

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

### **Decision notice**

**Date:** 6 August 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 an action plan issued to The Islamic Centre Manchester charity in 2018, and details of any complaints received about the charity. The Charity Commission ('the Commission') initially relied on section 31(1)(g) of FOIA (law enforcement) to withhold the information requested in questions one and three and advised that it did not hold the information requested in question four of the request. During the course of the Commissioner's investigation, the Commission advised that it intended to release a redacted copy of the action plan, but it considered that section 31(1)(g) FOIA still applied to the redacted information. The Commission also advised that it considered that sections 40 and 41 also applied to question three of the request, as well as section 31. Sections 40 and 41 concern personal data and information provided in confidence, respectively.
2. The Commissioner's decision is that the Commission should disclose the redacted copy of the action plan as intended, and that it is entitled to rely on section 31(1)(g) of FOIA to withhold the redacted information and the information requested in question three. He has also found that the Commission is in breach of sections 10(1) and 17(5) by failing to provide a response and a relevant refusal notice within 20 working days.
3. The Commissioner requires the Commission to take the following step: to ensure compliance with the legislation.
  - Disclose a redacted copy of the action plan as intended.

4. The Commission must take this step within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 9 March 2023, the complainant wrote to the Commission and requested information in the following terms:
  - “1. Please provide me with the action plan drawn up for Didsbury Mosque in 2018.
  2. Please provide me with any progress against all the points in the action plan.
  3. Please provide me with a list of all the complaints made to the Charity Commission about Didsbury Mosque, including date the complaint was received, brief details of the nature of the complaint and how each complaint was resolved.
  4. Please provide me with details of any official warnings or notices handed to Didsbury Mosque including dates.”
6. The Commission responded on 25 April 2023. It stated that it was relying on section 31(1)(g) of FOIA to withhold the information requested in questions one and three. It provided a response to question two and advised that it did not hold the information requested in question four.
7. Following an internal review the Commission wrote to the complainant on 25 January 2024. It maintained its reliance on the exemptions cited, and confirmed that no information was held within scope of question four.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 11 March 2024 to complain about the way their request for information had been handled. The focus of their complaint was that the requested action plan was being withheld.
9. During the course of the Commissioner's investigation, the Commission advised that it had reviewed its handling of the request and, due to the passage of time, it was now willing to disclose a redacted version of the

action plan. It advised that it was still relying on section 31(1)(g) of FOIA to withhold some of the information within the plan and the information requested in question three. It also considered sections 40 and 41 of FOIA to also apply to question three of the request.

10. The Commissioner considers that the scope of his investigation is to determine whether the Commission should disclose a redacted copy of the action plan and whether it is entitled to rely on sections 31(1)(g), 40, and 41 of FOIA to withhold part of the requested information.

## Reasons for decision

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### Section 31- Law enforcement

11. Section 31 of FOIA states:

“(1) information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

(2) The purposes referred to in subsection (1)(g) to (i) are

c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

12. The Commissioner accepts that the Commission is formally tasked with certain regulatory functions under the Charities Act 2011.<sup>1</sup>
13. The Commission has explained that, when preparing its submission, it found that sections of the requested action plan were already in the public domain due to the media coverage of the public inquiry. The Commission has advised the Commissioner that it therefore intends to disclose a redacted version of the action plan requested in question one.

