

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2011

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

Decision

1. The complainant requested information held by the Charity Commission regarding an investigation into a particular charity. The Charity Commission refused the request under sections 21 (available accessible by other means), 31 (law enforcement), 32 (inquiries), and 40 (personal data).
2. The Information Commissioner's decision is that the Charity Commission correctly applied section 32 to most of the information it withheld and that it correctly applied section 31 to the remainder of the withheld information. The Information Commissioner ("the Commissioner") does not therefore require the Charity Commission to take any steps in relation to this complaint.

Request and response

3. On 9 April 2011, the complainant wrote to the Charity Commission and requested information in relation to its investigation of a charity, the Central African Association ("CAA"), in the following terms:

"all documents deemed not disclosable on the MG6C under Third party non sensitive unused material held by this Commission, including the following documents:

A copy of the Commission response in relation with CAA letter dated 03/11/05, letter dated 21.07.05 from [person A], letter dated 18.10.05 from [person B], letter dated 26.09.05 from

[person C], letter dated 10.11.05 from [person D], letter dated 03.10.05 from [person B] regarding POW Trust that he sent to [person E] as we need to see how this matter has been handled by the Commission compared to Black African Groups, a copy of the memorandum of Understanding between the Commission, Big Lottery fund and Metropolitan Police, a letter dated 04 October 2005 from [person F], a letter dated 18.10.05 from [person B], a full copy of an update report on the work undertaken by the Charity Commission on a group of charities funded by the Big Lottery Fund (This document was attached to the letter dated 18.10.2005 from [person B] to [person F])."

4. The MG6C form is a schedule prepared as part of a criminal case. It is provided to the defendant's lawyers by the prosecution and gives details of non-sensitive unused evidence which may be disclosed to the defence during the course of criminal proceedings.
5. The Charity Commission responded on 18 May 2011. It disclosed some information but withheld most of the requested information under sections 21, 31, 32 and 40.
6. As the Charity Commission's response to the request of 9 April 2011 also constituted a review of its earlier decisions in relation to similar requests made by the complainant for much of the same information, the Commissioner did not require it to carry out a further internal review in relation to the request of 9 April.

Scope of the case

7. On 14 March 2011 the complainant contacted the Commissioner to complain about the way the Charity Commission had handled his requests for information concerning its investigations into a charity, the CAA. He then made a further request on 9 April 2011 of a similar nature to the previous requests. This request is detailed above. He also complained to the Commissioner about the Charity Commission's response to this request.
8. The complainant subsequently agreed that the scope of his complaint would be limited to whether the Charity Commission had correctly applied exemptions to the several hundred documents that it had identified as falling within the scope of his request of 9 April 2011 and which were detailed in a schedule attached to its letter to the complainant of 18 May 2011.

Reasons for decision

9. The Charity Commission argued that most of the requested information was exempt from disclosure under section 32. With some additional information being exempt under sections 31 and 40.
10. The Charity Commission originally applied section 21 to the complainant's requests. It explained that it had applied this exemption on the basis that the requested information was available through the disclosure process which was part of the criminal proceedings being taken against the complainant. While those initial criminal proceedings were completed at the time of the request of 8 April 2011, the complainant was still pursuing an appeal through the criminal courts. The Charity Commission ascertained that the requested information may not now necessarily be available to the complainant through the criminal disclosure process. It therefore agreed to withdraw its reliance on section 21 in relation to the complainant's request of 8 April 2011. However, it remains of the view that it was correct to apply section 21 to the complainant's earlier requests as the information was available to him by other means, the criminal disclosure process, when those requests were made.
11. The Commissioner went on to consider whether the Charity Commission had correctly applied exemptions to the information that it withheld.

Section 32(2) - Inquiry

12. Section 32(2) of FOIA states that:

"Information held by a public authority is exempt information if it is held only by virtue of being contained in-

(a) any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or

(b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration."

Section 32(4) goes on to provides that –

"In this section-

(c) "inquiry" means any inquiry or hearing held under any provision contained in, or made under, an enactment".

13. The Commissioner accepts that the Charity Commission's inquiry into the CAA was set up under a provision in an enactment, section 8 of the Charities Act 1993. Section 8(1) provides:

"The Commissioner may from time to time institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes, but no such inquiry shall extend to an exempt charity".

14. The Commissioner therefore accepts that the inquiry falls within section 32(4) of FOIA.

15. The Commissioner has viewed the information to which the Charity Commission has applied section 32(2). He is satisfied that all of this information was either:

(i) provided to it by a third party in relation to the inquiry, and therefore falls within the scope of section 32(2)(a) or

(ii) was created by it for the purposes of the inquiry, and therefore falls within the scope of section 32(2)(b).

