

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2023

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

Decision (including any steps ordered)

1. The complainant made a three part request to the Charity Commission for minutes of meetings relating to a named charity.
2. The Charity Commission stated that it did not hold any information falling within the scope of parts one and three of the request. It withheld the information requested in part two of the request, relying on the exemptions under sections 31(1) (law enforcement) and 40(2) (personal information) of FOIA.
3. With regards to parts one and three of the request, the Commissioner's decision is that, on the balance of probabilities, the Charity Commission does not hold the requested information.
4. With regards to part two of the request, the Commissioner's decision is that the Charity Commission was entitled to rely on section 31(1)(g) of FOIA to withhold the requested information. As the Commissioner is satisfied that the Charity Commission was entitled to rely on section 31(1)(g) to withhold all the information within the scope of part two of the request, he has not gone on to consider whether section 40(2) also applied to the requested information.
5. The Commissioner does not require the Charity Commission to take any steps as a result of this decision notice.

Request and response

6. On 22 November 2021, the complainant made the following request for information under FOIA:
 - “1) Minutes of the meeting wherein [name redacted] resigned (I presume you have access to them)
 - 2) Minutes of any meetings conducted between the Charity and the Commission
 - 3) Minutes of any other relevant meetings where it was determined that the Charity is somehow now safe”
7. The Charity Commission responded on 17 December 2021. It stated that it did not hold the information requested in parts one and three of the request but confirmed that the information requested in part two was held. However, it refused to provide this information, relying on section 31(1) of FOIA to do so.
8. At internal review, the Charity Commission confirmed that it did not hold any minutes of meetings relating to parts one and three of the request. It maintained its position that section 31(1) of FOIA applied to the minutes of the meetings requested in part two of the request. It also stated that section 40(2) of FOIA applied to some information contained within these minutes.

Scope of the case

9. The complainant contacted the Commissioner on 20 April 2022 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of his investigation is to consider whether the Charity Commission can withhold the requested information under section 31(1)(g) of FOIA, and if necessary, section 40(2) of FOIA.

Reasons for decision

Section one – information held/not held

11. In response to part one of the request, the Charity Commission stated that the individual named in this part of the request resigned prior to its regulatory involvement with the charity. The Charity Commission understands that there was no meeting of trustees at which the

resignation of the named individual took place. The Charity Commission stated that it was a reactive decision made independently by the named individual in response to media enquiries made in relation to allegations about their personal life. The Charity Commission stated that as there was no meeting, there are no minutes.

12. In relation to part three of the request, the Charity Commission stated that it has never held a meeting where it was determined that the charity is "safe". It clarified that its regulatory role is to determine whether or not the trustees are complying with their legal duties when administering and managing the charity. It stated that in the Charity Commission's closing letter to the trustees, it had acknowledged that significant steps had been taken to address the issues identified but also identified further improvements to be made to strengthen the administration and management of the charity to ensure that the trustees were meeting their legal duties. It also provided advice and guidance about how these improvements could be implemented.
13. The Charity Commission also referred to the case report it published, in which it explained:

"The Commission recently assessed the charity's progress in addressing the measures set out in the warning, finding improvements around the charity's safeguarding policies, training of trustees and staff and in its overseas operations. The Commission has now issued further formal advice to trustees, requiring them to address outstanding concerns around the charity's handling of conflicts of interest. The Commission has now closed its case".

14. The Commissioner is satisfied that, on the balance of probabilities, the Charity Commission does not hold the information requested in parts one and three of the request.

Section 31 – law enforcement

15. Section 31(1)(g) of FOIA allows a public authority to withhold information if its disclosure under the Act 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).
16. The Commissioner accepts that the Charity Commission is formally tasked with certain regulatory functions under the Charities Act 2011.
17. The Charity Commission has stated that the disclosure of the information requested in part two of the request would be likely to prejudice its functions. This is because the requested information is detailed specific information about a matter which, although the

regulatory case had recently closed, continued to be of regulatory interest to the Charity Commission for the following reasons:

