



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 4 July 2006

Public Authority: Charity Commission

**Address: Woodfield House
Tangier
Taunton
Somerset
TA1 4BL**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has dealt with the Complainant's request in accordance with Part I of the Act.

In the light of this decision, there are no remedial steps to be taken by the public authority.

- 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
 - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
 - 1.2 Where a complainant has made an application for a decision, unless:
 - a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.
 - 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.



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2. The Complaint

2.1 The complainant was formerly chairman of the trustees of a charity (the charity) which is registered with the public authority (the authority). On 28 March 2005 the complainant, writing as chairman of the trustees of the charity, made the following request to the authority in accordance with section 1 of the Act:

the trustees of this charity formally request that [the authority] divulge to us full details, including the informant's identity, of the source and nature of the information which triggered their action with us.

2.2 On 21 April 2005, the authority provided the complainant with information relating to the second of these requests. The authority also confirmed that they held the information sought about the source of information to them (the source) but refused to disclose it citing three exemptions: section 40 (personal information), section 41 (information provided in confidence) and section 31 (law enforcement).

2.3 On 27 June 2005, the complainant asked the authority to review their decision not to disclose the information he sought about their source. On 1 August, the authority responded by saying that they would not divulge information that contained personal data as defined by the Data Protection Act 1998 and that, in this case, the information had been provided in confidence and so was exempt under section 41 of the Act.

2.4 On 25 October 2005, the complainant asked the Commissioner to investigate: he said also that he was ceasing to be a trustee of the charity from 1 November. He subsequently confirmed to the Commissioner's staff that he wished to continue with his complaint in a personal capacity and said that he intended to tell past and present trustees of the charity the outcome of the Commissioner's investigation.

2.5 On 3 May 2006, the authority provided the Commissioner's staff with copies of their correspondence with the complainant, and with evidence that the source of their information about the charity had not only provided the information in confidence but had wanted that confidentiality to remain, then and for the future.

2.6 After receiving information from the source, the authority itself examined the financial accounts submitted by the charity and then commenced their enquiries.

3. Relevant Statutory Obligations under the Act

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –



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- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 40

40. - (2) Any information to which a request for information relates is also exempt information if-
- (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied.
- (3) The first condition is-
- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

Section 41

41(1) Information is exempt information if –

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

4. Review of the case



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- 4.1 The complainant asked the Commissioner to look into his request that the authority disclose the information sought, i.e. the identity of their source. The Commissioner's staff obtained copies of relevant correspondence from both the complainant and the authority; the correspondence from the authority included a copy of a confidential letter from the source.
- 4.2 The complainant said that he had strong concerns about how the authority had raised the matter with the charity and about how they had handled it. The charity had been put to considerable trouble and expense, both in lost fundraising and legal bills, and accordingly he considered that he had a right to the information sought. He asked the Commissioner to intervene in his request for the identity of the person or persons who had initiated action by the authority with the charity from March 2004.
- 4.3 The authority responded to the complaint on 21 April 2005, invoking sections 40 and 31 of the Act in addition to section 41 but, in their report of the outcome of their internal review, the authority maintained that they would not divulge information that contained personal data (the section 40 exemption) but focused on section 41. The authority said that there was a strong case to be made in the public interest for them to act in order to maintain the standards of charities and to investigate complaints into their conduct. To disclose the source of investigations would jeopardise their investigatory role and potentially undermine the principles of the charity system in the eyes of the public. The authority also said that their enquiries into the charity had followed an examination of the financial accounts submitted by it. The Commissioner has seen evidence that the authority examined the annual accounts submitted by the charity before querying aspects of the charitable activity evidenced within those accounts.

Section 41 (information provided in confidence)

- 4.4 The Commissioner is satisfied for the following reasons that section 41 is engaged.
- 4.5 It is clear that the information was obtained by the authority from the source and not generated by the authority itself. The information therefore falls within section 41(1)(a) of the Act.
- 4.6 The Commissioner is satisfied that the information was provided to the authority in circumstances which created an expectation of confidentiality. The authority subsequently approached the source which said that they believed they had been speaking to the authority in confidence at the time and wished that confidence to be preserved both now and in the future. The Commissioner is also satisfied that, by its very nature (issues about alleged breach of charity law), the information must comprise information which is more than merely trivial and, if disclosed, which



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would be likely to undermine the duty of confidence owed by the Authority in their communications with members of the public.

- 4.7 The Commissioner is also satisfied that were the requested information disclosed, the confidential source would have the standing to take action through the courts for breach of confidence. In summary, the Commissioner is persuaded that the requested information is exempt by virtue of section 41 of the Act.

Other sections of the Act

- 4.8 In the Commissioner's view section 41 is the most relevant and clearly applicable exemption and is of itself sufficient to warrant withholding the information.
- 4.9 The Commissioner also noted that the section 40 exemption had been cited by the authority since the information sought is third party data. With regard to personal data of which a third party is the subject, this is exempt where disclosure of that data would contravene any of the data protection principles in the Data Protection Act 1998 (the "DPA"). This is an absolute exemption which means there is no requirement to consider the public interest. The Commissioner is satisfied that the information requested by the complainant constitutes personal data. The First Data Protection Principle (the First Principle) requires that personal data should be processed fairly and lawfully and only where one of the conditions listed in Schedule 2 (or, in the case of sensitive personal data, one of the conditions in Schedule 3) of the DPA is satisfied. The Commissioner is of the view that a disclosure would be unfair and would therefore contravene the First Data Protection principle. The reason for this view is that the information was offered and received at the time in the clear expectation of confidence and the data subject, the source, has since asked for that confidence to be maintained.
- 4.10 The Commissioner did not proceed to a decision on section 31 of the Act which was also cited by the authority during their initial refusal of these matters, although he accepts that this section may well be relevant to the circumstances.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the public authority has dealt with the Complainant's request in accordance with the requirements of Part I of the Act:

6. Action Required



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6.1 In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he agrees that the exemption claimed applies and that the public interest requires the authority to continue to withhold the information requested.

7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the Tribunal). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 4th day of July 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**