

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 January 2023

Public Authority: The Charity Commission
Address: PO Box 211
Bootle
L20 7YX

Decision (including any steps ordered)

1. The complainant has requested copies of the advice given by the Charity Commission to a specific charity.
2. The Charity Commission refused to provide the requested information, citing section 31(1)(g) (law enforcement).
3. The Commissioner's decision is that the Charity Commission is entitled to withhold the information under section 31(1)(g) (law enforcement).
4. The Commissioner doesn't require the public authority to take any steps.

Request and response

5. On 15 July 2022, the complainant wrote to the Charity Commission and made the following request for information, relating to a specific charity:
 "...detailed information about the advice you have given to the Trustees."
6. The Charity Commission responded on 4 August 2022, refusing to disclose the information in accordance with section 31(1)(g).
7. The complainant requested an internal review on 7 September 2022. The complainant argued that the Charity Commission had failed to take into account the public interest in the requested information.

8. The Charity Commission provided the outcome to its internal review on 26 October 2022. It upheld its original position, confirming that section 31(1)(g) applied by virtue of section 31(2)(c) and 31(2)(f).
9. During this investigation, the Charity Commission confirmed to the Commissioner that it considered section 31(1)(g) applied by virtue of 31(2)(g) also.

Reasons for decision

10. The Commissioner notes that he has recently dealt with a very similar case, IC-39105-P4N11¹ in which the requestor requested all information held in relation to a complaint that they had submitted. What is particularly relevant about this case is that it included any guidance that the Charity Commission issued to the charity in question.
11. Section 31(1)(g) states that information is exempt if its disclosure would, or would be likely to, 'prejudice the exercise of any public authority of its functions for any purposes specified in subsection 31(2).'
12. In both cases the Charity Commission withheld the requested information because it believed its disclosure would be likely to prejudice its statutory functions under sections 14 and 15 of the Charities Act 2011.²
13. The Commissioner agrees with the Charity Commission that disclosure would be likely to prejudice its statutory functions, which fall under the following section 31(2) subsections:
 - “(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;”

¹ [ic-39105-p4n1.pdf \(ico.org.uk\)](https://ico.org.uk/subject-access/subject-access-requests/subject-access-requests-2020/2020-03-01-ic-39105-p4n11)

² [Charities Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2011/33/section-14)

14. Paragraphs 13-18 of IC-39105-P4N1 explain in more detail the interplay between section 31(1)(g) of FOIA and sections 14 and 15 of the Charities Act 2011. Therefore, the Commissioner doesn't deem it necessary to repeat that analysis here.
15. For the same reasons as outlined in IC-39105-P4N1, the Commissioner is satisfied that the requested information engages section 31(1)(g) by virtue of section 31(2)(c), 31(2)(f) and 31(2)(g). As section 31 is a qualified exemption, the Commissioner has now gone onto consider where the balance of the public interest lies.
16. The complainant has put forward several arguments in favour of disclosure. This included the arguments that there have been multiple complaints made to the Charity Commission about the charity in question and there has been 'no discernible impact' in the behaviour of the charity following the Charity Commission's engagement.
17. The complainant also argued the 'application of an exemption would only be logical if you (the Charity Commission) applied the exact same directives to every charity or trust which had complaints made against it and then wider disclosure of those directives may adversely affect your ability to act as an effective regulator of charities when dealing with future complaints.'
18. The Charity Commission acknowledges that there is a public interest in 'disclosing information that holds the Commission to account and increases transparency, accountability, public understanding and involvement regarding the performance of our objectives and functions.'
19. The Charity Commission accepts that this public interest will be greater when the request concerns a 'high-profile' case which the Charity Commission does not consider to be the case in this instance.
20. However, the Charity Commission does not consider the public interest in disclosure outweighs the public interest in maintaining the exemption. It has explained that it is a 'small regulator, regulating over 175,000 Registered charities with approximately 400 staff. It is in the public interest for the Commission to continue to be able to engage productively, and to encourage and continue to receive information in connection with complaints about charities which raise regulatory concerns. It is critical to our ability to operate as an effective regulator of the charity sector that complainants are enabled to approach the Commission where appropriate to inform us of potential misconduct and mismanagement of charities.'
21. The Commissioner recognises that there is a significant public interest in allowing the Charity Commission to carry out its functions as robustly as possible, which it may not be able to do if charities were discouraged

from cooperating with any investigation, for fear that the findings or outcome would be made public.

22. The Commissioner disagrees with the complainant – he doesn't consider that any advice or instruction, disclosed to the world at large under FOIA, has to be identical or even remarkably similar to previous cases to discourage other charities from engaging with the Charity Commission. He also notes this can't be the case, since there's no way of anticipating what advice or guidance the Charity Commission will give in a case that has not yet been brought to it.
23. Ultimately, the Commissioner is satisfied that the public interest lies in maintaining the exemption. Whilst he acknowledges the complainant's concerns, he does not consider that unfettered disclosure of the requested information to the world at large, prejudicing the Charity Commission's statutory functions, is the correct way to address these concerns.
24. The complainant, or any other individual who continues to have concerns about the charity, can raise a concern with the Charity Commission and allow it to carry out its regulatory functions, as effectively and robustly as possible, in relation to the charity.
25. Alternatively, if the complainant or any other individual is concerned with the outcome of any complaint that they have brought to the Charity Commission, or the way that their case was handled, they may ask for this matter to be reviewed internally by the Charity Commission.

Right of appeal

26. 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

27. 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.
28. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF