

Freedom of Information Act 2000 (Section 50)

Decision Notice

10 December 2008

Public Authority: The Charity Commission
Address: PO Box 1227
Liverpool
L69 3UG

Summary

The complainant requested from the Charity Commission information regarding support for changes to the Singh Sabha London East registered charity. The Charity Commission identified that the requested information comprises two documents and stated that personal data contained in those documents was being withheld on the basis of the exemption under section 40(2) of the Act. The Commissioner has investigated and agrees with the Charity Commission's application of section 40(2) in relation to that personal data. However he finds that the refusal notice issued by the authority did not comply with the requirements in section 17(1) and 17(7). The Commissioner also finds that the Charity Commission breached section 1(1)(b) and 10(1) in failing to provide the date when the Charity Commission was provided with the documents within the time for compliance.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Act. This Notice sets out his decision.

The Request

2. On 18 April 2005 the complainant, via his solicitor, made the following request for information to the Charity Commission regarding a registered charity, Singh Sabha London East:

"1. Please provide details of the 'new information provided to me in February' referred to in the second paragraph of your letter."

2. Please provide us with copies of the documentation 'which shows that the 2003 amendments did in fact have written support from the membership and refers specifically to Clause 2'. You say that you have written evidence of support from over 75 members. When was this written evidence provided to your office? Have the Commission asked the Executive Committee as to why this written evidence was not provided at a much later stage?"

3. The Charity Commission replied to the request on 22 April 2005, explaining its position and also stating in relation to part 2 of the request "Copies of this information are now enclosed. For reasons of Data Protection, all personal data has been removed". The complainant was not informed by the Charity Commission of his right to request an internal review.
4. There was a sequence of correspondence between the Charity Commission and the complainant and his solicitor in which the latter two parties expressed their dissatisfaction with the response they had received on a number of issues.

The Investigation

Scope of the case

6. On 6 April 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

*"Refusal of information to the complainant under Freedom of Information Act 2005 (sic) consisting of a copy of new information including a resolution passed in the meeting mentioned above and a copy of the Video Cassette.
Abuse of Data Protection Act 1998 or any other related matter within your authority."*

7. The complainant's request for information can be split into the following three parts:

*(1) "details of the 'new information provided to me in February",
(2) Copies of the documentation which shows that the 2003 amendments did in fact have written support from the members...
(3) When was this evidence provided to your office.*

8. The requests for information were made after the complainant received a letter from the Charity Commissioner dated 5 April 2005. The Charity Commission wrote in that letter as follows:

"In the light of new information provided to me in February about the issues which are currently affecting Singh Sabha, I have undertaken an in-depth

case review in consultation with colleagues at the Commission. As a result, our view has been revised”.....

”We have now been provided with documentation which shows that the 2003 amendments did, in fact, have written support from the membership We have written evidence of support from over 75 members. In light of this new information, which we have considered thoroughly, it is now our view that the charity’s Constitution was amended validly...”.

9. In his investigation the Commissioner has therefore reviewed the way that the Charity Commission handled all three information requests. The information being withheld from the first and second parts of the request is an un-redacted copy of a letter dated 23 January 2003 and a list of 75 names, addresses and signatures, these have been withheld under section 40(2). The Commissioner has investigated whether the Charity Commission was correct in refusing to disclose this information. The information requested in part 3 of the request was disclosed during the internal review. The Commissioner has considered the late disclosure of this information and sets out his decision in relation to this late disclosure in the notice.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular, he has repeatedly expressed concerns and made allegations about the validity of a list of 75 names and the associated covering letter, as well as the propriety of the Charity Commission’s decision making procedures regarding the charitable status of Singh Sabha London East. The Commissioner has explained to the complainant that these issues are not within his remit under the Act and therefore he is not empowered to consider these concerns.

Chronology

11. Following the complainant’s letter to the Commissioner dated 6 April 2007, on 25 April 2007 the Commissioner wrote to the complainant and to the Charity Commission acknowledging receipt of the complaint.
12. On 28 November 2007 the Commissioner wrote again to the Charity Commission to seek clarification of aspects of its handling of the complainant’s request for information. The Commissioner asked the Charity Commissioner:
 - Why the responses sent to the complainant had made no reference to the Act.
 - What exemptions it wished to rely on
 - Why it had not informed the complainant of his right to request an internal review or appeal to the Commissioner
 - If the Charity Commission considered it had completed an internal review and for its procedures regarding internal reviews
 - For an un redacted copy of the information provided in response to the original information request

