

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2015

Public Authority: Charity Commission for Northern Ireland
Address: 257 Lough Road
Lurgan
Craigavon
Northern Ireland
BT66 6NQ

Decision (including any steps ordered)

1. The complainant has requested information relating to a particular aspect of an investigation carried out by the Charity Commission for Northern Ireland (CCNI) into Lough Neagh Rescue Service. The CCNI responded by stating that the requested information was either exempt information under section 21 ('information accessible to the applicant by other means') of FOIA or was otherwise not held. The complainant has not disputed the application of section 21 of FOIA but has instead argued that the CCNI would hold additional information that had not been identified. The Commissioner's decision is that on the balance of probabilities the CCNI does not hold further information and therefore he does not require any steps to be taken as a result of this notice.

Request and response

2. On 23 October 2014 the complainant contacted the CCNI with the following questions.
 - *F.O.I Request (1) would the Commission please release any emails, file notes or any other correspondence, either inbound or outbound in their possession that relates to the Kinnego safe including the confirmation to all parties that the safe was private property.*

- *F.O.I Request (2) would the Commission please advise if regulatory advice, or any direction or order were made or given in response to the act of breaking into the safe?*
 - *F.O.I Request (3) would the Commission confirm whether or not it took inventory of the contents of the safe?*
 - *F.O.I Request (4) would the Commission release all emails, file notes or any other correspondence, either inbound or outbound in their possession that relates to the offer to attend the site in order to voluntarily open the safe, and the Commissions offer to provide an escort to allow this to happen.*
 - *F.O.I Request (5) will the Commissioner respond as to whether or not it is now treating the Lough Neagh Rescue Regulatory Inquiry as "open ended", and if so will they produce the evidence either in correspondence or minutes of meetings that support this stance?*
3. The CCNI responded on 12 November 2014. With regard to requests 1 and 4, the CCNI advised that the recorded information it did hold was already reasonably accessible to the complainant and therefore the section 21 exemption in FOIA applied. In relation to requests 2 and 3, the CCNI stated that it did not hold any relevant information. Finally, with respect to request 5, the CCNI stated that its inquiry report would be made public at a future date and included a link to a Third Sector article which referred to the work of the CCNI.
4. In an email received by the CCNI on 12 November 2014, the complainant asked the CCNI to review the way it had handled his requests. This was completed and the outcome provided by the CCNI on 10 December 2014. The reviewer upheld the CCNI's original position, although he clarified that request 5 had been dealt with as a normal course of business enquiry rather than an application under FOIA.

Scope of the case

5. The complainant contacted the Commissioner on 17 December 2014 to complain about the way the CCNI had dealt with his requests.
6. In making the complaint, the complainant has confirmed he is content that request 5 has been disposed of by the CCNI. The complainant has also informed the Commissioner that he does not dispute the CCNI's application of section 21 of FOIA. However, he has argued that there is additional material captured by requests 1 – 4 that has not been disclosed.

7. In light of this clarification, the Commissioner's decision notice focuses solely on whether the CCNI holds information pertinent to any or all of requests 1 – 4 that had not previously been identified and provided. When reaching his determination, the Commissioner has reviewed all the material put before him, although he has not felt it necessary to refer to each item of evidence in exhaustive detail.

Background

8. The background to the requests relates to an internal dispute at a charity, Lough Neagh Rescue Service, which led to the involvement of the CCNI. The directions of the CCNI were subsequently appealed to the Charity Tribunal Northern Ireland¹.
9. The requests focus on one particular aspect of the events at Lough Neagh Rescue Service, namely an alleged attempt to break into a safe at Kinnego station (the Kinnego safe), and the CCNI's line of enquiries into this matter.

Reasons for decision

10. Section 1 of FOIA provides the public with a general right of access to information held by public authorities. It states that:

1. – (1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

11. It is accepted that where there is a dispute about whether or not information is held by a public authority, there will be occasions in which it is not possible practically speaking to make a decision that is beyond
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¹ https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Charity_Tribunal_Decisions/Documents/decision_010714/j cht LN R-decision_010714.htm

any doubt. Therefore, in the absence of absolute certainty, the Commissioner will apply the civil standard of the balance of probabilities. A decision on where the balance lies will take into account the thoroughness of any searches carried out and, or any other explanations offered by the public authority that demonstrate why it considers it can be confident the requested information is not held. In accordance with the approach, the Commissioner has asked the CCNI to provide more detailed explanations to support its position.

