



CHARITY COMMISSION
FOR ENGLAND AND WALES

By email only: Shivani Patel
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Charity Commission
PO Box 211
Bootle
L20 7YX

Your ref:
Our ref: C-527793

Date: 27 October 2020.

Dear Shivani Patel

Freedom of Information Review: Saltdean Lido Trust

Thank you for your email requesting an internal review of our response to your request for information under the Freedom of Information Act 2000 (the “FOIA”).

I have taken forward your request for a review.

Background

You emailed the Commission on 4 August 2020 and asked the Commission:

“Please provide me with copies of the records relating to the registration of Saltdean Lido Trust (to also include copies of that body's governing instruments).”

We responded to you on 1 September 2020 providing a copy of the charity’s governing document and advising that we were withholding the records relating to the registration of the charity citing the exemption at Section 31(1)(g) of the FOIA.

It was argued that disclosure of the information would likely prejudice the Commission’s statutory objectives and functions as outlined by sections 14 and 15 of the Charities Act 2011 thereby adversely affecting the Commission’s ability to regulate effectively and efficiently.

As the Commission was relying on a qualified exemption a public interest test was undertaken and this test was found, on balance, to favour withholding the information from disclosure.

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Decision Review

You emailed the Commission on 29 September 2020 requesting we review our decision reached in this case.

I have looked again at your request and I uphold the Commission's decision to withhold information from disclosure under section 31(1)(g) of the FOIA. I also consider Section 40(2): Personal Information and Section 41: Information provided in confidence apply to the information requested. I have therefore applied these exemptions to the information held which is relevant to your request.

I do however find that we hold some information that can be released to you, please find this attached.

Please note that the attached Report of the Executive Director for Economy, Environment & Culture at Brighton & Hove City Council concerning the Saltdean Lido Restoration Project is publicly available information at [https://present.brightonhove.gov.uk/Published/C00000912/M00006401/AI00055441/\\$Saltdean%20Lido.docxA.ps.pdf](https://present.brightonhove.gov.uk/Published/C00000912/M00006401/AI00055441/$Saltdean%20Lido.docxA.ps.pdf)

Please find below my explanation of the added exemptions that are considered applicable to your request upon review. In upholding the Commission's use of section 31(1)(g) I have also carried out a further public interest test to ensure the robustness of the application of this exemption, please find the outcome of this following the explanation of the added exemptions.

Section 40(2)

Section 40(2) provides that the personal data of third parties is exempt information if one of the conditions set out in section 40 (3A) is satisfied, namely whether any of the data protection principles would be contravened by the disclosure.

Disclosure of the personal data of third parties would breach the first principle at Article 5(1)(a) of the GDPR. Under this principle personal data is required to be processed lawfully, fairly and in a transparent manner.

To disclose personal data in response to a FOIA request would beat odds with this principle unless there is a legitimate interest in doing so, and this was in line with the expectations of the data subjects concerned.

In this instance, I have not identified a legitimate interest which overrides the rights and freedoms of those individuals who may be identified by the disclosure of the information requested.

The personal data of third parties has been withheld as those individuals would have no expectation that their personal data would be processed in this manner. Disclosure of their personal data would therefore be unfair and in contravention of Article 5 of the GDPR.

Section 41(1)

Section 41(1) provides that information is exempt information if it was obtained by the public authority from any other person (including another public authority), and 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.

We can confirm that the information in question possesses the necessary quality of confidence and has been provided to us in circumstances that would warrant us to handle the information confidentially. We consider that disclosure of the information in question would cause harm to the individuals concerned and for which the Commission would be legally liable.

Section 31(1)(g)

It is the Commission's view that disclosure of information relating to an institution's application to register as a charity has the potential to undermine the Commission's ability to collect candid and accurate information from applicants. The routine disclosure of information related to our registration casework methodology could be used to help others who may wish to abuse charitable status avoid detection.

This would be prejudicial to the Commission's ability to carry out its statutory objectives and functions in accordance with sections 14 and 15 of the Charities Act 2011.

Public Interest Test

Public interest in favour of disclosure:

There is a public interest in the Commission being open and transparent regarding our regulatory activities such as determining whether an institution is a charity or not. Such transparency helps to promote public awareness and understanding of our regulatory functions and this factor weighs in favour of disclosure.

There is a public interest in the Commission and how it spends public funds, being transparent and accountable for its decisions, findings and regulatory conclusions in order to meet its objective to ensure public trust and confidence and accountability in charities. This would also favour disclosure

Public interest in favour withholding the information:

There is a strong 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.

The routine disclosure of the information held would adversely affect the Commission's ability to regulate efficiently and effectively by "tipping off" potential applicants of the Commission's registration casework methodology which could then be used to avoid detection should they wish to abuse charitable status.

Disclosure would likely make applicants, charities, and other parties, reluctant to cooperate or enter into open and frank discussions with the Commission in the course of its work for fear that their communications would later be released to the world at large in an FOI request.

In addition to obtaining information by the exercise of its statutory powers, the Commission relies on charities, and other interested parties, to voluntarily provide us with the full and frank disclosure of information, so that it can identify regulatory issues within charities.

It would be difficult for the Commission to be aware of all relevant issues if trustees and other parties were not prepared to fully disclose information, including confidential information, voluntarily.

Outcome

In balancing the public interest of disclosure against the public interest in withholding the information, it is the Commission's view that on review of the request the public interest lies in maintaining the exemptions cited in this review.

This concludes our review of your FOI request.

Yours sincerely

Katherine O'Hare
Information Rights and Complaints Manager
Charity Commission

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.)