13. The Commissioner also wrote to the complainant on 28 November 2007 to clarify whether he had received copies of all the relevant correspondence. The complainant subsequently corresponded on a number of occasions with the Commissioner both in writing and over the telephone, providing additional background information and commenting on various aspects of his complaint.
14. The Charity Commission telephoned the Commissioner on 18 December 2007, acknowledging that errors had occurred in the handling of the complainant's request for information. The Charity Commission stated that it now proposed to undertake an internal review, which it agreed had not previously been undertaken, and would write direct to the complainant.
15. On 19 December 2007 the Charity Commission wrote to the complainant with the outcome of its internal review. It stated that the "particular information which brought about a change in case direction" comprised two items, namely a letter dated 23 January 2003 and a signed list of 75 names and addresses. It upheld its original refusal to disclose the information which it considered was subject to the personal data exemption in section 40(2) of the Act. That information was "a tabulated list of numbered names, addresses and signatures" and some information contained in a letter dated 23 January 2003 addressed to the President, Singh Sabha London East. The Charity Commission provided the complainant with a copy of the letter it had received from the charity but redacted from the letter the names addresses and signatures of the seven members who proposed the amendments to the charities constitutions. The Charity Commission also refused to disclose the table annexed to the letter under section 40(2) as it contained the names, addresses and signatures of a further 75 individual members who supported the amendments.
16. The Charity Commission also wrote to the Commissioner on 19 December 2007. It provided background information and also identified the "particular information which brought about a change in case direction", referred to both in the Charity Commission's letter dated 5 April 2005 and in the complainant's request, namely the letter dated 23 January 2003 and the table of 75 names. The Charity Commission provided to the Commissioner un-redacted copies of both items of information.
17. The Charity Commission also explained its handling of the complainant's request, expressing regret about the conduct of its correspondence with the complainant and also expressing regret that it had neither offered nor undertaken an internal review. It provided the Commissioner with copies of its current and draft internal procedures regarding the handling of freedom of information requests.

Findings of Fact

18. The Charity Commission have explained that the information falling within the scope of parts one and two of the complainant's request is a letter dated 23 the letter has been disclosed to the complainant. The un-redacted copy of the letter and the signed list of names and addresses are being withheld under section 40(2). The information requested in part 3 of the request was disclosed to the complainant at internal review.

Analysis

Procedural matters: Section 1(1) (General right of access) and Section 10 (time for compliance)

16. Section 1(1) states that any person making a request for information to a public authority is entitled to (a) be informed in writing by the public authority whether it holds the information requested and (b) if that is the case to have that information communicated to him.
17. Section 10(1) states that a public authority must comply with section 1(1) promptly and no later than the twentieth working day following the date of receipt.
18. The complainant made his request on 18 April 2005, the public authority failed to provide the complainant with the information requested in part 3 of his request until the internal review over two years later on 19 December 2007. By failing to provide the information requested until the internal review the Commissioner finds the Charity Commission breached the requirements of section 1(1)(b) and section 10(1) of the Act.

Section 17 (Refusal of request)

19. Section 17(1) states that a public authority which is relying on a claim that the information is exempt, must, within the time for complying issue a refusal notice which:
 - (a) states the fact that information is exempt,
 - (b) specifies the exemption in question, and
 - (c) states why the exemption applies.
20. The Charity Commission's refusal notice dated 22 April 2005 stated: "For reasons of Data Protection, all personal data has been removed". It neither referred to the exemption it was applying under the Act, nor did it inform the complainant of his right to request an internal review and thence to appeal to the Commissioner. The Commissioner therefore finds that the Charity Commission in its refusal notice failed to comply with sections 17(1) and 17(7) of the Act.

Exemption: Section 40(2) (Personal Data)

21. Section 40(2) provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the Data Protection Act 1998 (the "DPA").
22. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal information as:

*...data which relate to a living individual who can be identified
a) from those data, or*

