

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 August 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific charity. The Charity Commission refused the request, citing section 40(2) (personal information) and section 41(1) (information provided in confidence).
2. The Commissioner's decision is that the requested information is exempt under section 40(2) and section 41(1).
3. The Commissioner does not require further steps.

Request and response

4. On 27 November 2023, the complainant wrote to the Charity Commission and requested information in the following terms:
 - "1. The names of past and present trustees of the Campaign Against Antisemitism (charity 1163790) ('the Charity'), along with their dates of service.
 2. A copy of any applications made by the charity, or its trustees, for regulation 40 exemption from the need to publish the names of its trustees."
5. The Charity Commission responded on 11 December 2023. It refused to provide the information requested at part 1 of the request under section 40(2) and part 2 under section 41(1).

6. The complainant requested an internal review on the same day.
7. The public authority provided the outcome to its internal review on 7 March 2024. It upheld its previous positions and also confirmed it was withholding the information requested at part 1 under section 38(1)(b) (health and safety).

Scope of the case

8. The complainant contacted the Commissioner on 29 April 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine whether the Charity Commission was correct to withhold the requested information.

Reasons for decision

Section 40(2) – personal information

10. This aspect of the Commissioner's analysis concerns section 40(2), which is the exemption for personal information. Full details of section 40(2) can be found below:

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11. The requested information is clearly personal data. It's the names of the trustees of the charity in question.
12. There is a legitimate interest being pursued here; the complainant is concerned that senior members of the Charity have political affiliations, which are incompatible with its charity status. The complainant has also raised concerns about the appropriateness of a financial arrangement between this and another charity, and the wage of the Chief Executive of the Charity.
13. The Commissioner will now consider whether disclosure of the names of current and previous trustees is necessary to meet this legitimate interest.
14. The complainant believes that the names of the trustees of the charity in question are already in the public domain. The Commissioner notes that the Charity Commission has granted the Charity a dispensation under

Charities (Accounts and Reports) Regulations 2008,¹ which removed the requirement to publicly name its trustees.

15. The Commissioner accepts there is information about individuals' affiliation with the Charity in the public domain, but there is no information that confirms past or present trustees.
16. The Charity Commission's website² invites members of the public to submit complaints to it if a charity is:
 - not doing what it claims to do
 - losing lots of money
 - harming people
 - being used for personal profit or gain
 - involved in illegal activity.
17. If the complainant believes they have used information that's in the public domain to make, or substantiate, these allegations, they can bring them to the Charity directly, or the Charity Commission's attention to investigate.
18. Therefore, it's not necessary for the Charity Commission to confirm the names of the current, or past trustees, for the legitimate interest to be achieved.
19. However, the complainant has also identified 'the strong, general public interest in transparency within the charity sector' and, for completeness, the Commissioner will go onto balance the legitimate interest represented in this request against the rights and freedoms of the trustees.
20. The Commissioner accepts that disclosure of the requested information would demonstrate accountability and transparency, both in relation to the Charity specifically and the Charity Commission.
21. However, the Commissioner has determined that this legitimate interest doesn't outweigh the rights and freedoms of the individuals whose personal data is being requested. If the Charity Commission has granted the Charity a dispensation from publicly naming its trustees, to then

¹ [The Charities \(Accounts and Reports\) Regulations 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

² [Complain about a charity - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

disclose this information to the world at large via FOIA would likely be beyond their expectations and cause those individuals distress.

22. Furthermore, the Commissioner acknowledges that the Charity has attracted controversy and the Charity Commission has real concerns that disclosure of the names of the Trustees would lead to them being targeted.³
23. The Commissioner therefore has decided that there is no Article 6 basis for processing and so disclosure wouldn't be lawful. This is line with a previous decision of the Commissioner's⁴, where similar information was requested.
24. Since the Commissioner has been determined that the information requested at part 1 can be withheld under section 40(2), he doesn't need to go onto consider the Charity Commission's application of section 38.

