

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 June 2020

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

#### Decision (including any steps ordered)

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1. The complainant has requested a risk assessment and evidence associated with the Charity Commission's decision not to progress a complaint he had submitted to it about a charity. The Charity Commission ('the Commission') has withheld the information under section 31(1)(g) of the FOIA (law enforcement) and considers that the public interest favours maintaining this exemption.
2. The Commissioner's decision is as follows:
  - The information that the Commission is withholding is exempt information under section 31(1)(g) and the public interest favours maintaining the exemption.
3. The Commissioner does not require the Commission to take any remedial steps.

#### Request and response

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4. The complainant has told the Commissioner that on 31 January 2019 he submitted a complaint to the Commission about a particular charity. The Commission refused to investigate the complaint on the grounds that it had conducted a risk assessment and judged the risk to be low. The complainant disagreed with this assessment.

5. On 22 August 2019, the complainant wrote to the Commission and requested information in the following terms:

*"Further to my last email, please also provide a copy of your risk assessment and the evidence you used to complete it."*

6. The Commission issued a refusal notice on 17 September 2019. It refused to release the requested information, noting its function under section 31(2)(c) of the FOIA which it considered would be prejudiced if it released the information in question. The Commission confirmed that it considered that the public interest favoured maintaining this exemption.
7. Following an internal review, the Commission wrote to the complainant on 14 October 2019. It maintained its position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 26 January 2020 to complain about the way his request for information had been handled.
9. Having assessed the complaint, the Commissioner advised the complainant that her initial view was that the Commission was entitled to withhold the requested information under section 31 of the FOIA, and that the public interest favoured maintaining the exemption. The Commissioner directed the complainant to her previous published decisions in somewhat similar cases and invited him to withdraw his complaint, but he preferred to conclude it formally through a decision notice.
10. The Commissioner's investigation has therefore focussed on the Commission's application of section 31(1) of the FOIA to the information the complainant has requested, by way of section 31(2)(c), and the balance of the public interest.

### **Reasons for decision**

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#### **Section 31 – law enforcement**

11. Under subsection 31(1)(g) of the FOIA information is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any public authority of its functions for any of the purposes specified in subsection 31(2).
12. In its refusal notice to the complainant, the Commission said that it considered that disclosing the specific risk assessment would be likely to

prejudice the function in section 31(2)(c). This is the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

13. In its refusal notice, the Commission advised that, as the regulator and registrar of charities in England and Wales, it has statutory objectives and functions under sections 14 and 15 of the Charities Act 2011. From previous cases involving the Commission, the Commissioner is aware that these include promoting compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities. The Commission's functions also include encouraging and facilitating the better administration of charities and identifying and investigating apparent misconduct or mismanagement in the administration of charities. In addition, the Commission takes remedial or protective action in connection with misconduct or mismanagement in the administration of charities.
14. The Commission has previously explained to the Commissioner that its regulatory approach, as explained in its published Regulatory and Risk Framework<sup>1</sup> ('the Framework'), is to target its resources at the highest risks to charities' beneficiaries, services and assets and where it thinks its intervention will have the most effective impact. It does not have the resources to investigate every single complaint it receives.
15. Paragraph 2.2 of the Framework explains that it assesses risk on a case by case basis, and this paragraph sets out factors which may be considered.
16. The Commission has advised the Commissioner previously that its approach to risk has developed in recent years. In December 2013, the National Audit Office (NAO) was critical of the Commission, reporting that it was not sufficiently proactive in its assessment of risk. The Commission has since then taken significant steps to address these concerns, which were recognised in the NAO's progress report in November 2017. Since 2017, it has continued to develop the approach to risk at sector level, for individual charities and in response to specific allegations.
17. As part of this, the Commission developed a detailed risk tool to help it to apply its risk assessments consistently in accordance with the Framework when an incident is reported, or complaint received about a charity. This is called the Compliance Risk Assessment Tool. The

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<sup>1</sup> <https://www.gov.uk/government/publications/risk-framework-charity-commission>

Framework the Commission publishes sets out its overarching approach to risk and this is in the public domain. However, the detailed Compliance Risk Assessment Tool that it uses as part of its approach to assessing risk associated with an individual complaint is not in the public domain. It is the Compliance Risk Assessment Tool as applied to the complaint he submitted to the Commission, that the complainant has requested in this case.

