

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

### **Decision notice**

**Date:** 14 November 2023

**Public Authority:** The Charity Commission  
**Address:** 102 Petty France  
London SW1H 9AJ

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

---

1. The complainant has requested information relating to the merger of two schools.
2. The Charity Commission of England and Wales (the "Charity Commission") disclosed some information to the complainant but relied on section 31(1)(g) by virtue of subsection 2(c)(f) and (g) of FOIA to withhold some of the information.
3. The Commissioner's decision is that the Charity Commission was entitled to refuse to comply with the request in accordance with section 31(1)(g) by virtue of subsection 2(c),(f) and (g).
4. The Commissioner considers that the Charity Commission has breached section 10(1) of FOIA as it did not provide all of the non-exempt information that it held within the statutory time limit.
5. The Commissioner does not require further steps.

#### **Request and response**

---

6. On 25 April 2023, the complainant made the following request:
  - "1. All documents submitted to the Charity Commission by The Godolphin and Latymer School Foundation in connection with its merger with Redcliffe School Trust Limited on 31 August 2020 ("the Merger"),

including any documents submitted in connection with requesting approval for the Merger.

2. All documents submitted to the Charity Commission by Redcliffe Gardens School or Redcliffe School Trust Limited in connection with the Merger, including any documents submitted in connection with requesting approval for the Merger.
3. All correspondence between the Charity Commission and The Godolphin and Latymer School Foundation or Redcliffe School Trust Limited or Redcliffe Gardens School in connection with the proposal for the Merger and any approval sought for the Merger.
4. Any approval documentation issued by the Charity Commission in connection with the Merger.
5. All correspondence between the Charity Commission and The Godolphin and Latymer School Foundation or Redcliffe Gardens School in connection with the registration of the merger between The Godolphin and Latymer School Foundation and Redcliffe School Trust Limited.
6. Correspondence received by the Charity Commission from Redcliffe Gardens School and/or The Godolphin and Latymer School Foundation since 1 January 2023 in connection with the decision taken by The Godolphin and Latymer School Foundation and the Board of Governors of Redcliffe Gardens School to close Redcliffe Gardens School at the end of summer term 2023."
7. On 23 May 2023, the Charity Commission responded, providing some information within the scope of the request but refused to provide the remainder relying on section 31 and 40(2) of FOIA as the bases for doing so.
8. The complainant requested an internal review on 8 June 2023. The Charity Commission provided the outcome of its internal review on 20 July 2023 upholding its original position.

### **Scope of the case**

---

9. The complainant contacted the Commissioner on 11 August 2023 to complain about the way their request for information had been handled.
10. The Commissioner wrote to the Charity Commission for its submissions in respect of this case and, in response, the Charity Commission

disclosed further information to the complainant on 9 October 2023, but maintained its position as regards section 31 of FOIA in respect of the withheld information and also argued that section 41(1) (information provided in confidence) would apply to the withheld information.

## **Reasons for decision**

---

11. Section 31(1)(g) of FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the exercise of any of the public authority's purposes specified in subsection (2).
12. Those purposes include "ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise" (31(2)(c)); "protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration" (31(2)(f)); and "protecting the property of charities from loss or misapplication" (31(2)(g)).
13. The Charity Commission referenced the above three purposes in its submissions to the Commissioner.

## **The Charity Commission's position**

14. The Charity Commission explained to the complainant that the withheld information consisted of a Serious Incident Report ("RSI") submitted by The Godolphin and Latymer School Foundation (the "Foundation") on 15 March 2023 pertaining to the proposed closure of Redcliffe Gardens School. The Foundation subsequently submitted a further RSI later on 24 March 2023 which provided an update to the previous RSI, which has also been withheld by the Charity Commission.
15. The Charity Commission explained to the complainant that the RSI process is an important regulatory tool which allows it to engage with the most high-risk incidents and situations at charities when they are proactively, and voluntarily, reported to the Charity Commission at an early stage. The Charity Commission stated that it would not become aware of many of these incidents without this reporting tool, and it enables the Charity Commission to ensure that charity trustees are meeting their legal duties in responding to serious incidents as soon as possible.
16. The Charity Commission has explained that disclosure of the withheld information would be likely to prejudice the function of the RSI process because charities and other interested parties would be reluctant to co-operate or provide full disclosure for fear of the information being made public at an early stage before a full investigation has taken place. The

Charity Commission asserts that such reluctance may also lead to the reporting of incidents at a later stage, which would limit the number of regulatory options available to it. The Charity Commission contends that this would be likely to hinder its role as an effective and efficient regulator of charities in England and Wales.