12. In doing so, the Commissioner referred the CCNI to the initial arguments made by the complainant to support his view that further records would be held. Although not limiting his complaint to this information, as an example the complainant has said that he would expect the CCNI to hold records of discussions with Lough Neagh Rescue Service that made reference to the ownership of the Kinnego safe and included advice about the consequences of breaking into the safe. Guiding this view is the belief that the CCNI would have needed prior knowledge of any decision to crack the safe. The Commissioner provided the complainant with a summary of the CCNI's response during his investigation, which contained the following findings.
13. The CCNI initially placed the request into context by clarifying that the Kinnego safe issue was originally brought to its attention midway through 2013 via an email. This stated that financial records relating to Lough Neagh Rescue Service were held in the Kinnego safe. The CCNI has informed the Commissioner that its primary concern was not with the precise location of the financial records but only that they were not in the possession of Lough Neagh Rescue Service.
14. The CCNI has insisted that it was not required to, nor did it, investigate any matter directly relating to the safe or its contents and left it to Lough Neagh Rescue Service itself to resolve any associated issues. The CCNI stated that it had no knowledge as to the whereabouts of the financial records beyond the references made in the correspondence which alerted it to the issue. For completeness, the CCNI confirmed that it was not party to any further correspondence regarding the contents of the Kinnego safe.
15. On the understanding that the Kinnego safe issue only ever had an indirect effect on the investigation, the Commissioner advised the complainant that it seemed unlikely the CCNI would have needed to produce or receive a significant amount of correspondence on the subject. This seemed to be borne out by the limited number of references made to the Kinnego safe in the bundles prepared for the Charity Tribunal. Notwithstanding this, the CCNI has advised the Commissioner that it has carried out extensive searches for relevant information.

16. In terms of the places where information relating to an investigation will normally be stored, the CCNI has explained that it operates a computerised filing system known as TRIM. It also holds manual files and emails. The CCNI's formal investigation into Lough Neagh ended in 2013. As the email system only holds emails for six months, CCNI determined that any records would be held in TRIM and, or in hard-copy; an assumption the Commissioner considers logical in the situation. With regard to the records kept in hard-copy, the CCNI stated that it held 23 lever arch files relating to the investigation. For the avoidance of doubt, the CCNI has also clarified that it has not destroyed any information captured by the requests.
17. In relation to request 1, the main officer involved with the investigation recalled that emails had been received on the issue in June 2013. These were identified during a search of TRIM using the terms "Kinnego" and "safe". The officer confirmed the complainant would already have had access to these records. The manual files corresponding to the same time period as the emails were then searched but this did not result in the discovery of any further information.
18. With reference to request 2, the CCNI has confirmed that it maintains a list of all directions, order and regulatory advice given in each case. The CCNI has explained this list is small and was checked in full but no order, direction or regulatory advice was found to have been given in respect of the safe.
19. Turning to request 3, the CCNI has reiterated that it did not pursue the issue of the safe. Consequently, no action was taken to make an inventory of the safe.
20. Regarding request 4, the CCNI again searched TRIM using the terms "Kinnego" and "safe" but also separately used "escort" and "safe". The CCNI has verified that the only records found were those that had previously been identified.
21. As stated, taking into account the relatively minor part that the Kinnego safe itself played in the CCNI's investigation, the Commissioner considers it plausible that only a limited amount of information would be held. This position is reinforced by the knowledge of the searches that the CCNI has carried out. In the Commissioner's view, the direction and scope of these seem proportionate in the circumstances.
22. The complainant, however, remains unconvinced by the CCNI's explanations. In this regard he has advanced further arguments which he considers strongly indicate that additional correspondence must have been produced.

- The complainant considers that attempts to access the safe were potentially a criminal act. Although the CCNI does not investigate allegations of criminal conduct, the complainant has highlighted that the CCNI would be required by law to report any suspicions of criminal activity to the police. He contends it is unlikely the CCNI did not recognise the risk of not making a report.
 - The complainant argues that the wording of an email to the CCNI in June 2013, which makes reference to the Kinnego safe, suggest that there is additional correspondence that exists which should have been provided.
 - There is a possibility that information may be held in the form of SMS text messages.
23. Replying to the first point, the CCNI has affirmed that it was not considered appropriate in the circumstances for it to report a possibility of a crime to the police. In the Commissioner's view, this confirmation effectively disposes of the argument.
24. In relation to the second point, the Commissioner does not place the same importance on the references made in the email as the complainant and does not agree that they definitively point to the existence of further information. In this regard it is recognised that the CCNI's searches cover the same period and these have not identified any further information.
25. With respect to the third point, the Commissioner considers a public authority should appreciate that some requests will involve the expending of greater resources than others. However, the Commissioner would also take the view that a public authority should only be required to carry out searches that are appropriate and proportionate in the circumstances. In this case the Commissioner has not been provided with any evidence to suggest that relevant information would be held in the form of SMS text messages, even assuming that messages from as far back as 2013 were still stored. There is also a distinct possibility that the costs limit under section 12 would regularly be engaged if a public authority was routinely expected to widen its searches to areas beyond where the public authority would reasonably expect information to be held.
26. As stated previously, the Commissioner will decide on the balance of probabilities whether further information captured by a request is held. The effect of this test is that the Commissioner does not need to be absolutely certain one way or the other in order to make a finding. Rather, any decision will be based on whether a public authority's claim

that it does not hold information seems more probable than not in the circumstances.

27. In this case the Commissioner understands that the complainant has strong reasons for believing that further information must be held. However, the Commissioner has not seen or been provided with anything probative that indicates the requested information should be held, or directly calls into question what the Commissioner considers is the CCNI's reasonable explanations for not holding further information. Consequently, on the balance of probabilities, the Commissioner has decided that the CCNI does not hold any further material pertinent to the requests.

Right of appeal

28. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. 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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