18. In its refusal notice, the Commission advised the complainant that disclosing how the Commission actually applied the Framework in an individual case would be likely to prejudice its efficient and effective operation. The Commission said that such information goes into more detail than is contained in the published Framework. Disclosing this information has the potential to undermine the Commission's ability to collect accurate information from complainants and charities. It could also be used to help trustees in the future delay or avoid regulatory action and this would be likely to be prejudicial to the Commission's ability to regulate effectively.

#### *Conclusion*

19. The Charity Commission is formally tasked with certain regulatory functions including to ascertain whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise. In this case the enactment is the Charities Act 2011.
20. In order to target its resources effectively it has developed a Compliance Risk Assessment Tool. The Commission measures complaints about charities that are brought to it against this tool in order to decide whether or not to progress any particular complaint.
21. The Commissioner has had sight of the Commission's Compliance Risk Assessment Tool as applied the complainant's complaint and the Commission has explained to her why it considers releasing this information would prejudice its functions. The Commissioner agrees that disclosing the Compliance Risk Assessment Tool would put into the public domain the Commission's methodology for deciding whether or not to take further action in respect of a complaint it receives about a charity. The Commissioner also agrees with the Commission that disclosing the Compliance Risk Assessment Tool would be likely to distract it from carrying out its regulatory functions effectively.
22. So as to avoid releasing any information about the Assessment Tool at all, the Commissioner does not intend to provide detail here on how that prejudice would be likely to occur. However, having seen the withheld information, she is satisfied that there is a real and significant risk that the prejudice the Commission envisions would be likely to occur and that

disclosing the Compliance Risk Assessment Tool would be likely to prejudice the Commission's regulatory functions.

23. Having considered all the circumstances this case, the Commissioner has therefore decided that section 31(1)(g), with subsection 31(2)(c), is engaged.

### **Public interest test**

#### Public interest in maintaining the exemption

24. In its refusal notice, the Commission acknowledged that there is a public interest in having an effective and efficient regulator of charities to ensure compliance with the relevant law and to increase public trust and confidence in charities.
25. But the Commission advised that disclosing the detail of its assessment measures, which it uses to decide whether or not to either engage or not engage with a charity, would be likely to prejudice its ability to carry out its functions effectively. The Commission explained that this is because it would be likely to cause charities, other organisations and individuals to be aware of the level of risk at which the Commission would become involved. This would therefore be likely to prejudice its ability to exercise its powers in order to protect charitable assets and, if necessary, hold trustees to account for their actions and decision making in relation to a specific issue.

#### Public interest in disclosing the information

26. In his complaint to the Commissioner the complainant has disputed the Commission's argument, above. The complainant says that this is because he has neither the means nor the motivation to inform other bodies of the Commission's risk assessment procedures. He also argues that by refusing to tell complainants why it has rejected their complaints, the Commission is rendering itself unaccountable and making it impossible for any complainant to challenge its decisions. The complainant considers this is grossly prejudicial to the interests of justice.
27. In its refusal notice, the Commission noted that there is a public interest in it being open and transparent regarding its regulatory activities. Such transparency helps to promote public awareness and understanding of the Commission's regulatory functions.

Balance of the public interest

28. The Commissioner has considered the complainant's and the Commission's arguments. The complainant may well not have the means or motivation to inform other bodies about the detail in the Risk Assessment Tool. However, disclosure under the FOIA is effectively disclosure to the wider world, and so other bodies would be able to access that information themselves, directly. And the public interest in the Commission being open and transparent is met, in the Commissioner's view, through the Regulatory and Risk Framework that the Commission publishes. Having considered all the circumstances, the Commissioner is satisfied that, in this case, there is greater public interest in the Commission being a robust and efficient regulator through withholding the specifics of its Compliance Risk Assessment Tool.

## Right of appeal

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29. 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@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)

30. 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.
31. 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

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
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