

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2023

Public Authority: Charity Commission for England and Wales
Address: PO Box 211
Bootle
L20 7YX

Decision (including any steps ordered)

1. The complainant requested information from the Charity Commission (the public authority). The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to withhold some of the requested information.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 5 April 2022, the complainant made the following request for information to the public authority:

"As a former trustee to the above Charity which was taken over by CISWO in or around October 2013, I wish to know who signed the transfer document please?"
4. The public authority refused to provide some of the requested information citing section 40(2) (personal information) of FOIA as its basis for doing so.

Reasons for decision

Section 40 - personal information

5. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request.¹
6. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
7. In this case, the Commissioner is satisfied that the withheld information is personal data because it contains the names of the trustees who signed the document in question and, if disclosed, would identify the individuals.
8. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
9. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
10. The Commissioner considers that the complainant is pursuing a legitimate interest but that disclosure of the information through FOIA is not necessary to satisfy it. This is because the legitimate interest has been met by the public authority providing information that confirms the transfer was carried out lawfully. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The public authority was therefore correct to apply section 40(2) of FOIA to this request.
11. It is necessary to balance the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects. In doing so, it is necessary to consider the impact of disclosure.

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

12. The Commissioner has determined this by balancing the legitimate interests in disclosure against the fact that the individuals concerned would have a reasonable expectation that their information would not be disclosed 'to the world' under FOIA. Such a disclosure would be likely to cause distress to the individuals.
13. The condition at section 40(3A)(a) of FOIA is therefore satisfied, as disclosure would contravene the data protection principle at Article 5(1)(a) of the UK General Data Protection Regulation (UK GDPR) – 'lawfulness, fairness and transparency'.
14. In this case, the Commissioner considers that while the complainant has a legitimate interest in requesting information about the transfer of a charity, the public authority has provided information within the scope of the request to demonstrate the transfer process, and has only withheld the information that identifies individuals.
15. Based on the above factors, the Commissioner has determined that the fundamental rights and freedoms of the individuals outweigh the legitimate interest identified above. The Commissioner therefore considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The public authority was therefore correct to apply section 40(2) of FOIA to this request.

Right of appeal

16. 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

17. 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.
18. 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

Michael Lea
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Wycliffe House
Water Lane
Wilmslow
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