

## **Freedom of Information Act 2000 (FOIA) Decision notice**

**Date:** 3 November 2022

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

### **Decision (including any steps ordered)**

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1. The complainant has requested information regarding whistleblowing concerns. The above public authority ("the Commission") relied on section 31(1)(g), section 40, and section 41 of FOIA to withhold the requested information.
2. The Commissioner's decision is that the Charity Commission has correctly applied section 31(1)(g) of FOIA to information it is withholding as disclosure would be likely to prejudice the exercise of its functions under sections 31(2)(a), (b), (c), (f) and (g). The public interest favours maintaining this exemption.
3. However, the Commissioner has concluded that the Commission breached section 10(1) and 17(1) of FOIA by failing to respond to the request within 20 working days.
4. No steps are required as a result of this decision notice.

## **Request and response**

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5. On 23 June 2021, the complainant wrote to the public authority and requested information in the following terms:

“Please also treat this as a Freedom of information request for a copy of the entire file relating to this matter.”

6. After several email exchanges the Commission responded on 7 October 2022 and refused to provide the requested information citing section 31(1)(g) of FOIA as its basis for doing so.

7. The complainant argued that:

“It is clearly in the public interest that we as the members see exactly what your findings were and can take steps to ensure they are properly addressed instead of being ignored.”

8. The Commission upheld its original position at internal review.

## **Reasons for decision**

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### **Section 10 / Section 17 - Time for compliance**

9. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
10. Section 10(1) of FOIA states that on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
11. Under section 17(1) a public authority which, in relation to any request for information, is to any extent relying on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a refusal notice.
12. In this case, the complainant originally submitted their request on 23 June 2021 and the Commission responded on 9 September 2021 seeking clarification, finally providing its response on 7 October 2021. It therefore breached sections 1(1) and 10(1) of FOIA by failing to respond to the request within 20 working days.

### **Section 31 – Law enforcement**

13. The following analysis sets out why the Commissioner has concluded that the Commission was entitled to rely on section 31(1)(g) of FOIA in this particular case.
14. section 31(1)(g) of FOIA allows a public authority to withhold information if its disclosure under the Act would, or would be likely to, prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2).
15. The Commissioner accepts that the Commission is formally tasked with certain regulatory functions under the Charities Act 2011.
16. The Commissioner agrees that disclosing the correspondence it has received from the trustees about a particular charity, would be likely to prejudice the Commission's functions, for the reasons it has given. First, disclosure would be likely to deter individuals and charities from providing information to the Commission. Second, it would be likely to erode the safe space it needs to reach decisions and to erode public trust in its ability to handle information confidentially. And third, it would undermine the Commission's ability to collect accurate information from complainants and charities, if it were known how the Commission assesses risk.
17. Having considered all the circumstances in this case, the Commissioner has therefore decided that section 31(1)(g), with subsections 31(2)(a), (b), (c), (f) and (g), is engaged. He has gone on to consider the public interest.

### **Public Interest Test**

18. The Commission has recognised that there will always be some public interest in disclosure of information to promote transparency and accountability of public authorities, the free exchange of views and more effective public participation in decision making, all of which ultimately contribute to a better environment. However, they argue that the Commission relies on charities, and other interested parties, to provide it voluntarily with information fully and frankly without the need for the Commission to obtain information by exercising its statutory powers.
19. This allows the Commission to identify issues falling within its regulatory remit. The Commission says it would be difficult for it to be aware of all relevant regulatory issues if charities and individuals were not prepared to fully disclose information, including confidential information, voluntarily. The Commission's view is that disclosure would have a chilling effect on its engagement with the charity sector. This would be likely to prejudice its abilities to perform its functions and objectives as

set out above and considers it is in the public interest that it has space and time in which to fully consider its policy and casework options, to enable it to reach an impartial and appropriate decision, away from public interference.

20. The complainant argues that:

"It is accepted even by the CC that the trustees failed to carry out their duties properly in several regards. That they so failed must be a legitimate matter of public interest if only to the members of the NRA. How else can we as members judge their competence to act on our behalf? We need to be able to make informed decisions. In addition if they put forward a defence or explanation and we are not allowed to see it how can it be properly tested for validity? By being secretive the CC is failing in its basic duty to the public and is misusing secrecy to protect itself from proper scrutiny."

21. They go on to argue that:

"I would add that the CC does not depend on trustees voluntarily providing information. The trustees are under a legal duty to supply that information requested and to refuse to do so would be a criminal offence."

### **The Commissioner's conclusion**

22. The Commissioner has reviewed both the complainant's requests and the public authorities' responses. The Commissioner notes that the Commission has disclosed some of the information the complainant has requested which satisfies to an adequate degree the public interest in transparency. The Commissioner is satisfied that there is greater, wider public interest in the Commission being a robust and efficient regulator of the charity sector through withholding certain information in this case.
23. Therefore, the Commissioner's view is that the balance of the public interests favours the maintenance of the exemption, rather than being equally balanced. This means that the Commissioner's decision, is that the exemption provided by section 31(1)(g) was applied correctly.
24. Because he has found that the Commission has correctly applied section 31(1)(g) to the information it is withholding, it has not been necessary for the Commissioner to consider its application of section 40 and 41 of FOIA in this case.

## Right of appeal

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25. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**