

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2018

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

Decision (including any steps ordered)

1. The complainant made a freedom of information request to the Charity Commission for correspondence and communications regarding a particular charity. The Charity Commission initially refused the request under the section 31 (law enforcement) exemption but during the course of the Commissioner's investigation changed its position and applied section 12 (cost exceeds the appropriate limit) instead.
2. The Commissioner's decision is that cost of complying with the request would exceed the appropriate limit and that therefore section 12 was correctly applied. The Commissioner requires no steps to be taken.

Request and response

3. On 11 October 2017 the complainant made 5 freedom of information requests to the Charity Commission which read as follows:
 1. *Please provide copies of the minutes of any meeting between any officer or employee of the Charity commission and Rob Wilson (ex MP) concerning charity 304328 in the period from January 2012 – September 2017.*
 2. *Please provide copies of any correspondence between any officer or employee of the Charity commission and Rob Wilson (ex MP) concerning charity 304328 in the period from January 2012 – September 2017.*
 3. *Please provide copies of any memorandum of understanding or undertaking between any officer or employee of the Charity commission*

and any officer, employee or agent acting for Reading Borough Council (including any employee, consultant or contractor acting on behalf of Veale Wasbrough Vizards) concerning charity 304328 in the period from January 2012 – September 2017.

4. Please provide copies of the minutes of any meeting between any officer or employee of the Charity commission and any officer, employee or agent acting for Reading Borough Council (including any employee, consultant or contractor acting on behalf of Veale Wasbrough Vizards) concerning charity 304328 in the period from January 2012 – September 2017.

5. Please provide copies of any correspondence between any officer or employee of the Charity commission and any officer, employee or agent acting for Reading Borough Council (including any employee, consultant or contractor acting on behalf of Veale Wasbrough Vizards) concerning charity 304328 in the period from January 2012 – September 2017.

4. The Charity Commission responded to the requests on 24 October 2017 when it confirmed that it held information falling within the scope of the requests but explained that this was being withheld under the section 31(1)(g) exemption. This was on the basis that disclosure would or would be likely to prejudice the exercise of its functions for the purposes listed in section 31(2)(g):

(g) the purpose of protecting the property of charities from loss or misapplication,

5. The Charity Commission also confirmed that it did not hold any “memorandum of understanding or undertaking between any officer or employee of the Charity commission and any officer, employee or agent acting for Reading Borough Council” (request 3).
6. The complainant subsequently asked the Charity Commission to carry out an internal review of its handling of his request and it presented its findings on 28 November 2017. The review upheld the decision to refuse the request under section 31 and concluded that the public interest in maintaining the exemption outweighed the public interest in disclosure.

Scope of the case

7. On 27 October 2017 the complainant contacted the Commissioner to complain about the Charity Commission’s decision to refuse his request.

8. During the course of the Commissioner's investigation the Charity Commission confirmed that it was now changing its position and that rather than applying the section 31 exemption, it was now applying section 12(1) on the basis that complying with the complainant's request would exceed the appropriate limit.
9. The Commissioner considers the scope of her investigation to be to consider whether section 12 applies to the request.

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

10. Section 12 provides that a public authority may refuse to comply with a request if it estimates that the cost of doing so would exceed the appropriate limit. The appropriate limit for public authorities within central government is set at £600 and in making its estimate a public authority is allowed to charge for the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
11. In estimating the cost of compliance a public authority is also allowed to aggregate the costs of complying with any related requests from the same individual.
12. In explaining why it considered that section 12 applied the Charity Commission said that it had concentrated on the costs involved in providing the information in the fifth request. It explained that its case management system holds 1085 items for the relevant charity for the specified time period comprising of:
 - 51 tasks/memos;
 - 9 referrals (some with attachments);
 - 12 Phone calls;
 - 6 meeting appointments;
 - 1007 email/letter actions (377 of these have attachments to them, some multiple attachments).

13. The Charity Commission also explained that on its document management system it held a further four folders and one item which included material which may be relevant to the 5th request but which would need to be opened to determine this exactly.
14. The Charity Commission has said that each item would need to be opened up to ensure that it falls within the time period, to determine who it was to/from (especially as it may not be clear the status of the individual just from the name) and therefore whether it fell within scope of this fifth request. It carried out a sampling exercise and found that it took approximately 1 minute to complete this process for each item. It then found that it would take a further approximately 1 to 2 minutes to open up each of the attachments to determine whether they are in scope in terms of time period and relevant person. Of the correspondence items with attachments sampled, a number had one attachment but the Charity Commission said that others sampled contained up to four attachments.
15. Based on the Charity Commission's searches and its sampling exercise it is apparent that the time needed to review each item of correspondence and the attachments would exceed 24 hours which equates to the £600 appropriate limit (based on £25 per hour of staff time). Even using the lowest estimate of 1 minute to review each file, 1 minute to review any attachments and assuming that there was only one attachment per file, it would take 24 hours 27 minutes to comply with the fifth request alone.

$$1085 + 5 + 377 = 1467 \text{ minutes (24 hours 27 minutes)}$$

16. This is likely to be a conservative estimate given that the Charity Commission indicated that it could take between 1 and 2 minutes to review any attachments and that some items of correspondence contained up to 4 attachments. As explained above, a public authority may aggregate the cost of complying with a request with the cost of complying with any related request from the same individual received within a period of 60 consecutive working days. Therefore the Charity Commission's estimate of the time taken to comply with the fifth request would be in addition to the time that would be needed to comply with the complainant's 3 other requests where the Charity Commission confirmed that information was held. The Commissioner is satisfied that the costs of complying with all of the requests would significantly exceed the appropriate limit.
17. Given the wide ranging nature of the requests and the very significant number of documents held, it is clear to the Commissioner that it would

take a considerable amount of time to locate, retrieve and extract all of the information. The Commissioner has considered the Charity Commission's estimate which she has found to be reasonable, realistic and based upon a thorough sampling exercise. The Commissioner is also satisfied that only relevant costs have been taken into account in producing this estimate. As a result the Commissioner must conclude that section 12(1) was correctly applied and the Charity Commission does not need to take any further action.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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

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