Section 41 – information provided in confidence

25. Section 41(1) of FOIA states that information is exempt from disclosure if:
 - "a) it was obtained by the public authority from any other person (including another public authority), and
 - b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."
26. The information being withheld under this exemption is a copy of the Charity's application for an exemption to publish its trustees. This information didn't originate from the Charity Commission – it obtained it from another person, the Charity.
27. In order for disclosure to represent a breach of confidence, the information:
 - must have the necessary quality of confidence;
 - must have been imparted in circumstances importing an obligation of confidence;

³ <https://www.bbc.co.uk/news/uk-68288727>

⁴ [ic-172290-v3r4.pdf \(ico.org.uk\)](https://www.ico.org.uk/for-organisations/data-protection/data-protection-articles/172290-v3r4.pdf)

- must be an unauthorised use of the information to the detriment.
28. The application in question details why the Charity should be exempt from publishing the names of its trustees. The Commissioner has considered the nature of the withheld information, and the context in which it was shared with the Charity Commission in its capacity as regulator.
 29. The Commissioner is satisfied the application isn't trivial, nor in the public domain. Therefore it has the necessary quality of confidence.
 30. The Commissioner is also satisfied that the information was imparted in circumstances imparting an obligation of confidence, owing to the Charity Commission's personal information charter⁵, which specifically states that information provided in relation to a charity trustee's dispensations will 'be held securely for routine internal access.'
 31. Although disclosure of personal data is mentioned in the charter, the Commissioner's view is that the information requested in part two of the request will have been imparted in an expectation of confidence. It relates to sensitive matters, specifically the reasons why publishing the trustee's name could put people in danger and evidence of this. Again, if the withheld information is sensitive enough for the dispensation to be granted, the Commissioner is satisfied it will have been imparted with an expectation of confidence.
 32. The Commissioner must now consider whether unauthorised disclosure would cause a specific detriment to the party that provided it or any other party.
 33. The Commissioner considers there would be damage to both the Charity Commission and the data subject(s) to whom the application relates, were the information to be disclosed.
 34. Charities may be less inclined to share information, specifically information relevant to trustee dispensations, with the Charity Commission if there are concerns that this information will be disclosed to the world at large. In turn, this will hamper the Charity Commission's ability to perform its regulatory role.

⁵ [Charity trustee dispensation privacy notice - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

35. The damage to the data subject(s) in question is self-explanatory. The application will name the trustees, and through the disclosure of this information, their identities would become public knowledge and place them in potential danger, which undermines the very purpose of the dispensation.
36. What this means is, were the Charity Commission to breach this confidence and disclose the requested information, it's likely that the Charity would be able to bring against it an actionable breach of confidence.
37. Although section 41 is an absolute exemption, it's accepted that if there is an overriding public interest in disclosure, this can be used as a defence against any breach of confidentiality that might be brought against a public authority disclosing information under FOIA. Unlike the test for a qualified exemption which is the reverse, the public interest in disclosure would have to outweigh the public interest in maintaining confidentiality.
38. If the complainant believes this trustee dispensation has been granted when it shouldn't have been, they can raise a complaint with the Charity Commission.⁶ Furthermore, the Charity Commission has explained its trustee dispensation process on its website⁷, which goes some way to meeting the public interest in the requested information.
39. On this occasion, the Commissioner considers the public interest lies in preserving the confidentiality, given the alternative methods that are available to the complainant to pursue their concerns, and the information that the Charity Commission already placed in the public domain.

Other matters

40. The Commissioner's guidance states that internal review outcomes should be provided within twenty working days. This period can be extended to forty working days if the matter is particularly complex. The Charity Commission exceeded this timeframe in providing its internal review outcome.

⁶ [Display of trustee legal names on the charity register - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

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Right of appeal

41. 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

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

42. 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.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
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Wycliffe House
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