



CHARITY COMMISSION
FOR ENGLAND AND WALES

Mr A Ying
By email: request-615822-f02ca74c@whatdotheyknow.com

Charity Commission
PO Box 211
Bootle
L20 7YX

Your ref:
Our ref: C-513349

Date: 13 February 2020

Dear Mr Ying,

REVIEW OF FOI REQUEST

Thank you for your email of 20 January 2020, asking for an internal review of the response that you received to your request under the Freedom of Information Act 2000 (the Act).

I have taken forward your request for a review.

Background

Your email of 27 October 2019 requested the following information:

"I am writing to request the following information under the Freedom of Information Act 2000:

1. Number of serious incident reports made by Trinity Hall Cambridge (the "Charity") to the Charity Commission (the "Commission") between January 2015 and December 2017;
2. Number of serious incident reports made by the Charity to the Commission between January 2015 and December 2017 in relation to Dr Peter Hutchinson, formerly a fellow and trustee of the Charity, and incidents relating to Dr Hutchinson;
3. Copies of any such serious incident reports referenced in (2);
4. Copies of all communications between the Charity and the Commission with regard to Dr Hutchinson, formerly a fellow and trustee of the Charity."

You also requested copies of the charity's Annual Returns which has been dealt with by the Commission and I have not considered this part of your request further.

On track to meet your deadline?

Visit 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

The Commission responded on 19 November 2019. Its response neither confirmed nor denied that it held the information you requested by virtue of section 31(3) of the Act.

You requested a review of our decision in your email of 20 January 2020 on the grounds that section 31 did not apply and, in particular, that the Commission had not explained how reporting on the number of RSI's would prejudice the function of the Commission. It is your view also that each sub-section of your request should have been considered separately.

Internal Review

By way of background, when the Commission receives a request under the Act, it is under duty to confirm or deny that it holds the information requested (section 1(1)(a)). Public authorities such as the Commission are excluded from this duty in certain circumstances. In the case of your request, the Commission considered that it could apply section 31(3) of the Act – that to confirm or deny that the information is held would, or would be likely to, prejudice the exercise by the Commission of its functions. The Commission's original response provides further details about this exemption and also set out the results of the public interest test that was carried out.

Having considered your request again, I am satisfied that the Commission has applied section 31(3) correctly. I do accept, however, that we could have applied our response more clearly to your individual requests.

You have queried, in particular, why the Commission believes that disclosing the number of RSI's would prejudice its functions.

In accordance with its objectives and functions in charity law, the Commission is responsible for regulating the charitable sector, including performing functions such as identifying and investigating apparent misconduct or mismanagement, and encouraging and facilitating the better administration of charities.

As part of those functions, the Commission requires charities to report serious incidents providing full and frank disclosure to the Commission. As far as requests 1 and 2 above are concerned, if the Commission was required to disclose whether or not it had received such reports (and how many), this would prejudice the ability of the Commission to perform these core functions. Disclosing whether or not the information is held to the wider public would be likely to prejudice the Commission's regulatory functions by discouraging full and frank disclosure by charities in the future.

You have also specifically asked for copies of any reports (3 above). Reports of serious incidents often contain sensitive and confidential material. If the Commission disclosed whether or not it had received such reports (and how many) as well as disclosing copies of such reports, this would undermine confidence in the Commission's ability to handle such

material in a confidential manner. This would, in turn, undermine the Commission's role as an effective and efficient regulator of charities that is able to ensure compliance with the relevant regulations.

Your request at 2 above also refers specifically to a named individual. I would add a further exemption in these circumstances at section 40(5b)(a) of the Act. This section provides that a public authority is not obliged to confirm or deny that it holds information if confirming this would contravene any of the data protection principles.

Section 40(5b)(a) states that:

"The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

- (a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—
- (i) would (apart from this Act) contravene any of the data protection principles"

Under the Act, confirming or denying that this information is held would be a breach of the fair and lawful processing principle contained in the GDPR (Article 5(1)(a)). This is because it would be unfair to that person to process their personal data in a way they would not expect us to (i.e. disclose it to the wider world under a Freedom of Information Act request).

In respect of the specific request you have submitted, any confirmation or denial that we do/do not hold the relevant information would be likely to breach the GDPR as it would indicate whether we were processing personal information relating to a specific individual. Given the nature of your request, such a confirmation or denial by the Charity Commission would constitute the unfair processing of personal data.

As far as request 4 is concerned, section 40(5b)(a) applies. Please see the explanation above regarding this section.

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.)

Yours sincerely,

Lucy Breakspere
Information Rights and Complaints Manager

