

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 October 2015

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

Decision (including any steps ordered)

1. The complainant made a freedom of information request to the Charity Commission for details of complaints made against Charities which involved issues of radicalisation and extremism. The Charity Commission refused the request under section 12(1) of FOIA (appropriate limit).
2. The Commissioner has investigated the complaint and found that the Charity Commission applied section 12(1) correctly but that it had failed to provide advice and assistance in accordance with section 16.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Charity Commission shall provide the complainant with advice as to how his fourth request of 23 December 2014 could be refined to bring it within the cost limit or else it should confirm that it is not possible to refine the request and no information can be supplied within the appropriate limit.
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. This decision notice relates to a request for information the complainant made to the Charity Commission on 23 December 2014. This followed an earlier request he had made on 18 November 2014 which he is not challenging. The Commissioner has detailed the full history of the request below for ease of reference and to avoid any confusion.
6. On 18 November 2014 the complainant made a freedom of information request to the Charity Commission regarding complaints made against charities which involved the issue "extremism and radicalisation". The request read as follows:
 1. *Please provide the current number of charities tagged with the 'extremism and radicalisation' issue code?*
 2. *How many of those charities are Muslim charities?*
 3. *Please provide how many charities have had the tag removed since the tag was created?*
 4. *Please provide the dates on which the list of charities with this tag has been amended. Please provide the number of charities either added or removed from the list on the date of those amendments.*
 5. *Please inform if it is the charity commission that determines which charities receive the 'radicalisation and extremism' tag or is it another authority outside of the Commission?*
 6. *Please provide the job title of the person responsible for determining which charity the 'radicalisation and extremism' tag is applied to or redacted from.*
 7. *Please provide the job title of the person responsible for instituting the 'radicalisation and extremism' issue code.*
7. The Charity Commission responded to this request on 22 December 2014 when it explained that the request was based on a misunderstanding and that issue codes were not applied to individual charities but rather were a means of identifying which issues arose in its casework. Therefore, the Charity Commission took the view that most of the requested information was not held. It said that where information on its casework was held and was relevant to the request it was being

withheld under section 22 (information intended for future publication) and section 31(g) (Law enforcement).

8. The complainant contacted the Charity Commission again on 23 December 2014 with what he described as 'some follow up questions' and which are repeated below. It is this request which is the subject of the complaint.

1. You have said that issue codes are not applied to charities but only to cases. Please clarify why you feel this distinction is important since the cases are connected to charities?

I should note that in a previous FOI from our organisation we asked "Do any of the 55 charities know this issue code has been applied to them?"

Your Answer was:

"The application of issue codes is an aspect of internal case management and administration. The Commission has not made the 55 Charities aware that this issue code has been applied to them."

You did not make the distinction in your answer and crucially you confirmed that 55 charities were affected. Please explain?

2. The Chairman of the Commission in an interview with the Telegraph informed them "The regulator has begun scrutinising 86 British charities which it believes could be at risk from extremism, including 37 working to help victims of the Syria crisis, according to new figures released today."

<http://www.telegraph.co.uk/news/worldnew...>

At the time that article were those 86 charities connected with cases that have had the issue code 'radicalisation and extremism' applied?

3. Please provide the current number of cases that have had the issue code 'radicalisation and extremism' applied and clarify how many charities are connected with these cases?

4. How many charities have had allegations of 'extremism' upheld by the Commission? If it is not the commission that determines the correctness of such allegations please inform us which body is?

9. The Charity Commission responded on 23 January 2015 when it informed the complainant that these new requests were refused under section 12(1) of FOIA because it estimated that the cost of complying with the requests would exceed the appropriate limit of £600. It also

said that the costs of complying with the requests had been aggregated with the costs of complying with the earlier requests of 18 November 2014.

10. The complainant subsequently asked the Charity Commission to carry out an internal review of its handling of the request and it presented its findings on 12 February 2015. This review upheld the decision to refuse the request under section 12.

Scope of the case

11. On 6 February 2015 the complainant contacted the Commissioner to complain about the Charity Commission's decision to refuse to comply with his request by relying on section 12(1) of FOIA.
12. During the course of the Commissioner's investigation the Charity Commission wrote to the complainant with a further explanation of why it considered the request would exceed the appropriate limit. In doing so it confirmed that it was no longer aggregating the costs of complying with his request of 23 December 2014 with his earlier request of 18 November 2014.

Reasons for decision

Section 12 – Appropriate limit

13. Section 12(1) provides that a public authority is not obliged to comply with a request if it estimates that the cost of complying with that request would exceed the appropriate limit. The appropriate limit for central government departments (the Charity Commission is a non-ministerial governmental department) is £600.
14. In estimating the costs it expects to incur in complying with a request a public authority is allowed to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.

