

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

**Date:** 20 December 2022

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

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

---

1. The complainant has requested information regarding the transfer of Church property to a third-party charity. The Charity Commission ("the Commission") relied on section 31(1)(g) 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. No steps are required as a result of this decision notice.

## Request and response

---

4. On 30 November 2021, the complainant wrote to the public authority and requested information in the following terms:

“sight of all documentation, including the advice given and a detailed explanation of how the final decision was arrived at in this case.”
5. The Commission responded on 30 December 2021 and refused to provide the requested information citing section 31(1)(g) of FOIA as its basis for doing so.
6. The Commission upheld its original position at internal review.

## Reasons for decision

---

### Section 31 – Law enforcement

7. 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.
8. 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).
9. The Commissioner accepts that the Commission is formally tasked with certain regulatory functions under the Charities Act 2011.
10. The Commissioner agrees that disclosing the correspondence it has sent and received 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 prejudice the consideration and assessment of any regulatory action the Commission might take. This would adversely affect the Commission's ability to regulate efficiently and effectively.
11. 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**

12. 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.
13. It states: "The Commission is formally tasked with encouraging and facilitating the better administration of charities and protecting charities against misconduct or mismanagement in our administration. In order to consider whether the Commission needs to use its powers and protect charities from misconduct or mismanagement it needs to have open and candid dialogue with charity trustees and others. This strongly favours withholding the information."
14. 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: "The wider public interest is not serviced by the disclosure of the withheld information." And "the Commission is concerned that this would cause unnecessary harm to the charity which is contrary to the Commission's objectives and functions about the effective use of charitable resources and facilitating the better administration of charities. This also favours withholding the information." Therefore, this would be likely to prejudice its abilities to perform its functions and objectives as set out above and considers that the public interest would not be served by providing such detail about their regulatory engagement and disclosing the information requested.
15. The complainant believes that the requested information should be disclosed to them in order to enable informed decision making and for openness and transparency of decisions made and advice given to relevant parties regarding the 'Gifting' of property.

## **The Commissioner's conclusion**

16. The Commissioner has reviewed both the complainant's requests and the public authorities' responses. 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. He is satisfied that the disclosure of the

requested information would prejudice the Commission's ability to operate efficiently as a regulator, and that this would not be in the public interest.

17. Therefore, the Commissioner's concludes that section 31(1)(g) of FOIA is engaged to all the withheld information and the public interest favours maintaining the exemption in this case.

## **Right of appeal**

---

18. 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)

19. 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.
20. 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**  
**Head of Freedom of Information Casework**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**