### **The complainant's position**

17. In their request for information dated 25 April 2023, the complainant indicated that they were making the request "for and on behalf of parents of current pupils at Redcliffe Gardens School". The concern raised is that the Foundation stands to make an alleged profit of £5 million as a result of the merger of the two charities and the future sale of assets formerly belonging to Redcliffe Gardens School.
18. The complainant is of the view that the requested information will provide greater clarity of the actions of the Foundation and that "it is in the public interest that a higher level of transparency is applied, and seen to be applied, when said actions result in closure of public benefit activities and loss of employment."
19. In addition, the complainant believes that "it is in the public interest that a robust debate be had on whether larger charities have an ethical obligation [with regard to] the underlying assets of smaller charities they take over." and that disclosure of the withheld information could help inform that debate.
20. Furthermore, the complainant contends that it is in the public interest "for public confidence in the system at large, that the Charity Commission be seen as proactive and transparent in situations such as these."
21. In their complaint form to the Commissioner the complainant stated: "We are specifically pointing out a situation where the commission may not be effectively regulating a charity. Should that turn out to be the case, the protection offered to said charity by the failure to provide this information may embolden other charities, thereby having the exact opposite effect to the one intended by the exemption quoted."
22. The complainant is also unhappy that the Charity Commission introduced another exemption at a late stage, namely, section 41(1).

### **The Commissioner's view**

23. The Commissioner accepts the potential prejudice claimed by the Charity Commission which clearly relates to the interests the exemption contained at section 31(1)(g), by virtue of section 31(2)(c)(f) and (g) is designed to protect.

24. The Commissioner is also satisfied that the prejudice being claimed is "real, actual or of substance", and that there is a causal link between disclosure of the withheld information and the prejudice claimed.
25. The RSI process allows charities themselves or third parties to raise any issues or concerns with the Charity Commission on a confidential basis. It is clearly logical to argue that the disclosure of the withheld information would be likely to prejudice the function of the RSI process in the future. Disclosure would be likely to deter charities from proactively reporting serious incidents at an early stage, would be likely to hinder the free flow of often sensitive information and would discourage those that would normally use the process from doing so. This would be likely to hamper the Charity Commission's ability to identify issues falling within its regulatory remit efficiently and effectively.
26. Being a qualified exemption, section 31 is subject to the public interest test.

### **Public interest test**

27. In terms of the public interest test, the Commissioner is satisfied that the public interest rests in maintaining the exemption. The Commissioner recognises that there will be a number of parents who will want to understand the process that has ultimately led to the closure of their children's school. He accepts there is a public interest in openness and transparency and in allowing access to information to enable the public to understand how the RSI process works. However, there are no significant or overwhelming wider public interest arguments in favour of disclosure of the particular withheld information in this case.
28. The Commissioner considers the public interest rests in maintaining the exemption and the ability of the Charity Commission to use the RSI tool effectively in future, with the full co-operation and assistance of parties required to assist that process. It is not in the public interest to hinder the ability of the Commission to carry out its function as the regulator of charities.
29. In their complaint to the Commissioner, the complainant did not challenge the application of section 40(2), and so the Commissioner has not investigated the redactions made as a result of section 40(2) in this case.
30. In addition, the Commissioner has not investigated the application of section 41(1), as section 31 applies to the withheld information in its entirety.

## **Procedural matters**

---

31. As a result of the disclosure of further information on 9 October 2023, following the Commissioner's intervention, the Commissioner considers that the Charity Commission has breached section 10(1) of FOIA as it did not provide all of the non-exempt information that it held within the statutory time limit.

## Right of appeal

---

32. 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)

33. 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.
34. 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 .....**

**Roger Cawthorne**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**