed, the arguments that disclosure is likely to prejudice a public authority's ability to carry out its functions are likely to remain strong.'
21. Ultimately, the Commissioner agrees with the Charity Commission that the withheld information deals with confidential and sensitive matters which isn't otherwise publicly available. It wouldn't be fair to disclose this information, especially since the Charity Commission has determined that no further action is necessary against the charity at present.
22. However, that's not to say that the Charity Commission won't need to engage with the charity, and follow up on the regulatory advice given, in the future. The charity is less likely to cooperate with such enquiries if similar information has been published to the world at large under FOIA. In turn, this would hinder the Charity Commission's ability to gather

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<sup>2</sup> [ic-166571-p9f9.pdf \(ico.org.uk\)](#)

necessary information and carry out its statutory duty. With this in mind, the Commissioner considers the exemption engaged on the lower threshold of prejudice.

23. Since section 31(1)(g) is a qualified exemption, the Commissioner will now go onto determine where the balance of the public interest lies.

### **The public interest test**

#### **Factors in favour of disclosure**

24. The Charity Commission acknowledged its general obligations to 'maintain transparency and enhance the accountability of charities' which would be met by disclosure.
25. It also acknowledged 'the public interest in understanding how the Commission addresses non-compliance by trustees, given the concerns raised.'
26. Disclosure would meet the general public interest in how it deals with concerns of non-compliance, and how it manages regulatory cases.
27. The complainant isn't the only person who has concerns about the charity in question, in fact they appear to be representing a larger group. The Commissioner notes that, the more individuals a situation affects, the greater the need for transparency and disclosure would address the specific public interest in the charity in question.

#### **Factors in favour of maintaining the exemption**

28. In its internal review outcome, the Charity Commission explained to the complainant:

"The Charity Commission meets the public interest in transparency by providing information on its policies, guidance, annual report, and also by disclosing the information sent to you on, 03 May 2023, about our engagement with trustees of [Redacted]."
29. It believes that, since it 'routinely provides updates to the public about its regulatory actions' disclosure of the confidential regulatory advice issued in this instance, which would be likely to prejudice the Charity Commission's ability to perform its role, isn't proportionate.
30. As previously discussed, disclosure would be likely to impede the voluntary flow of information between the charity, (or any other charity) and the Charity Commission. In turn, this could affect the efficacy and robustness with which the Charity Commission performs its role which

isn't in the public interest because it would impact the running of charities, which are meant to benefit the residents of the UK.

31. In this case, the Commissioner has determined that the public interest is better served by maintaining the exemption. In reaching this decision, the Commissioner has considered the likelihood in which the Charity Commission will need to engage with the charity in the future and how disclosure would be likely to affect any such future engagement.

### **Other matters**

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32. The complainant is concerned that specific regulatory advice, relating to the charity in question, was disclosed to their MP, who then shared it with them. It's unclear to the Commissioner if this is the same regulatory advice being requested in this instance.
33. The Charity Commission explained to the complainant that 'this was a disclosure to the MP, who was acting in his role as a member of Parliament' and this is a separate and distinct process from FOIA.
34. Whether or not the MP chose, correctly or not, to further disseminate information that was shared with them, as their role as a member of Parliament, is not for the Commissioner to verify or consider.
35. The Commissioner's role is solely to determine whether the Charity Commission was correct to withhold the requested information under FOIA, which he has decided it was.
36. The Commissioner's guidance states that an internal review outcome should be provided within twenty working days; this timeframe can be extended to forty working days in particularly complex cases.
37. The Charity Commission grossly exceeded this timeframe in providing its internal review outcome.

## **Right of appeal**

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38. 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)

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**