16. The Charity Commissioner has confirmed to the Commissioner that this information was originally only obtained for the purposes of the inquiry that was carried out, and for no other purpose, and that it continued to be held only for that purpose after the inquiry was completed. The Commissioner has seen no evidence which would suggest that this is not the case.

17. The Commissioner is therefore satisfied that section 32(2) has been correctly applied to all of the information identified by the Charity Commission and that this information is exempt from disclosure. As section 32 is an absolute exemption, the Commissioner did not consider the public interest test contained in section 2 of the Act.

Section 31 – Law enforcement

18. In addition to the documents to which section 32 applied, there were a much smaller number of documents to which the Charity Commission applied section 31. These were documents that had not been held by the Charity Commission solely for the purpose of its investigation into the CAA.

19. Section 31 was applied to some documents that were held by the Charity Commission for the purpose of investigating a complaint about

the way it had handled its investigation into the CAA (documents numbered 216-220 and 237-257 in the schedule attached to the Charity Commission's letter to the complainant dated 18 May 2011 ("the schedule")). It was also applied to two documents held for the purpose of considering the initial application for the registration of the charity (documents numbered 273 and 274 in the schedule.).

20. Section 31(1) states that:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice- ...

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),..."

The Charity Commission argued that section 31(1)(g) applied to the complaint file documents and the registration file documents as the documents were held for the function set out in section 31(2)(c). This provides that:

"The purposes referred to in subsection (1)(g) to (i) are ...

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise".

21. In relation to section 31(2)(c), the Commissioner considers that in order for a public authority to have a "function" for one of the purposes listed under section 31(2), it must have an adequate legal basis for the specified purpose. The Charity Commission confirmed that the documents in the complaint file related to the inquiry it conducted as part of its statutory function to protect charities and their property from misconduct and mismanagement under section 1 of the Charities Act. The documents in the registration file were collected as part of the Commission's function of determining whether or not organisations are entitled to be registered as charities, under section 1 of the Charities Act 1993.
22. For the exemption to be engaged, the Commissioner is of the view that the disclosure of the information must have a causal effect on the relevant interest identified by the public authority. The effect must be detrimental or damaging in some way and the detriment must be more than insignificant or trivial.
23. In relation to the registration file, the Charity Commission explained that these documents were collected for the purpose of carrying out the Commission's function of considering the CAA's initial application for

charitable status. It had only withheld two of these documents. The withheld documents related to the Commission's processes in determining an organisation's charitable status, due diligence and any on-going monitoring issues. If they were disclosed they would reveal the Commission's internal procedures and safeguards which could enable future bogus organisations seeking charitable status to manipulate the information provided to facilitate their registration as registered charities and ultimately undermine the public trust and confidence in the Commission's regulation of this area.

24. In relation to the complaint file, the Charity Commission explained that the information related to an investigation into a complaint about its handling of its inquiry into the CAA under section 8 of the Charities Act 1993. It considered that disclosure of the withheld information would inevitably provide details of how it conducted its inquiry into the CAA, particularly the inquiry/investigative strategies, processes and techniques used by its Compliance division. Such information, once in the public domain, could be used to enable others to conduct themselves in such a way as to evade its attention.
25. The Charity Commission argued that disclosure of the information to which it applied section 31 would be likely to prejudice its ability to ascertain whether regulatory action was justified in particular circumstances in future. The Commissioner reviewed the information to which it had applied the exemption. Having done so, he is of the view that the possibility of the prejudice identified by the Charity Commission occurring, if the information were to be disclosed, is real and significant. He therefore accepts that section 31 is engaged.
26. As section 31 is a qualified exemption, a public interest test is applicable under section 2(2) of the Act. The Commissioner therefore went on to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

Public interest test

Public interest arguments in favour of disclosing the requested information

27. The Commissioner acknowledges that disclosure of the withheld information would be relevant to the general public interest in promoting transparency and accountability, particularly in respect of the Charity Commission's role in carrying out part of its regulatory function.

Public interest arguments in favour of maintaining the exemption

28. There is clearly a significant public interest in the Charity Commission being able to carry out its regulatory functions effectively. It would not be in the public interest for information to be placed in the public domain which revealed its internal procedures and safeguards so as to make it easier for those wishing to set up bogus charitable organisations to do so.
29. It would also not be in the public interest for information to be placed in the public domain about the strategies, processes and techniques the Charity Commission used when carrying out investigations if this would enable others to conduct themselves in such a way as to evade effective regulation.

Balance of the public interest arguments

30. In the Commissioner's opinion, the arguments in favour of maintaining the exemption need to be given particular weight. It is strongly in the public interest that the charity sector is effectively regulated so that potential abuses of charitable funds can be prevented and detected. He has therefore determined that the balance of the public interest in maintaining the exemption outweighs the public interest in disclosure and that the information to which section 31 has been applied should not be disclosed.

Right of appeal

31. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

32. 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.
33. 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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