15. The Charity's Commission's arguments for applying section 12 focused on the burden imposed by complying with the complainant's fourth question of 23rd December 2014. It said it had interpreted this as a request for "in how many cases has the Commission investigated allegations of extremism and found that those allegations had some merit". It had also confirmed this with the complainant and noted that he had not objected to this interpretation. To comply with this request the Charity Commission said that it would need to go through every relevant case where allegations of extremism had been made (both open and closed) and identify in which of these cases the allegations/concerns were not substantiated and so its examination of them ceased. For other open cases, it said that its consideration of the allegation would be ongoing and no conclusions reached. For the remaining cases the Charity Commission explained that it would need to determine whether it had established that the allegations/concerns posed such a level of risk to the charity that it found the trustees had or still needed to take action to manage/resolve such risks to protect the charity, or that the trustees had properly assessed and managed the risks and determined that no action was necessary. It said that only then would it be in a position to count these cases as cases in which the allegations had been upheld/had some merit.
16. It said that for this part of the request alone it estimated that it would take between 36 mins and 3 hours and 42 mins to review each of the cases relevant to the request – i.e. cases involving allegations of extremism. This figure was based on a sampling exercise carried out by the Charity Commission where it selected four cases at random.
17. The Charity Commission explained that allegations of extremism may be made at different stages in a case and it may not be the only issue being considered, so whether the allegation was substantiated or not may be resolved at different stages in a case. Therefore, in order to accurately identify the requested information it would need to review all of the documents on a case and as noted above, it found that this took between 36 minutes and 3 hours 42 minutes per case. It is clear to the Commissioner that given the large number of cases potentially relevant to the request, even using the lower figure the time needed to comply with the request would greatly exceed the appropriate limit. The Commissioner has given some further details about the extent of information that would need to be reviewed to comply with the request in a confidential annex to this decision notice.
18. In addition to this, the Charity Commission has said that it will hold information on other cases where allegations of extremism have been made but which were considered before it began using the issue codes which it explained it uses to identify and classify the issue of concern

under consideration in cases. The Commissioner was told that to search for this information would be a massive task especially as the word 'extremism' may not have been used. This would be in addition to the time involved in reviewing the information associated with any cases found using the issue codes referred to above.

19. Under FOIA a public authority may aggregate the costs of complying with two or more requests received from an applicant within a period of sixty working days where the requests are, to any extent, for similar information. Multiple requests within a single item of correspondence are separate requests for the purposes of FOIA and the effect of this is that the Charity Commission may refuse to comply with any of the complainant's requests if the cost of complying with just one of the requests, or a combination, would exceed the appropriate limit.
20. The Commissioner has considered the arguments made by both parties and is satisfied that the cost of complying with the fourth request would exceed the appropriate limit and therefore the Charity Commission was entitled to rely on section 12(1) to refuse all of the complainant's requests of 23 December 2014. It is clear that answering the complainant's requests would be far from straightforward and involve a great deal of effort on the part of the Charity Commission. This is compounded by the fact that there is no timeframe to the complainant's fourth request and so it would need to search through all of its cases to identify what information it held.
21. The Commissioner has found that the Charity Commission's estimates of the time needed to comply with the request are reasonable and that only relevant costs have been taken into account. Therefore, the Commissioner's has decided that section 12(1) was correctly applied.

Section 16 – advice and assistance

22. Section 16 of FOIA provides that it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
23. Under section 16(2) a public authority is considered to have met that duty if it follows the section 45 code of practice. The section 45 code of practice is guidance, produced by the Secretary of State, on how public authorities should deal with information requests. It includes what is expected from a public authority in terms of advice and assistance when a request is refused under section 12.

24. Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."

25. On this point the Charity Commission noted that its internal review had advised the complainant about the time needed to comply with each of the four requests (which it aggregated) and therefore it was open to the complainant to refine his request if he so wished. Therefore, it considers that it has complied with his request by explaining which of his requests could be complied with within the appropriate limit. However, the Commissioner notes that the Charity Commission has not given any advice or assistance to the complainant about how his fourth request could be refined to bring it within the appropriate limit. As he explains in relation to section 12, multiple requests within a single item of correspondence are still separate requests for the purposes of FOIA. Typical advice and assistance might include advising an applicant to narrow the timeframe of the request to reduce the amount of information that would need to be located.

26. The Commissioner's guidance suggests that the minimum a public authority should do in order to satisfy section 16 is:

- either indicate if it is not able to provide any information at all within the appropriate limit; or
- provide an indication of what information could be provided within the appropriate limit; and
- provide advice and assistance to enable the requestor to make a refined request.

27. There is likely to be a breach of section 16 where a public authority has failed to indicate that it is unable to provide any information within the appropriate limit. This is based on a plain English interpretation of the phrase *"...what, if any, information could be provided..."*. In this case the Charity Commissioner failed to inform the complainant that it was unable to provide any information within the cost limit or take any other steps to suggest how this particular request might be refined or reformatted. The Commissioner considers this a breach of section 16 of FOIA.

Right of appeal

28. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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

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