

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

### **Decision notice**

**Date:** 12 October 2022

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

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

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1. The complainant has requested correspondence between the Charity Commission and a specific charity.
2. The Charity Commission refused to provide the requested information, citing section 31(1)(g) (law enforcement), section 40(1) and section 40(2) (personal information) and section 41(1) (information provided in confidence) of FOIA.
3. The Commissioner's decision is that the withheld information engages section 31(1)(g) and the public interest lies in maintaining the exemption.
4. The Commissioner does not require the public authority to take any steps.

## Request and response

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5. The complainant has raised several concerns with the Charity Commission about a specific charity. On 26 August 2021 the complainant then asked the Charity Commission to provide a copy of the correspondence it exchanged with the charity, following his complaints:

"I first raised concerns in 2015, which were upheld, and a few changes were made. However things deteriorated, and I raised further issues with the Charity Commission three times in the last twelve months – a total of forty-three concerns. Initially your officers were not prepared to take any action, but on the third occasion they did engage with the charity, and according to their final response to me, 'received certain assurances from the charity', and so no action was taken.

Several of us appealed about this, but the Commission has declined to review its decision, for which no reason was given. However we have no idea what these assurances were, and neither the charity, not the Commission will enlighten me, and nothing has changed. Why is this a secret?

The accounts just published for the year ended 31 December 2020 reveal just as many, if not more, concerns, so I am writing to you to ask you to intervene, at least to let me know about the exchanges between the Commission and the charity. I am sure you will have access to the files.

Literally thousands of members - and supporters (individuals and churches) in the UK are unaware of the charity's excessive expenditure on non-essential items as the charity falls short of the standard one might expect, with lack of clarity in its communication, or even a lack of communication per se. The trustees often seem not as fully engaged as they should be and exhibit too much deference of the Chief Executive, (known as Executive Director)

I look to you, acknowledging the pressure you may be under, to arrange for someone to 'fill me in' on what the true outcome of the Commission's intervention might be, as nothing has apparently changed."

6. On 15 October 2021 the Charity Commission responded and confirmed that the requested information was exempt under section 31(1)(g), by virtue of section 31(2)(c), 31(2)(f) and 31(2)(g).
7. The complainant was dissatisfied and so requested an internal review on 28 November 2021.

8. On 14 April 2022 the Charity Commission provided the outcome to its internal review. It upheld its original position, that all of the information within the scope of the request was exempt under section 31(1)(g). It informed the complainant that some of the withheld information was also exempt under section 40(1), section 40(2) and section 41(1).
9. Since the Charity Commission has withheld all of the requested information under section 31(1)(g), the Commissioner will consider this exemption first. Depending on his findings, he may go onto consider the Charity Commission's application of the other exemptions.

## Reasons for decision

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10. The Commissioner notes that he has recently dealt with a very similar case, IC-39105-P4N1<sup>1</sup> in which the requestor requested all information held in relation to a complaint that they had submitted. What is particularly relevant about this case is that it included any guidance that the Charity Commission issued to the charity in question.
11. 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).'
12. In both cases the Charity Commission withheld the requested information because it believed its disclosure would be likely to prejudice its statutory functions under sections 14 and 15 of the Charities Act 2011<sup>2</sup>.
13. The Commissioner agrees with the Charity Commission that disclosure would be likely to prejudice its statutory functions, which fall under the following section 31(2) subsections:
  - c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment may exist or arise
  - f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons in their administration)

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<sup>1</sup> [ic-39105-p4n1.pdf \(ico.org.uk\)](https://ico.org.uk/subject-access-request/subject-access-request-39105-p4n1)

<sup>2</sup> [Charities Act 2011 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2011/25)

- g) the purpose of protecting the property of charities from loss or misapplication.
14. Paragraphs 13-18 of IC-39105-P4N1 explain in more detail the interplay between section 31(1)(g) of FOIA and sections 14 and 15 of the Charities Act 2011. Therefore, the Commissioner doesn't deem it necessary to repeat that analysis here.
  15. For the same reasons as outlined in IC-39105-P4N1, the Commissioner is satisfied that the requested information engages section 31(1)(g) by virtue of section 31(2)(c), 31(2)(f) and 31(2)(g). As section 31 is a qualified exemption, the Commissioner has now gone onto consider where the balance of the public interest lies.
  16. Paragraphs 20-25 of IC-39105-P4N1 outline the arguments in favour of disclosure and in favour of maintaining the exemption. The Commissioner accepts that there is a public interest in public authorities being open and transparent about their processes. However, he also recognises that there is a significant public interest in allowing the Charity Commission to carry out its functions as robustly as possible, which it may not be able to do if charities were discouraged from cooperating with any investigation, for fear that the findings would be made public.
  17. In this instance, the Commissioner notes that the request represents a private concern of the requestor and not necessarily a matter that is within the wider public interest.
  18. Ultimately, the Commissioner is satisfied that the public interest lies in maintaining the exemption.
  19. Since the Commissioner is satisfied that the requested information is exempt under section 31(1)(g), he has not gone onto consider any of the other exemptions that the Charity Commission has cited.
  20. However, the Commissioner notes that the Charity Commissioner has explained that some of the exempt information is also the complainant's personal data and therefore exempt under section 40(1) of FOIA. In this case, the Commissioner is satisfied that the Charity Commissioner has provided the complainant with advice on how to request this information, should they wish, via a subject access request.

## **Other matters**

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21. The Commissioner's guidance states that internal reviews should usually take 20 working days. There may be circumstances where a public authority requires more time to complete an internal review, for example if the matter is complex. However – internal reviews should take no longer than 40 working days and the Commissioner notes that the Charity Commission grossly exceeded this timeframe in its handling of this request.

## **Right of appeal**

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22. 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)

23. 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.
24. 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**

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