

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 2024

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Charity Commission for England and Wales (the Charity Commission) for a copy of the Reporting Serious Incidents and the correspondence associated with it, in relation to a named charity.
2. The Commissioner's decision is that the Charity Commission correctly cited section 31(1)(g) (law enforcement), with subsection 31(2)(c) and (f), of FOIA to refuse to disclose the requested information, and that the public interest favoured maintaining the exemption. However, in failing to issue an appropriate refusal notice confirming the exemption it ultimately came to rely upon, within the statutory timescale, the Charity Commission has breached 17(1) of FOIA.
3. The Commissioner does not require further steps, as a result of this decision notice.

Request and response

4. On 1 June 2023, the complainant wrote to the Charity Commission and requested information in the following terms:

“Under the Freedom of Information Act I here request:

 - a) Copies of both of the [redacted]RSI (reporting serious incidents) submitted on 2014 and 2017 including any enclosures or attachments.
 - b) Copies of all correspondence between [redacted] (including any of the legal or other representatives) and the Charity Commission consequent upon these RSI report, including any enclosures and attachments.”
5. On 28 June 2023, the Charity Commission responded stating that it could neither confirm nor deny whether it holds the information, falling within scope of the request and that the duty in Section 1(1)(a) of FOIA does not apply by virtue of sections 31(3) and 41(2).
6. Upon receiving this response, the complainant submitted an internal review request on 2 July 2023.
7. After contact by the Commissioner, the Charity Commission provided its internal review response on 28 March 2024, in which it confirmed that it was no longer relying on sections 31(3) and 41(2) of FOIA but was instead relying on sections 31(1)(g), 41(1), 40(1) and 40(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 26 February 2024 to complain about the way their request for information had been handled.
9. The request concerned the reporting of historic abuse allegations, by the named charity, to the Charity Commission, in 2014 and 2017, using the RSI tool.
10. In submissions to the Commissioner, the Charity Commission confirmed that it was no longer relying on section 40(1) of FOIA.
11. The Commissioner considers that the scope of his investigation is to examine the application of sections 31(1)(g), 41(1) and 40(2) of FOIA.
12. As the Charity Commission has applied all three exemptions to the withheld information, the Commissioner will firstly examine the application of section 31(1)(g) of FOIA.

13. Should the above exemption not apply to the withheld information, the Commissioner will go onto consider the application of sections 41(1) and 40(2) of FOIA.

Reasons for decision

Section 31-law enforcement

14. Section 31(1)(g) of FOIA allows a public authority to withhold information if its disclosure under the Act would or would likely to prejudice the exercise by any public authority of its functions, for any of the purposes specified in section 31(2).
15. The Commissioner accepts that the Charity Commission is formally tasked with certain regulatory functions under the Charities Act 2011¹
16. The Charity Commission has withheld the requested information because it believes its disclosure would be likely to prejudice its statutory functions under sections 14 and 15 of the Charities Act 2011, specifically 15(2) which describes its function as encouraging and facilitating the better administration of charities.
17. The Charity Commission is specifically concerned 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 exist or may arise,
 - (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration.”
18. The Charity Commission’s role is to increase public trust and confidence in charities and promote compliance by charity trustees with their legal obligations. Part of its role is to identify and investigate apparent misconduct or mismanagement in the administration of charities and take appropriate informal or regulatory action.

¹ <https://www.legislation.gov.uk/ukpga/2011/25/contents>

19. In its internal review, the Charity Commissioner comments that the request is about the reporting of serious incidents by the charity, and that the reporting of serious incidents serves three purposes:
 - to ensure trustees are fulfilling their duties by addressing risks to the charity;
 - to allow the Charity Commission to provide regulatory advice and;
 - to help the Charity Commission to assess the scale and effects of incidents across charities, identify trends and understand sector-wide risks.
20. It further explains that information relating to serious incidents, reported to the Charity Commission, falls within its regulatory remit, and that the RSI is a useful regulatory tool through which the Charity Commission can “become aware of the risks that charities are facing” and that it would be “difficult to obtain this information as efficiently by other means”.
21. When considering the likely prejudice to its regulatory functions, the Charity Commission explained that disclosure would prejudice the above regulatory tool, as an “adverse interference may be taken by a charity’s stakeholders about whether a charity has or has not reported serious incidents” and may deter charities from reporting at an early stage.
22. The complainant argues that disclosure would not be prejudicial to the function at 31(2)(c) and(f) and that they would argue to the contrary that disclosure in this case would “demonstrate, support and actively enhance the effectiveness of the Charity Commission’s functions as described in the Act.”
23. However, 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) and(f). He has therefore gone on to consider the public interest test.

Public interest test

Factors in favour of disclosure

24. The complainant argues that disclosure of the requested information would help clarify “whether or not the charity acted appropriately when they were made aware of the abuse, and whether or not the Charity Commission discharged its statutory responsibilities once it became aware.”

25. The Charity Commission acknowledged that disclosure would assist in determining whether the specific charity had acted appropriately or not.
26. The Charity Commission also acknowledges that there is a public interest in how "religious charities respond to allegations of abuse" and the reporting of serious incidents.

Factors in favour of maintaining the exemption

27. There is a strong public interest in avoiding the prejudice outlined in paragraph 21 and the Charity Commission argues that this would not be in the public interest.
28. The Charity Commission states that the public interest in transparency and accountability is met through disclosure of its policies, guidance, annual report, and the final report of the Charity Commission safeguarding taskforce. It further explains that where its regulation in a specific case meets the public interest in disclosure about its regulatory activities, it does publish statements about its work².

The balance of the public interest test

29. The Commissioner acknowledges the complainant's arguments in favour of disclosure and their strength of feeling with regards to the disclosure of the requested information. He also recognises the distressing nature of the events that led to the complainant contacting the Charity Commissioner.
30. The Commissioner understands that some weight must also 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 decisions are made and in turn fosters trust in public authorities.
31. 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 alerted to potential risks, and not discourage early reporting.

² <https://www.gov.uk/government/publications/charity-inquiry-watch-tower-bible-and-tract-society-of-britain/charity-inquiry-watch-tower-bible-and-tract-society-of-britain>

32. 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 considers would be negatively affected by disclosure of the requested information.
33. The Commissioner has therefore concluded that, in all the circumstances the balance of the public interest lies with maintaining the exemption under section 31(g) of FOIA.
34. As the Commissioner has found that section 31(1)(g) of FOIA applies to the withheld information, and that the public interest lies with maintaining the exemption, it has not been necessary for him to consider the application of sections 40(2) and 41(1) to the information.

Procedural matters

35. Under section 17(1) a public authority that is relying upon an exemption to withhold information, must issue a refusal notice within 20 working days.
36. As the Charity Commission did not provide a refusal notice specifying the exemption it ultimately came to rely upon to withhold information, within 20 working days, it breached section 17(1) of FOIA.

Other matters

37. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
38. In this case the complainant requested an internal review on 2 July 2023 and the Charity Commission provided the outcome of its review on 28 March 2024, over eight months later. The Commissioner reminds the Charity Commission of the Code of Practice and urges it to respond in a timely manner.

Right of appeal

39. 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

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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