

Making Open Data Real: A Public Consultation

Response from the Charity Commission for England and Wales

1. Background and Introduction

The Charity Commission welcomes the opportunity to respond to the proposals on increasing access to data from public bodies and about public services.

The Charity Commission is the independent regulator and registrar of charities in England and Wales. There are 162,000 registered charities. Two thirds of these have an income of less than £10,000 a year, and 9,000 charities have an income of more than £500,000 a year. Charity income is over £50 billion a year in total and the sector represents around 4% of GDP. One of our core duties is to maintain a register of charities; this is web based and the pre-eminent resource for providing information about the charity sector and ensuring that charities are accountable to the public. Our website is the primary source of open information, and in 2010-11 its pages were viewed 42 million times.

The consultation is understandably wide-ranging. In our response we have not sought to address the specific consultation questions. Instead there are a number of points that we would like highlight which have implications either for us as charity regulator, or for charities themselves.

2. Implications for the Commission as regulator

i. Transparency standards. Whilst supporting openness and transparency, the nature of our role means that we are not able to make all of the information we hold open and available to the public. To do so would jeopardise our investigations and could also undermine public confidence in our role; we rely on the public having confidence that they can contact us regarding any concerns about malpractice by a charity in confidence. A small number of our cases lead to a criminal investigation handled by the police and some involve the security services. Therefore it is important to set transparency standards for public bodies that are sensitive and flexible enough to deal with legitimate exceptions.

ii. Freedom of Information (FOI). At present the Charity Commission responds to very many FOI requests each year. The number of requests we receive has increased by 77% in the last three years. In 2010 we responded in full to 872 requests. The requests usually relate to information which is not held in an easily accessible format or data set. The information may have been generated over several years and many requests require a bespoke response which involves considerable amounts of time. Because of the nature of our regulatory work we frequently need to consider whether there are exemptions which apply; this is complex and requires costly input from our legal staff. FOI requests are increasingly accompanied by Subject Access

Requests made under Data Protection legislation and these also pose an increased resource pressure.

We do not believe that extending the amount of time or the £600 limit for responding to FOI requests would bring increased benefits to the public. We agree that as much information as possible should be made readily available and we are currently developing our FOI publications scheme so that more responses can be published. However it is our view that the proposed changes would not increase our accountability to the public or be the best of use of public funds. At a time when the Commission's budget is reducing significantly it would not be the best use of our scarce funding to spend more on this aspect of our work.

iii. Internal Reviews under the FOI Act. The consultation recommends that a new statutory time limit of 20 days should be introduced for the completion of internal reviews under the Freedom of Information Act. In 2010-11 we were able to complete 31 internal reviews within 20 days, with a further two completed within 30 days. For us the implementation of statutory limits would be unlikely to lead to quicker responses. It is important that there is sufficient flexibility to ensure that public bodies have adequate time to review complex cases without the risk of compromising the quality of the review.

iv. Requirement for Public Bodies to publish an Information Strategy.

We have noted the commitment made in the Prime Minister's letter on Transparency (7 July 2011) which includes the revision of existing Information Strategies to be published in departmental business plans from April 2012. We are currently examining our own approach to the information we hold and are in the process of developing a new Information Strategy for the Commission which we will be happy to publish alongside our business plan next year. We would welcome further information about Cabinet Office thinking in this area, and have also noted that proposals are due to be published in a White Paper this autumn.

3. Implications for charities

i. Public bodies that are charities. Some charities are also public bodies and are subject to the same requirements as other public bodies. For example, London museums and galleries, the Arts Council, Kew Gardens, the British Library, and the Historic Royal Palaces are all public bodies that have charitable status. It is important that the regulatory model for public sector information in government takes into account the diversity of public bodies. For this reason we welcome the proposals to strengthen and broaden the membership of the Public Sector Transparency Board chaired by the Minister for the Cabinet Office. It would be helpful if membership could be extended to some of the bodies we refer to above, so that any issues relating to the need to balance the dual demands of having charitable status and being a public body can be taken into account when considering a future strategy for transparency of data.

ii. Misuse of public data. The Charity Commission provides access to the Register of Charities data to 35 other bodies, free of charge, through licensing agreements using the Open Government licence. We have some concerns about proposals to further enhance rights to data, as outlined in section 4.8 of the consultation.

Our concerns relate to the issue of ‘screen scraping’. What this means is that some individuals use the Commission’s register data, available on our website, and sell it on to others for direct marketing purposes. This results in charities receiving unwanted mail shots and promotions. Many charities are small, local organisations and their contact details are often the home addresses of the charity correspondents. The vast majority of charity trustees are volunteers and unsolicited mail could potentially lead to a situation where people feel less inclined to volunteer for the role as a result.

It is therefore important to ensure that greater access to public data is accompanied by increased responsibility and respect for personal data. We believe that any increased rights to data must be accompanied by sanctions against those who misuse public data.

iii. Comparability issues. A challenge that both the Charity Commission and charities face relates to the issue of data interpretation. We support and encourage charities to be as open and transparent as possible in their annual report and accounts. The question that arises is how to manage the impact of publishing quantitative data without necessarily being able to explain what lies behind it.

For example, we know from our research on levels of public trust and confidence in charities¹, that the most important driver of trust and confidence is that charities ensure that a reasonable proportion of donations get to the end cause. However, the percentage of income that a charity spends on its overheads and on its end cause varies significantly from charity to charity; a charity with a popular cause may need to spend less on its fundraising activities than one which is less popular. Whilst comparative data is a powerful tool some charities face the risk of losing support if the public are unaware that they are not comparing like with like.

We don’t have any easy answers but wanted to raise this as an issue for the charity sector, and to give an example of why we believe it is important to consider the impact of making data open as part of the decision-making process for requiring public access to data.

4. Concluding comments

The Charity Commission welcomes the consultation and supports its overall aims. We are keen to ensure that the diverse nature of public bodies is properly considered as the proposals are taken forward, and we have some

¹ *Public Trust and Confidence*, Research study by Ipsos MORI on behalf of the Charity Commission, 2010

concerns about the potential impact of Freedom of Information proposals. We will continue to work to ensure that the data we hold is made as widely available as possible.

If you have any questions, or would like to discuss any issues we have raised, please do not hesitate to get in touch.