

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 November 2022

Public Authority: Charity Commission
Address: 102 Petty France
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant has requested internal guidance on the registration of certain charities. The above public authority ("the public authority") initially withheld information, before later disclosing it – however, the complainant believes that more information is held.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has disclosed all the information it holds. The public authority breached section 10 of FOIA as it provided information outside of the 20 working day timeframe.
3. The Commissioner does not require further steps.

Request and response

4. On 18 May 2021, the complainant wrote to the public authority and requested information in the following terms:

"could you please provide me with:

1. Any information and or guidance notes that you hold relating to how you process:
 - a. applications from organisations seeking to become a charity pursuing animal welfare/rights
 - b. applications from organisations seeking to become a charity with environmental objectives."

5. The public authority responded on 30 June 2021. It relied on section 31 of FOIA (law enforcement) to withhold the information – a position it upheld at internal review.

Scope of the case

6. During the course of the Commissioner's investigation, the public authority reconsidered its position as a result of reassessing the scope of the request (this is discussed in more detail below). The public authority now accepted that the information falling within the scope of the request could be disclosed and it disclosed this information to the complainant on 19 October 2022.
7. The complainant declined to withdraw her complaint as she considered that the public authority held further information within the scope of the request – her reasons for this view are explored in more detail below.

Reasons for decision

8. The following analysis explains why the Commissioner is satisfied that the public authority holds no further information within the scope of the request.
9. The public authority made clear to the complainant, in its correspondence of 19 October 2022, that it now took the view that the scope of the request was much narrower than it previously considered it to be. It now took the view that the request only sought the guidance that related solely to the process of registering charities focused on either animal rights or environmental issues – as opposed to its general guidance which would apply to all charities, regardless of focus.
10. Whilst the Commissioner does not consider this to be the most obvious reading of the request, he accepts that it is an objective reading. More importantly, he notes that the complainant has not sought to challenge the public authority's decision to interpret her request in this manner.
11. The complainant's challenge rests on the content of responses that have been provided to other charities – which, she says, do not match with the extracts of guidance that the public authority has disclosed. In particular, the extracts that the public authority has disclosed do not include references to specific court cases.
12. The complainant provided extracts from the responses received by other charities. Unfortunately the link to the original correspondence had

broken when the Commissioner tried to access it, but he does not dispute that the extracts are an accurate reflection of the correspondence.

13. The Commissioner has compared the extracts carefully with the disclosed information. They are not identical, but they are substantially similar. He accepts that, the disclosed information does not include some court case references that are included in the correspondence extracts.
14. The Commissioner has considered whether this points to the existence of further guidance. He has concluded that it does not.
15. To illustrate the point, the Commissioner has considered the following passage from the disclosed information:

“To be regarded as charitable organisations promoting animal welfare will need to show elements of mental and moral improvement for mankind itself. An organisation cannot be registered if the consequences of its actions are not considered to be in the interests of the community.

“This is illustrated as follows:

- It is not against the law to humanely slaughter animals for meat, so an organisation established to save animals from going to slaughter would not confer adequate public benefit.
- There are circumstances where animal experimentation benefits medical science in a way which outweighs any consideration of cruelty. Therefore, any assumed public benefit in the advancement of public morals would be far outweighed by the detriment to medical science and research and, consequently, to public health.
- It may be charitable to promote research into alternatives to animal experimentation or humane methods of slaughter where these will be for the benefit of the public.”

16. The correspondence extract states that:

“The advancement of animal welfare includes any purpose directed towards the prevention or suppression of cruelty to animals or the prevention or relief of suffering by animals. But to be regarded as charitable, organisations promoting animal welfare need to be doing so for the public benefit and need to show elements of mental and moral improvement of mankind itself (the relevant case is *Re Moss* [1949] 1 All ER 495). **The advancement of animal welfare does**

not extend to purposes relating to the promotion of animal rights or justice for animals or advocating legislation in this connection, which are controversial issues and may be political in nature. [original emphasis]

"The following examples may help to illustrate the limits of the advancement of animal welfare in charity law.

1. It is not against the law to humanely slaughter animals for meat, so an organisation established to stop animals from going to slaughter would not meet the test of public benefit (the case is *Re Cranstoun* [1898] 1 IR 431).
 2. There are circumstances where animal experimentation benefits medical science in a way which outweighs any consideration of cruelty. Therefore any assumed public benefit in the advancement of public morals would be far outweighed by the detriment to medical science and research and, consequently, to public health (see for example the cases *The National Anti-Vivisection Society v IRC* [1948] AC 31 and *Re Jenkins' Will Trust* [1966] Ch 249).
 3. The courts have held that simply providing a sanctuary for animals free from man providing no public access is not charitable because it is not considered as being of benefit to the public (the case is *Re Grove Grady* [1929] 1 Ch. 557)."
17. The Commissioner has considered whether there is any difference of substance between the two sets of information. He has concluded that there is not. The *Moss* and *Grove Grady* cases do not appear in the equivalent section of disclosed information – but they do appear in an earlier section, which also contains some more of the language used in the extracts.
 18. In the Commissioner's view, it is not unreasonable that the public authority's outgoing correspondence does not reflect its guidance verbatim. Guidance is intended to apply to every case, correspondence is intended to explain a particular decision and how the guidance applies to. Whilst it is not unreasonable to suggest that correspondence reflect guidance (and it should not contradict it), the fact that a particular item of correspondence does not repeat guidance verbatim does not mean that the two must therefore contradict each other.
 19. More particularly, the Commissioner does not consider that the fact that two documents differ in form but not substance would indicate that another guidance document exists. The public authority has confirmed

that this is the only information it now considers falls within the scope of the request and that it is no longer withholding any information.

20. The disclosed information may not contain some specific court case references, but the complainant clearly has access to these already and so, even if the public authority held these, they would be exempt under section 21 of FOIA so the public authority would not be required to provide them anyway.
21. The Commissioner is satisfied that, on the balance of probabilities, the public authority has disclosed all the information that it holds.

Procedural matters

22. The public authority breached section 10 of FOIA as it provided information outside of the 20 working day period.

Right of appeal

23. 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

24. 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.
25. 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

Roger Cawthorne
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