



**IN THE FIRST-TIER TRIBUNAL**  
**GENERAL REGULATORY CHAMBER**  
**(INFORMATION RIGHTS)**

**Appeal No: EA/2017/0015**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50631941**

**Dated: 12 January 2017**

**Appellant: Narain Chand Kaul**

**Respondent: The Information Commissioner**

**2nd Respondent: The Charity Commission for England and Wales**

**Heard on the papers at: Fleetbank House**

**Date of Hearing: 23 August 2017**

**Before**

**Chris Hughes**

**Judge**

**Dave Sivers and David Wilkinson**

**Tribunal Members**

**Date of Decision: 17 October 2017**

**Date Promulgated: 17 October 2017**

**Subject matter:**

**Section 31 Freedom of Information Act 2000**

## **DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 12 January 2017 and dismisses the appeal.

### **REASONS FOR DECISION**

#### **Introduction**

1. The Appellant in the case has been engaged in a bitter dispute about the administration of a charity which has involved long-running litigation. On 7 February 2016 he wrote to the Charity Commission asking for information about its dealings with the charity:-

*“All we want is information about your correspondence with the charity trustees and their answer and finally, your decision.”*

2. The Charity Commission replied on 25 February 2016 relying on the exemption from disclosure contained in section 31 FOIA. This provides, so far as is relevant:-

*“Law enforcement.*

*(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*

*....*

*(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),*

*(2) The purposes referred to in subsection (1)(g) to (i) are—*

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

*(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,*

*(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,*

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

*(h) the purpose of recovering the property of charities,*

...”

3. The Charity Commission is responsible for the oversight of the many tens of thousands of charities in England and Wales, helping ensure that they comply with the law and that their assets are protected. In its response to the Appellant it explained its role as including: *increasing trust and confidence in charities, promoting compliance by charity trustees with their legal obligations, identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking appropriate remedial or protective action in connection with misconduct or mismanagement...*” and that any information it had was held in furtherance of its statutory role.
4. Having explained its role the Charity Commission explained that the disclosure of the information would be likely to prejudice its functions because if details of its correspondence were routinely disclosed the charities and other parties with which it dealt would be reluctant to co-operate with it or enter into frank exchanges with it. In addition disclosure could prejudice the decision-making about regulatory action. These consequences would prejudice the Charity Commission’s ability to take regulatory action. The public interest lay in not disclosing the information. On review the Charity Commission maintained this position.
5. The Appellant complained to the Information Commissioner (the ICO), who investigated. In her decision notice she noted that the Charity Commission’s role was protecting charities against misconduct and mismanagement. She considered the likely impact of disclosure would result in an impairment of its abilities to protect charities. While there was some interest in disclosing how a particular charity was functioning and in how the Charity Commission carried out its role she concluded that the strong public interest in an effective regulator for charities outweighed this and she upheld the Charity Commission’s position.

#### The appeal to the Tribunal

6. The Appellant in the grounds of appeal set out three issues which, he argued, the ICO had failed to investigate. All three related to the administration of the charity in question and were, in essence, criticisms of how the Charity Commission had handled the charity. The appeal notice culminated in the statement:- “*Since then, the Charity*

*Commission has always favoured the wrong people*". In the statement of the outcome he was seeking from the appeal he wrote:- *"I want the information revealing the whole truth. If that is not possible, the alternative is that they disclose correspondence between the charity trustees and the Charity Commission"*. Annexed to the statement of case was a document which set out his concerns about the history of the charity and the Charity Commission's dealings with it. He argued that the charity trustees had failed to comply with the law. He stated *"The Charity Commission wants to argue and focus only on one point, not my wider complaint. I did not ask for exempt disclosure. The Charity Commission wants to argue within section 31(2). Purchaser should have the same rights to argue."* He argued that people interested in the charity and its work wanted to know what was going on, that in his view the charity was now controlled by a few people and there was no public interest in maintaining the exemption:- *"..trustees do not have any public interest and all the public is outside against them."*

7. Although the Appellant feels strongly about the charity with which he is concerned and, to that extent, his notice of appeal is an affirmation of the importance of disclosing information about that charity, he did not engage with the position of the Charity Commission and ICO that disclosure in this case would prejudice many others by weakening the ability of the Charity Commission to regulate effectively.
8. In replying the ICO argued that there were no identifiable grounds of appeal which set out why the decision notice was not in accordance with the law. It was not the role of the ICO or the tribunal to consider how the Charity Commission had dealt with the Appellant's underlying concern. In supporting the ICO's stance the Charity Commission noted that it functioned under law and so was subject to the High Court and its regulatory decisions could be challenged by judicial review or certain appeals within the Charity jurisdiction of the tribunal. The Charity Commission relied on all the subsections of section 31(2) listed above and emphasised the value of the charity Commission being able to promote the resolution of disputes about the running of

charities so as to avoid the diversion of charitable resources to legal costs.

Subsequent submissions by the Appellant and Charity Commission reinforced points already made.

### Consideration

9. The Appellant feels very strongly about this charity. However he has been unable to see beyond his very personal concerns to the fundamental argument adopted by the Charity Commission and the ICO. This is that maintaining a significant degree of confidentiality about the contacts between the Charity Commission and those it works with is more effective in building effective working relationships and securing the information it needs to regulate effectively. Parliament, in legislating FOIA, clearly recognised that all sorts of bodies concerned in law enforcement benefitted from that confidentiality in the effective conduct of their affairs. The tribunal accepts the considered opinion of the Charity Commission (endorsed by the ICO) that disclosure would be likely to prejudice the effective working of the Charity Commission. The arguments advanced by the Appellant have very little weight against this. The balance of public interest is clearly in maintaining the exemption.
10. This appeal is without merit. The ICO's decision is correct in law. The appeal is dismissed.
11. Our decision is unanimous.

Judge Hughes

Date: 17 October 2017