



**CHARITY COMMISSION**  
FOR ENGLAND AND WALES

By email only: [request-640548-fefa9b4a@whatdotheyknow.com](mailto:request-640548-fefa9b4a@whatdotheyknow.com)

Charity Commission  
PO Box 211  
Bootle  
L20 7YX

**Your ref:**  
**Our ref: C-516098**

**Date: 25 March 2020**

Dear Mr Stacey

### **Freedom of Information Review**

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 Act").

I have taken forward your request for a review.

### **Background**

On 31 January 2020 you asked 7 questions under the Act in connection with Waiver applications received by the Commission during the periods 01/02/2018-31/01/2019, and 01/02/2019-31/01/2020).

We responded to you on the 26 February confirming we held information in scope of your request and provided responses to questions numbered 1 through to 6. It was considered the information held that was pertinent to the request numbered 7 was exempt from disclosure by virtue of the exemption found at section 31(1)(g) of the Act.

Your request at Q7 was for: *"The type and number of criminal record checks carried out on receipt of each waiver application (for example to confirm that an applicant is in fact disqualified under the rules.)"*

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.

#### **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)

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

## Decision Review

In your request for a review you argue it is unclear how the justifications put forward to support withholding the information related to the specific request regarding the types of checks carried out on waiver applications.

I have looked again at your request and I uphold the Commission's decision to withhold the information from disclosure under section 31(1)(g) of the Act. In carrying out the review I have taken into consideration your comments about the reasoning for applying section 31 (1)(g) to this part of your request and have carried out a further public interest test.

Section 31(1)(g) provides that:

*“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*

*(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)”*

Relevant purposes in subsection (2) include:

- ascertaining whether any person has failed to comply with the law;
- ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise;
- protecting charities against misconduct or mismanagement in their administration

Where a qualified exemption is engaged, as in the application of section 31 in this case, then the Commission must carry out a two-stage process.

Firstly, it must demonstrate that disclosing the information would prejudice the performance of its functions and then if that is satisfied, it carries out a balancing test to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure (the public interest test)

The Commission would respond as follows:

The information you are seeking at Q 7 of your request is held by the Commission in furtherance of its statutory objectives and functions as outlined by sections 14 and 15 of the Charities Act 2011.

Section 15 (3) of the Charities Act 2011 places a duty on the Commission to identify and investigate apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with that misconduct or mismanagement.

It is considered that disclosing the information requested would prejudice our ability to take protective action in connection with a charity or charities by effectively “tipping off” the public about the methodology of our casework and ergo how it may be possible to avoid detection and regulatory action by the Commission.

I am satisfied that we can demonstrate the prejudice that would be caused to the Commission’s exercise of its functions, we must now carry out a public interest test to demonstrate that withholding the information outweighs the public interest in releasing it.

## Public Interest Test

### Arguments for disclosure.

Public authorities such as the Charity Commission have a wider duty to be transparent and accountable for the decisions they make. There is therefore a genuine public interest in knowing how the Commission operates and spends public money.

Disclosure of information would help to inform public debate on issues of regulatory significance and demonstrate that the Commission is effectively and efficiently regulating the charity sector.

### Arguments against disclosure

Your request is for information is held by the Commission in its capacity as the charity regulator.

There is a great public interest in having an effective regulator, able to effectively and efficiently regulate the sector. Releasing the information requested could be used to help others who may wish to abuse charities to avoid detection by knowing our caseworking methodology. This would be prejudicial to the Commission’s ability to carry out its statutory objectives and functions in accordance with the Section 15(3) Charities Act 2011.

The disclosure of such information may also reveal other exempt information such as the source of information and with whom we may have engaged. Disclosure of this information would adversely affect the Commission’s ability to regulate efficiently and effectively by hindering any operational relationship we hold with other agencies with whom we may engage whilst carrying out our statutory functions.. This would be detrimental to the Commission’s purpose.

In addition to obtaining information by the exercise of its statutory powers, the Commission relies on third parties to voluntarily provide us with the full and frank disclosure of information to assist in carrying out its regulatory function. It would be difficult for the Commission to be

aware of all relevant matters if trustees and other parties were not prepared to be candid in their exchanges with the Commission as a result of information disclosed. This would have an adverse impact the Commission's ability to be an effective regulator.

### **Outcome**

It is the Commission's view that on balance and in this instance, the stronger public interest lies in withholding the information under section 31 (1) (g).

This concludes the review of your 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](mailto:casework@ico.org.uk).)*