

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2023

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

Decision (including any steps ordered)

1. The complainant made a request to the Charity Commission for information relating to its investigation into Central Mosque Northampton.
2. The Charity Commission withheld the requested information, relying on the exemptions under sections 31(1) (law enforcement) and 40(2) (personal information) of FOIA.
3. 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. However, he has recorded a procedural breach of section 10 of FOIA, as the Charity Commission failed to respond to the complainant's request within 20 working days of receipt.
4. The Commissioner does not require the Charity Commission to take any steps as a result of this decision notice.

Request and response

5. On 17 January 2022, the complainant made the following request for information:

"Please can you be more specific and advise me as to precisely what areas have been investigated and what precise advice has been given to the mosque's remaining three trustee-directors? Please also advise if any enforcement action has been taken, or there has been any form of intervention by the Charity Commission."

6. The Charity Commission responded on 29 March 2022, confirming it held information falling within the scope of the request but refused to provide the information, citing sections 31(1)(g) and 40(2) of FOIA.
7. The complainant requested an internal review of the Charity Commission's decision on 31 March 2022.
8. The Charity Commission provided the outcome of its internal review on 14 June 2022, maintaining its original position of refusing to provide the requested information under sections 31(1)(g) and 40(2) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 16 July 2022 to complain about the way his 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 31 – law enforcement

11. The following analysis sets out why the Commissioner has concluded that the Charity Commission was entitled to rely on section 31(1)(g) of FOIA in this particular case.
12. 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).
13. The Commissioner accepts that the Charity Commission is formally tasked with certain regulatory functions under the Charities Act 2011.
14. The Commissioner agrees that disclosing the requested information would be likely to prejudice the Charity Commission's functions for the reason it has given. Specifically, the Commissioner agrees that disclosure would be likely to deter individuals and charities from providing information to the Charity Commission. This would adversely affect the Charity Commission's ability to regulate efficiently and effectively.

15. 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)(c)¹, (f)² and (g)³. He has therefore gone on to consider the public interest test.

Public interest test

16. 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. It also accepts its wider duty to be transparent and accountable for the decisions it makes, how it operates and spends public funds.
17. The Charity Commission has argued that the disclosure of information would be likely to negatively impact the voluntary supply of information from third parties. It considers that this would be a significant inhibition on the Charity Commission's ability to gather information.
18. The Charity Commission is formally tasked with encouraging and facilitating the better administration of charities and protecting charities against misconduct or mismanagement in their administration, including being able to properly consider whether it needs to use its powers to do so. In order to do this it needs to have open and candid dialogue with third parties. It would be difficult for the Charity Commission to be aware of all relevant regulatory issues if individuals or third parties were not prepared to fully disclose information, including confidential information voluntarily.
19. The complainant believes that the full, unedited outcome of the Charity Commission's investigation should be disclosed to them, as they believe that without this information, the concerns they have raised about the mosque with the Charity Commission will persist.

¹(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

² (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration

³ (g) the purpose of protecting the property of charities from loss or misapplication

The Commissioner's conclusion

20. The Commissioner acknowledges the complainant's arguments in favour of disclosure. However, he considers that the balance of the public interest lies in withholding the information to enable the Charity Commission to perform its statutory objectives and functions and operate effectively and efficiently as a regulator. The Commissioner considers that there is greater public interest in individuals being prepared to engage fully and frankly with the Charity Commission in the supply of information without fearing that the information will be put in the public domain in response to a FOIA request.
21. As the Commissioner has found that section 31(1)(g) of FOIA applies to the entire 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.

Procedural matters

Section 10 – time for compliance

22. Section 1(1) of FOIA says that an individual who asks for information from a public authority is entitled to
 - a. be informed whether the authority holds the information, and
 - b. if the information is held, to have that information communicated to them.
23. Section 10(1) of FOIA says that a public authority should comply with section 1(1) promptly, and no later than the twentieth working day following the date of receipt.
24. In this case, the total time taken by the Charity Commission to respond to the request exceeded 20 working days. The Commissioner therefore considers the Charity Commission to have breached section 10(1) of FOIA.

Other matters

Internal review request

25. 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 practice⁴.

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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

26. 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

27. 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.
28. 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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