- There was a live Parliamentary and Health Service Ombudsman's (PHSO) case looking into the Charity Commission's handling of this case, and
 - Whilst the case was closed, further advice had been provided to the charity trustees on what was required to further improve the governance of the charity. The Charity Commission stated that it may need to open a new case if it is not satisfied that the trustees have made progress following this advice.
18. The Charity Commission argued that if it were to release specific and detailed information from a highly sensitive case such as this one, either while the case was ongoing, or shortly after it had closed and whilst the outcomes of that case were being worked through, it would be likely to impact detrimentally on the willingness of charity trustees to voluntarily supply information to the Charity Commission. It stated that this would significantly inhibit the Charity Commission's ability to gather information. The Charity Commission has stated that in order to consider whether it needs to use its powers and protect charities from misconduct or mismanagement as it did in this case, it needs to have open and candid dialogue with charity trustees and others.
 19. The Charity Commission explained that whilst it does have formal information gathering powers, including section 52 of the Charities Act 2011, it would receive far less information and be able to deal with far fewer cases.
 20. In addition, the Charity Commission stated that some of its most effective work with charities takes place when there is an open free flowing discussion. Such communication cannot take place if the Charity Commission can only obtain information by using its powers. It would therefore be prejudicial to regulatory compliance cases tasked with the functions in sections 31(2) (a), (c) and (f) if trustees were no longer willing to co-operate voluntarily.
 21. The Charity Commission has argued that the Commissioner has accepted arguments regarding the voluntary supply of information on a number of occasions. The Charity Commission specifically referred the

Commissioner to paragraph 94 of the decision notice under case reference FS50184898¹ which states:

“In reaching this conclusion the Commissioner recognises that the Charity Commission’s argument is more sophisticated than suggesting that the disclosure of information in response to this request will result in trustees refusing to communicate with the Charity Commission at all. Rather it is the nature of those communications that will change and thus both the Charity Commission’s formal and informal methods will be affected as well as its ability to gather/receive wider intelligence.”

22. In coming to its decision, the Charity Commission stated that it had considered the Commissioner’s guidance ‘Impact of Disclosure on the Voluntary Supply of Information’. It considers that the following factors in this case are relevant to the likely prejudice that may result from the disclosure of the information:

- (i) **Content of the information** – The information provides details of the trustees’ management of the charity in response to very serious allegations made against the charity. Other information about its operations, which for other charities may be disclosable, is more sensitive for this charity because of the nature of its work.
- (ii) **Timing of the request** – Although at the time of the request the case had closed, there remained live issues as the Charity Commission had provided regulatory advice to the trustees at the time it closed its case. The Charity Commission argued that to be effective and efficient, it requires the trustees to be willing to continue to co-operate fully and provide information voluntarily should the Charity Commission need to re-engage. The Charity Commission stated that it understands that the Commissioner recognises that where cases are only 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. It also stated that there is an ongoing PHSO investigation into the Charity Commission’s handling of its regulatory case.
- (iii) **Undue prejudice/harm to the charity** – Following the Charity Commission giving the charity an Official Warning and issuing a

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2009/486500/FS_50184898.pdf

press release on closing its case, the charity is now keen to move on.

23. The Charity Commission also argued that it regularly receives correspondence from trustees making it clear that there should be no onward disclosure of the information provided, making specific reference to FOIA.
24. Having considered all the circumstances in this case, the Commissioner has therefore decided that section 31(1)(g) is engaged, as disclosure of the requested information would be likely to prejudice the Charity Commission's exercise of its functions for the purposes listed under section 31(2)(a)², (c)³ and (f)⁴. He has therefore gone on to consider the public interest test.

Public interest test

Public interest arguments in favour of disclosing the information

25. The complainant has argued that it is in the public interest to disclose the requested information because the Charity Commission allegedly misled and deceived a vulnerable victim-survivor for three years, culminating in a suicide attempt.
26. The complainant believes this to be the case because they consider the Charity Commission to have indicated that it would remove the named individual and shut the charity down. Instead, the charity remains open and the named individual's wife now runs it. The complainant believes that the named individual remains the de facto director of the charity behind his wife, despite the Charity Commission citing conflicts of interest in a section 75A⁵ warning issued to the charity, and that this represents a capitulation by the Charity Commission.
27. The complainant considers this to be a betrayal of vulnerable people who have approached the Charity Commission for help. They believe that disclosure is in the public interest, as it will demonstrate "why" the

²(a) the purpose of ascertaining whether any person has failed to comply with the law

³(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise

⁴(f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration

⁵ Section 75A of the Charities Act 2011 – Official Warnings by the Commission

Charity Commission has done this. They also believe it to be in the public interest from a safeguarding perspective.

28. The complainant also believes that disclosing the requested information is in the public interest as it will enable the sector to understand what went on "behind closed doors" in such an important case. The complainant believes that the failure to release the information leaves more questions than answers.
29. The complainant considers there to have been multiple failings by the Charity Commission, which are now the subject of a PHSO inquiry. They believe the Charity Commission has failed profoundly as a regulator.
30. The Charity Commission acknowledges that it has an important public role, as a regulator, in demonstrating to the public that charities are effectively managed and protected. It recognises that disclosure can assist public trust and confidence in charities.
31. The Charity Commission also accepts its wider duty to be transparent and accountable for the decisions it makes, how it operates and spends public funds. It stated that in this case, there was interest in the case and its response as evidenced in the number of media articles and the profile of the individual named in the request.

