



**CHARITY COMMISSION**  
FOR ENGLAND AND WALES

Mr C Duke  
By email: [request-563293-7f056d2b@whatdotheyknow.com](mailto:request-563293-7f056d2b@whatdotheyknow.com)

Charity Commission  
PO Box 211  
Bootle  
L20 7YX

**Your ref:**  
**Our ref: C-497692**

**Date: 13 May 2019**

Dear Mr Duke,

**REQUEST FOR REVIEW OF FREEDOM OF INFORMATION ACT RESPONSE**

Thank you for your email of 20 April 2019, asking for an internal review of the response that you received to your request under the Freedom of Information Act 2000.

I have taken forward your request for a review.

**Background**

In your email of 20 March 2019, you asked the Commission for all “information relating to the Risk Framework undertaken by DR (RAU Team) in respect of taking no further action on a complaint duly made and falling within the regulatory framework as acknowledged of the commission. ie a full and documented assessment of what is proportional, what is in the public interest and how the commission arrived at the same Ref 20190319 - No Further Action - 1042146 CRM:0114880.”

You also made other requests for information which were considered under the Freedom of Information Act 2000, but you have asked only for the Commission’s response to the above request to be reviewed.

The Commission responded on 15 April 2019, stating that the information was exempt under section 21 of the Freedom of Information Act as the information was reasonably accessible to you by other means. You were sent a link to the Commission’s Risk Framework on its website, with an explanation that this was the document on which the assessment process is based and it outlined how the Commission operated as a risk led, proportionate regulator and how and when it engaged.

**On track to meet your deadline?**

Visit [www.gov.uk/charity-commission](http://www.gov.uk/charity-commission) for help on filing your annual return and accounts

**t:** 0300 066 9197 (General enquiries)  
0300 066 9219 (Textphone)

**w:** [www.gov.uk/charity-commission](http://www.gov.uk/charity-commission)

You requested a review of our decision in your email of 20 April 2019. You argue that the response to your request was incorrect as you were trying to understand how the Commission had reached its conclusions on your specific case, rather than a generalised document on the Risk Framework.

### **Decision Review**

Whilst I consider that the Commission's initial response was not unreasonable in the circumstances, I have considered the request again in light of your further comments.

I can confirm that the Commission does hold information that is relevant to your request. However, we are withholding this information from disclosure under the exemption in section 31 of the Freedom of Information Act 2000. This exemption refers to circumstances where the disclosure of information would or would be likely to prejudice the exercise by any public authority of its functions for any of the purposes specified in section 31(2) of the Freedom of Information Act.

These purposes include the following:

- ascertaining whether any person has failed to comply with the law;
- ascertaining whether any person is responsible for any conduct which is improper;
- ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise;
- protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration;
- protecting the property of charities from loss or misapplication;
- recovering the property of charities.

In this case, the information requested is exempt from disclosure because the Commission's view is that it would be likely to prejudice our function of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise (section 31(2)(c)). The Commission's statutory functions include encouraging and facilitating the better administration of charities, identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement in the administration of charities.

Under the Charities Act 2011, in carrying out its functions the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed). As part of its work in being proportionate and targeting cases where action is needed, the Commission has published its Regulatory and Risk Framework. The purpose of this Framework is to outline: how the Commission operates as a risk-led regulator; how it decides when and how to engage and the possible outcomes of its engagement.

However, disclosing how the Framework is actually applied in an individual case regarding each element would be likely to be prejudicial to the efficient and effective operation of the Commission. Such information goes into more detail than that contained in the Framework. This has the potential to undermine the Commission's ability to collect accurate information from complainants and charities and could be used to help trustees in the future delay or avoid regulatory action and this would be prejudicial to the Commission's ability to regulate effectively.

Section 31 is subject to the public interest test. This means that before the information can be withheld, the public interest in preventing that prejudice must outweigh the public interest in disclosure.

Public interest in favour of disclosure –

- There is a public interest in the Commission being open and transparent regarding our regulatory activities. Such transparency helps to promote public awareness and understanding of our regulatory functions and this factor weighs in favour of disclosure.

Public interest in favour of maintaining the exemption –

- 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.

We consider that if we disclosed the detail about the Commission's assessment measures to decide whether or not to either engage or not engage with a charity would be likely to prejudice the Commission's ability to carry out its functions effectively.

This is because it would be likely to cause charities, other organisations and individuals to be aware of the level of risk by which the Commission would become involved. This would therefore be likely to prejudice our ability to exercise our 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.

The Commission is therefore of the view that the greater public interest is in withholding the information.

### **Next Steps**

If you remain unhappy with our decision made under the Freedom of Information Act, you may apply directly to the Information Commissioner (ICO). The ICO can be contacted at the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF (email: [casework@ico.org.uk](mailto:casework@ico.org.uk).)

Yours sincerely,

Lucy Breakspere  
Information Rights and Complaints Manager