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

23. The Charity Commission state that the names, addresses and signatures of the individuals contained in the two documents described above amounted to personal data and should therefore be exempt from disclosure under section 40(2) of the Act. The Commissioner notes that the information withheld from the letter dated the 23 January 2003 is the names, addresses and signatures of 7 members of Singh Sabha London East who proposed the changes to the Charities constitution and a list provided to the Charity Commissioner in February 2005 which contains the names addresses and signature of a further 75 members who supported the changes. The Commissioner accepts that this information constitutes personal data as defined above.
24. The Commissioner notes that the Charity Commission argue that disclosure of the names would be in breach of the first data protection principle as it would be unfair. The first data protection principle has two components:
 1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
 2. at least one of the conditions in DPA Schedule 2 is met.
25. The Charity Commission have explained that the request relates to the internal administration of a Charity, Singh Sabha London East (the charity). In 2003 amendments were made to the Charity's constitution and the legality of these amendments was in dispute. The Charity Commission stated that it has the power to determine whether the amendments to the constitution were made in accordance with the relevant procedures. However, the Charity Commissioner does not have the power to comment on the substance of the amendments themselves. In this case, the charities constitution required that any amendments are sponsored by 25 members of the charity. As the Charity Commission was not satisfied this requirement had been met, and therefore the amendments would not be being made in accordance with the constitution, in February 2005 the charity provided further information in the form of a signed list of sponsors to the amendments containing 75 names and the letter dated 23 January 2003. This enabled the Charity Commission to satisfy itself that the amendments to the Charity's constitution had been made in accordance with the constitution although it formed no view on the substance of the amendments themselves.
26. In considering the Charity Commission's application of section 40(2) to the information contained in the letter of 23 January 2003 and in the list provide in February 2005, the Commissioner must first decide, whether disclosure would be fair and lawful. The Commissioner has also considered if disclosure would be in accordance with Schedule 2, condition 6 of the DPA. This condition contains a three part test which must be satisfied:

- there must be legitimate interest in disclosing the information
- the disclosure must be necessary for a legitimate interest of the public and,
- even whether disclosure is necessary it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms and legitimate interests of the data subject.

27. The Commissioner considers that the same considerations apply to the individuals names, addresses and signatures in the letter and in the attached list as the only difference is that the letter contains the details of those proposing the changes and the attached list contains the details of those supporting the changes.

Address details and signatures of named individuals

27. The Commissioner has first considered the disclosure of the address and signatures of those individuals contained in the letter of January 2003 and the list submitted to the Charity Commission in February 2005. In doing so the Commissioner has considered whether disclosure of this information would be fair and lawful.
28. In considering whether disclosure of the individuals addresses and signatures would be fair and therefore in accordance with the requirements of the first data protection principle, the Commissioner has considered the following:
- The individuals reasonable expectations of what would happen to their personal data;
 - Whether the individuals specifically refused to consent to the disclosure of the requested information; and
 - Whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals.
29. The Commissioner does not consider that the individuals concerned would have expected their address and signature details to be disclosed to the public in relation to their respective proposal and support of the amendments in respect of this matter. The Charity Commission explained that the individuals have not consented to disclosure of their names, signatures and addresses in this context and would have had an expectation that their names, in this context, would not be disclosed. As outlined above, in order to assess the validity of the amendments, the Charity Commission required evidence that 25 members of the charity supported the amendment. In light of this the signatories to the letter and attached list would have expected the information to be disclosed to the Charity Commission for the purpose of assessing the validity of the constitutional amendments. However, in the Commissioner's view it does not follow that the signatories would have also expected their names and addresses to be made available to the wider public. The Commissioner also considers that disclosing an individual's address could cause the individuals unwarranted damage or distress.
30. The Commissioner notes that the complainant is seeking the information to determine if the amendments made to the charities constitution were valid.

Clearly under the Act the reason for the complainant's request is not a relevant consideration. However in considering Schedule 2, condition 6 of the DPA, the Commissioner recognises that there is a legitimate interest in the public having access to information which supports the validity of the amendments made by a charity. However he does not consider that disclosure of all the information is necessary to meet this purpose. In order to satisfy the legitimate interest of the public in confirming the validity of the amendments it *may* be necessary to see the names of those who signed in support of the amendments but he does not consider it is necessary to know the addresses of the individuals or to have access to their signatures.

31. In light of the above the Commissioner therefore considers that disclosure of the address and signature details of the individuals concerned would not be fair and would not be in accordance with Schedule 2, condition 6 of the DPA.

Names of individuals set out in the letter of January 2003 and list of February 2005

32. The Commissioner has also considered whether disclosure of the names of the individuals set out in the letter and list would be fair and lawful in accordance with the first data protection principle. Paragraph 28 above outlines the Commissioner's test in relation to 'fair and lawful.'
33. As discussed above at paragraph 29, the Charity Commission has explained why the individuals would not have a reasonable expectation that their names would be disclosed. On the basis of the above, the Commissioner also accepts that the individuals concerned would not have an expectation that their names, in the context of this information, would not be placed in the public domain. The Commissioner's guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:

'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'

34. The Commissioner notes that the individuals are acting in a personal capacity as members of a charity, Singh Sabha London East and not in any professional capacity. The Commissioner also notes that the charity of which they are members is not a public body and the individuals are not carrying out a public function in that respect. He further notes that the charities 11 March 1990 constitution states that an amendment proposal must be submitted to the executive committee and does not provide for any wider publication of the documents in question. The Charity Commission has submitted that on the basis of this aspect of the constitution the signatories would have a reasonable expectation that their privacy would not be compromised by wider publication. In

light of the above, the Commissioner accepts that the signatories expectation that there names would not be disclosed to the public was a reasonable one.