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

14. The Commission explained that it is still relying on section 31(1)(g) of FOIA to withhold some of the information in the action plan, as it considers that disclosing that information would be likely to harm its ability to fulfil its objective and functions outlined in sections 14(1) (4) Charities Act 2011 (to promote the effective use of charity resources), and s.15(2) Charities Act 2011 (encouraging and facilitating the better administration of charities).
15. The Commission explained that disclosure of the redacted information could be likely to undermine charities' confidence in disclosing sensitive matters to the Commission if they consider that the Commission is unable to appropriately handle sensitive information carefully. The Commission considers that this would mean that it may not become aware of serious regulatory matters. This would be likely to undermine its ability to provide regulatory advice (and, where appropriate, take stronger regulatory action) if the trustees of a charity fail to disclose relevant information. The Commission explained that it regulates over 168,000 registered charities and even if a small percentage altered their behaviour following disclosure under FOIA, there would be a real and significant impact on its ability to carry out the functions described in section 31(2) of FOIA.
16. With regards to question three of the request, the Commission explained that disclosure of information about complaints it had received would be likely to harm its ability to gather information and effect its effectiveness and efficiency as a regulator. The Commission considers that disclosure would be likely to impact detrimentally on the willingness of members of the public to voluntarily supply information to the Commission if it becomes known that it failed to handle sensitive information appropriately, without considering relevant factors such as impact of disclosure on the third party-complainant, the charity and its ability to perform its function.
17. The Commission has highlighted that the Commissioner has recently issued a decision agreeing that disclosure of sensitive information provided to the Commission could be likely to undermine both the public's and charities' confidence in reporting matters to the Commission.<sup>2</sup>
18. The Commission has provided the Commissioner with a copy of the action plan and the proposed redactions. The Commissioner cannot

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<sup>2</sup> [ic-278930-t4t7.pdf \(ico.org.uk\)](#),

comment on the redacted information without disclosing its content, but he considers that the proposed redactions are minimal and appropriate.

19. Having considered all the circumstances in this case, the Commissioner has therefore decided that the Commission is correct to disclose a redacted version of the action plan, and that section 31(1)(g) is engaged for the redacted information within the plan, and for the information requested in question three. He considers that disclosure of the redacted information in the action plan and the requested information about complaints to the Commission would be likely to prejudice the Commission's exercise of its functions for the purposes listed under section 31(2)(c) and(f). He has therefore gone on to consider the public interest test.

### **Public interest test**

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

20. The Commission considers that there is public interest in the public understanding its compliance with its regulatory duties and functions, particularly as the charity referenced in the request is high profile because of its association with the Manchester Arena bomb attack, the publication of the Inquiry report and the comments on the Commission's action plan on paragraph 22.208 of the Public Inquiry report.
21. The Commission also acknowledged that disclosure of this information would likely assist the public in understanding the areas where the charity has made improvements. The Commission advised that it has published that it is satisfied that the recommendations have been actioned, therefore disclosure will inform the public of the actions the charity has undertaken since the Manchester Arena bombing attack.
22. In their request for an internal review the complainant stated

"My main argument is that any prejudice caused by disclosure cannot exceed the prejudice which undoubtedly resulted from Sir John's final report which contained some stark criticisms, the high water mark of which was that the trustees of the charity displayed 'a form of willful blindness' to the radical Islamist ideology being trumpeted by some people attending the mosque, most notably by members of the Abedi family. It is also notable and actually shocking that the evidence of the chair of trustees [REDACTED] - was described by Sir John as 'unreliable'. If there is prejudice resulting from disclosure, it is outweighed by the public interest in disclosing the material sought. The information I seek, particularly the 2018 action plan, would, I anticipate, yield only mundane details of the steps required of the mosque. I doubt very much that the detail of the action plan would

contain criticism which goes beyond the high point of Sir John's criticism, mentioned above. The action plan, if it is as the title suggests, won't make findings but suggest work that has to be carried out. Disclosure would, however, increase public confidence in the oversight of the mosque conducted by the Commission because people would be able to see for themselves the work required of the mosque and in turn the steps it has taken to address the action plan."