Public interest arguments in favour of maintaining the exemption

32. The Charity Commission has argued that in keeping with its duty to have regard to the principles of best regulatory practice, including transparency, it has a policy (dated 15 January 2015) about how it reports on its regulatory work. It stated that it does not routinely publish statements about all its regulatory cases but may do so where releasing a statement would be in the public interest or would increase public trust and confidence in charities.
33. In this case, the Charity Commission stated that it did consider there to be a public interest. It therefore provided a press release, setting out the issues in the case and the regulatory action it had taken whilst still taking care about what information was disclosed due to the sensitivities surrounding the case. It therefore considers that the public interest in transparency has been met in this regulatory case overall.
34. The Charity Commission recognises that disclosure of the withheld information from a regulatory case may help inform the public by detailing how the Charity Commission handles regulatory complaints and concerns, providing a fuller picture of the Charity Commission's statutory functions and duties. This would favour disclosure. However, it considers that the very limited and specific information withheld in this case would not assist in the public's understanding.

35. The Charity Commission understands that the complainant has a strong personal interest in the case and remains dissatisfied with its regulatory position. It stated that in its guidance CC47 "Complaints about Charities", it explains to complainants/whistle blowers about the information it provides to them as an interested party as follows:

"The Commission will inform you if it takes up a serious concern but it will not give you details of how it handles its casework. It will notify you of the outcome when it has finished its case".

36. The Charity Commission argues that this approach seeks to balance transparency and openness with being able to conduct effective casework. It provided the complainant with an explanation of its actions. However, this was not a disclosure under FOIA but instead was in accordance with its policy.

37. The Charity Commission does not consider that there is a public interest in providing additional (albeit limited) detail about the case by disclosing the information requested. It considers that the public interest in transparency, accountability, and public awareness of how the Charity Commission handles regulatory complaints and concerns is to a very great extent met by disclosure of its policies, guidance, and annual report. The Charity Commission stated that this was supplemented in this case because it made a public statement about the Charity Commission's findings into this charity. It stated that this favours withholding the information.

38. The Charity Commission argued that the disclosure of this information would be likely to impact on the voluntary supply of information between the Charity Commission and charity trustees. It stated that if charities recognised that the Charity Commission routinely disclosed details which the charity considers to be sensitive, this risks significantly inhibiting the Charity Commission's ability to gather information.

The Commissioner's conclusion

39. The Commissioner acknowledges the complainant's arguments in favour of disclosure. He also recognises the distressing nature of the events that led to the complaint being made to the Charity Commission, and the complainant's strength of feeling with regards to the outcome of that complaint as a result.

40. The Commissioner considers that some weight must also always be given to the general principle of achieving accountability and transparency through the disclosure of information held by public authorities. This assists the public in understanding how public authorities make their decisions and carry out their functions, and in

turn fosters trust in public authorities. The Commissioner considers that this is met, to some extent, by the Charity Commission releasing statements which would increase the public's understanding of the Charity Commission's regulatory function.

41. The Commissioner considers that the principle of confidentiality is important. Undermining this by disclosing information which is supplied by trustees to assist the Charity Commission perform its regulatory functions would not be in the public interest, as it is important for the Charity Commission to be able to have open and frank communications with trustees in order that it can make the right regulatory decisions.
42. 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 has determined would be negatively affected by disclosure. Against this, he does not consider the arguments for disclosure outweigh the overall public interest in maintaining the exemption.
43. The Commissioner recognises that the complainant in this case considers the Charity Commission to have failed in its duties with regards to the manner in which it has handled their complaint, and that they therefore consider disclosure to be in the public interest to establish why that is the case.
44. However, the Commissioner notes that a case remains live with the PHSO in relation to this complaint. He therefore considers this to be the appropriate route for challenging the Charity Commission's actions in this case.
45. The Commissioner has therefore concluded that, in all the circumstances, the weight of the public interest lies with maintaining the exemption under section 31(1)(g) of FOIA.
46. As the Commissioner has found that section 31(1)(g) of FOIA applies to part two of the request, and that the public interest favours maintaining this exemption, it has not been necessary for the Commissioner to consider the Charity Commission's application of section 40(2) to the information.

Other matters

Internal review request

47. The Commissioner notes that the time taken for the Charity Commission to respond to the internal review request exceeded 40 working days. Although there is no statutory time set out in FOIA within which public authorities must complete a review, the Commissioner takes the view that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. The Commissioner therefore recommends that the Charity Commission review the Section 45 code of practice⁶.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

48. 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

49. 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.
50. 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

Pamela Clements
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