35. Further in considering Schedule 2, condition 6 of the DPA the Commissioner acknowledges that disclosure of the names of the individuals concerned *may* be necessary to meet the legitimate interest of the public in assessing the validity of the amendments to the charities constitution. In determining if disclosure of the names *is* necessary the Commissioner has considered if this legitimate interest can or has been met by any other method. The Commissioner notes that the complainant has already been provided with a redacted copy of the letter and he has been informed by the Charity Commission that the amendments had written support from over 75 members, the complainant has also received a blanked out list of the names.
36. The Commissioner does not consider that, in this case, disclosure of the names of the individuals who proposed and supported the amendments to the charities constitution is necessary to meet the legitimate interest of the public. In reaching this conclusion the Commissioner considered the fact that the Charity Commission has reviewed the question of whether the charities constitution was amended in accordance with the relevant procedure and it has communicated its findings. The Charity Commission has also confirmed the number of individuals who supported the amendments and has disclosed a copy of the relevant letter but redacted the names of both the individuals who proposed the amendments and the names of the individuals who supported them. This also demonstrates that evidence was supplied to the Charity Commission in making its determination that the amendments were valid.
37. Having concluded that the disclosure is not necessary to meet the legitimate interest of the public, the Commissioner has not gone on to consider whether disclosure would cause unwarranted interference (or prejudice) to the rights, freedoms and legitimate interests of the individuals concerned. However, the Commissioner wishes to highlight the fact that in this case the named individual's charity membership is also reflective of their religious beliefs.
38. The Commissioner finds that in this case section 40(2) is engaged as the disclosure of the individuals names contained in the letter dated 23 January 2003 and the names in the list provided to the Charity Commission in February 2005 would not be fair and would not be in accordance with Schedule 2, condition 6 of the DPA.

The Decision

39. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - It correctly applied the exemption from disclosure contained in section 40(2) of the Act to the names, address and signature details of individuals

as contained in the letter dated 23 January 2003 and the further list of 75 signatories provided to the Charity Commission in February 2005.

40. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- In that the refusal notice failed to state the exemption the public authority was applying to the information it withheld, in breach of section 17(1) of the Act.
 - The refusal notice also omitted to inform the complainant of his right to request an internal review and to appeal to the Commissioner; in breach of section 17(7) of the Act.
 - The requirements of section 1(1)(b) and section 10(1) were not complied with in so far as the public authority failed to disclose the information set out in part 3 of the complainant request within twenty working days of the request.

Steps Required

41. The Commissioner requires no steps to be taken.

Other matters

42. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Section VI of the Code of Practice (provided for by section 45 of the Act) makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that in the context of provisions in the Act a reasonable time for completing an internal review is 20 working days from the date of the request for review. He accepts that, in exceptional circumstances, it may be reasonable to take longer, but the total time taken should not exceed 40 working days.
43. In this case, the Charity Commission did not offer the option of an internal review of its refusal dated 22 April 2005. The Charity Commission only completed its internal review 19 December 2007 following communications with the Commissioner.

Right of Appeal

45. Either party has the right to appeal against this Decision Notice to the Information 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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

Dated the 10th day of December 2008

Signed

**Nicole Duncan
Information Commissioner**

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

Legal Annex

The Freedom of Information Act 2000

- 1 (1)** Any person making a request for information to a public authority is entitled –
- (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 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

- 17(1)** A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(), give the applicant a notice which –
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.

- 17(7)** A notice under subsection (1), (3) or (5) must –
- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
 - (b) contain particulars of the right conferred by section 50.

- 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 provision below is satisfied.

- 40(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 other 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 33(1) of the Data Protection Act 1998 (which relates to manual data held by public authorities) were disregarded.”

The Data Protection Act 1998

SCHEDULE 1

The Data Protection Principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met....

SCHEDULE 2

Conditions relevant for purposes of the first principle: processing of any personal data

1. The data subject has given his consent to the processing.....

5. The processing is necessary –

- (a) for the administration of justice,
- (aa) for the exercise of any functions of either House of Parliament,
- (b) for the exercise of any functions conferred on any person by or under any enactment,
- (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department
- (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

6(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.