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

23. The Commission explained that it routinely provides updates to the public about its regulatory actions. It considers that the public interest in transparency, accountability, and public awareness of how the Commission handles regulatory concerns is therefore met by disclosure of the Commission's policies, guidance, annual report<sup>3</sup> and the final report of the Commission's safeguarding taskforce<sup>4</sup>.
24. The Commission added that in certain cases, where its regulation in a specific case meets the public interest criteria set out in its policies, it does publish statements about its work. In this case, the Commission disclosed its regulatory actions and its assessment that the trustees of the charity complied with the action plan.<sup>5</sup>
25. The Commission considers that the information it has released goes some way to satisfying the public interest in disclosure about its regulatory activities and that this supports maintaining the exemption.
26. The Commission considers that there is a stronger public interest in its ability to perform its statutory objectives and functions. It considers that disclosure could be likely harm its ability to promote the effective use of charitable resources under section 14(4) of the Charities Act 2011 and protect the properties of the charity from loss or misapplication under section 31(2)(g) of FOIA.
27. The Commission added that disclosing information considered to be sensitive or confidential by third parties and the charity trustees could be likely to harm its ability to gather information because it would be difficult for the Commission to be aware of all relevant regulatory issues if individuals or third parties are not prepared to fully disclose information, including confidential information voluntarily. It argued that

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<sup>3</sup> [Charity Commission annual report and accounts 2022 to 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103122/charity-commission-annual-report-and-accounts-2022-to-2023.pdf)

<sup>4</sup> [Final report of Charity Commission safeguarding taskforce - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/103122/charity-commission-annual-report-and-accounts-2022-to-2023.pdf)

<sup>5</sup> [\[Withdrawn\] Charity Commission announces statutory inquiry into Islamic Education Centre and Mosque - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/charity-commission-announces-statutory-inquiry-into-islamic-education-centre-and-mosque)

it is not in the public interest if charities and third parties hesitate to engage in transparent discussions with the Commission.

### **The balance of the public interest test**

28. The Commissioner acknowledges that there is a strong public interest in being able to see what actions and regulatory measures have been taken to ensure concerns about particular charities are addressed and resolved, particularly in high profile circumstances like those found in this case.
29. The Commissioner notes however that the Commission's disclosure of the majority of the action plan document, along with its other publications concerning the charity, satisfies the public interest in knowing that appropriate actions have been taken and followed up.
30. There is also a significant public interest in ensuring that the Charity Commission, with its statutory functions under the Charities Act 2011, can operate efficiently and effectively, something which the Commissioner considers would be negatively affected by disclosure of the requested information. This is particularly relevant to the information withheld for question three of the request relating to complaints received by the Commission.
31. The Commissioner has therefore concluded that, in all the circumstances, the balance of the public interest lies with maintaining the exemption under section 31(1)(g) of FOIA.
32. As the Commissioner has found that section 31(1)(g) of FOIA applies to the withheld information for question three as well as the redacted information in the action plan, and that the public interest lies with maintaining the exemption, it has not been necessary for him to consider the application of sections 40 and 41 to the information withheld for question three.
33. The Commissioner's decision is therefore that section 31(1)(g) is has been applied appropriately to the withheld information and that the Commission should disclose a redacted copy of the action plan as intended.

### **Procedural matters**

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34. The Commissioner finds that the Commission breached section 10(1) of FOIA by failing to provide its response within 20 working days.

35. Under section 17(1) a public authority that is relying upon an exemption to withhold information, must issue a refusal notice within 20 working days.
36. As the Commission did not provide a refusal notice specifying the exemption it ultimately came to rely upon to withhold information, within 20 working days, it breached section 17(1) of FOIA.

### **Other matters**

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37. The Commissioner notes that the Commission failed to carry out an internal review within 40 working days. The Section 45 Code of Practice advises all public authorities to carry out internal reviews in a timely manner and within 20 working days. A total of 40 working days is permitted in particularly complex cases only.
38. The Commission is reminded of the requirements of the Code and of the importance of carrying out internal reviews in a timely manner and in accordance with the timeframes specified in the Code. The Commissioner has recorded this as part of his routine monitoring of public authorities.



## Right of appeal

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39. 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)

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

**Keeley Christine**  
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**Information Commissioner's Office**  
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**Wilmslow**  
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**SK9 5AF**