

Mr. M McGartland

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Our ref: C-463539-K5Z7

Date: 29<sup>th</sup> August, 2017

Dear Mr. McGartland,

### **FOI Decision Review – Outcome**

Thank you for your email of 31<sup>st</sup> July, 2017.

I am Laura Evans of the Charity Commission's Monitoring and Enforcement Team. I have conducted a review of our decision that the information you requested under the Freedom of Information Act (FOIA) in your email of 18<sup>th</sup> July, 2017 was exempt from disclosure.

The review has been carried out in line with our published procedures, which are available at the following link:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/394719/our\\_guidance\\_on\\_requesting\\_a\\_review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/394719/our_guidance_on_requesting_a_review.pdf)

I can confirm that I was not involved in the making of the original FOIA decision.

### **The scope of the decision review**

The decision review examined whether the Commission was correct to decide that the information requested in your email of 18<sup>th</sup> July, 2017 was exempt from disclosure. The information requested was as follows:

*"I would like the Charity Commission to disclose all, any recorded information it holds regarding Vera Baird, Northumbria Police Crime commissioner, being investigated after awarding her own charity half a million pounds of taxpayers' cash.*

*The case was reported in the press as follows;*

*Crime tsar investigated after she awarded half a million pounds to her own charity:*  
<http://www.mirror.co.uk/news/uk-news/crime-tsar-investigated-after-awarded-5526484>

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**General enquiries:** 0300 066 9197

**Textphone:** 0300 066 9219

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

Newcastle crime commissioner investigated after awarding own charity with taxpayers' cash: <http://www.chroniclelive.co.uk/news/north-east-news/newcastle-crime-commissioner-investigated-after-9053853>

*It was reported; A Ministry of Justice (MoJ) source said officials would be making inquiries to ascertain whether conflict of interest rules had been broken.*

*The MoJ has supplied me with your details; <https://www.whatdotheyknow.com/request/402835/response/1004740/attach/html/2/IR%20112069%20Martin%20McGartland%20response%20FINAL.DOC.doc.html>*

*I would also like;*

*1. Copies of original e-mails, letters, all other correspondence between PCC Baird, OPCC Northumbria, Northumbria Police and Charity Commission for England and Wales, all other persons and third parties, copies of all complaints, all records, notes (including telephone notes), all minutes of meetings (including those which relate to all investigations ,inquiries) which relate to this request.*

*2. Copies of all original reports, findings by Charity Commission for England and Wales or others acting on their behalf. All recorded information which relates to this request.*

*I am not requesting any personal information. The request relates to the Northumbria Police Crime Commission while in public office. There is also a public interest. The case relates to public funds of £500,000.00 or more. I expect the Charity Commission for England and Wales to be open and transparent when dealing with such matters."*

## **The Commission's response**

The Commission provided a response to this request in an email of 28<sup>th</sup> July, 2017. The decision was that there were no past or current Investigations into Vera Baird.

In response to your request, a piece of correspondence was released in which some information was redacted. We explained that this was exempt from disclosure under section 40(2) of the FOIA.

## **Conclusion**

I have reviewed our decision and have concluded that we were correct to decide that the redacted information was exempt from disclosure and that the majority of it was correctly exempted under section 40(2) of the FOIA. However, I also find:

1. An incorrect exemption was applied to part of the redaction: it should have been exempted under section 41 and not section 40(2); and,
2. We did not provide you with a full explanation for non-disclosure.

I therefore clarify the above in the following information:

## **Section 40(2) – Personal information**

Personal information is withheld under Section 40(2) of the Freedom of Information Act 2000, as the information constitutes third party personal data for the purposes of the Data Protection Act 1998 (DPA). Section 40 (2) provides that personal data about third parties is exempt information if one of the conditions set out in section (3) is satisfied, namely whether any of the data protection principles would be contravened by the disclosure. Under the Act, disclosure of this information would breach the fair processing principle contained in the DPA where it would be unfair to that person and/or is confidential.

To clarify further personal information may not simply be a name, personal information may in regard to a personal characteristic that would enable identification of an individual. In this instance the redacted information is in relation to identifiable characteristics of prospective trustees. This information may or may not relate to those persons that eventually took up the office of trustee and as such s40 (2) is engaged.

### **Section 41 – Information provided in confidence**

The exemption under section 41 of the Act is engaged as we consider the information confidential. This is because it refers to information obtained from other parties and if disclosed, there is likely to be an actionable breach of confidence. Whilst this exemption is absolute and I do not have to apply the public interest test, I have considered the question of public interest and decided that on this occasion, there is no overriding public interest in disclosing the information.

In this instance we are unable to provide a copy of the information requested as disclosure would represent a breach of Section 41 of the Freedom of Information Act 2000. Information will be covered by Section 41 if;

- ) it was obtained by the Public Authority from any other person, (A person may be an individual, a company, the public authority itself or any other legal entity.)
- ) its disclosure would constitute a breach of confidence
- ) a legal person could bring a court action for that breach of confidence, and that court action would be likely to succeed

When determining if disclosure would constitute a breach of confidence, the authority will usually need to consider;

- ) whether the information has the quality of confidence,
- ) whether it was imparted in circumstances importing an obligation of confidence, and
- ) whether disclosure would be an unauthorised use of the information to the detriment of the confider.

To clarify; the information we hold relevant to your request has been provided to the Commission with no expectation of any subsequent release into the public domain. As such any disclosure made by the Commission would represent a breach of Section 41 of the Freedom of Information Act 2000

If a Public Authority receives a request for information which it has obtained from another person and that Public Authority holds the information subject to a duty of confidence, that information will be exempt if providing it to the public would constitute an actionable breach of that confidence.

Accordingly if we were to release the information you have requested it would be committing an actionable breach of the exemption and, as such, the information should be withheld.

To clarify, the term 'actionable' relates to a breach of confidence which is actionable if a person could bring a legal action against a Public Authority and be successful. The courts have recognised that a person will not succeed in any such action for breach of confidence if the public interest in disclosure outweighs the public interest in keeping the confidence

In line with the above the Commission feels the application of Section 41 is appropriate in these circumstances and that there is a clear public interest in withholding the information as potential release could place the Commission in a situation where it is required to defend its actions in a court of law and, potentially, financially compensate any organisation affected by our disclosure.

I hope the above has clarified matters however if you are unhappy with this decision, you may apply to the Information Commissioner for a decision. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely,

**Laura Evans**  
**Senior Case Manager, Monitoring and Enforcement**  
**Charity Commission**