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| Sharing Information with other Public Authorities |
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| OG405 |
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**OG 405 Sharing information with other public authorities**

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**Policy Statement/Overview**

Every time we liaise with other public authorities we need to think about the nature of the information we receive and pass on and how that information comes within the provisions of sections 52 to 59 of the Charities Act. It is important that we understand these provisions and how we treat information given to us and what we can or cannot disclose. This applies to all of our casework and not only compliance work.

This guidance explains when we can and cannot receive and pass on information to **other relevant public authorities** under the Charities Act and how we define disclosure, information and confidentiality in this context. It also considers how we satisfy ourselves that disclosures:

* enable us or the other public authority to discharge our respective functions;
* are necessary for the proper discharge of our functions;
* are proportionate to a legitimate Human Rights Aim and in the public interest;
* are being transmitted to a named person; and
* is adequate and relevant (and not excessive), accurate and up-to-date to the best of our knowledge.

**Summary of the guidance**

Section B1 Casework Guidance sets out why it is important for us to consider disclosure of information as part of our work and provides the criteria we need to consider when accepting and disclosing information.

Section B2 considers the principles involved when we are involved in making disclosures to other relevant public authorities and how such disclosures might engage issues of human rights and have implications for processing personal data.

At section C1 there is a checklist for disclosures under sections 56 to 57.

Section D Case Studies contain examples of:

* our decision to make a report to the police; and
* how we make a report to the police about a suspected crime.

Section E1 Legal/Policy/Accountancy Framework highlights the different elements of Act.

Section E2 looks more closely at what we mean by information, public interest and confidentiality in the context of our work and the considerations that are relevant in deciding whether or not to disclose information under sections 56 and 57.

Section F sets out the common questions we ask about confidentiality in the context of the Act, which link to the answers within the guidance.

Section G1 contains wording to be included in letters where we are making a disclosure under the Act.

**Casework Guidance

OG 405 Sharing information with other public authorities under the Charities Act 2011**

**B.1 Disclosure of information: background**

In the course of its work, the Commission acquires very considerable amounts of information. The extent to which it can disclose that information to third parties is governed by a number of legal rules. Some of those rules exist to promote privacy and confidentiality. Others tend towards making the processes of government more transparent.

In the course of carrying out its statutory functions, the Commission makes information available (now mainly through its website) about individual charities, about charity law and practice, and about the work of the Commission. Where individuals or organisations approach us for information that we don't usually publish, their requests are likely to be governed by the Data Protection Act or the Freedom of Information Act (and our response will need to comply with the Human Rights Act and any other relevant legislation). Guidance about such requests and what information we are able to provide is contained in Data Protection Essentials and OG 721 (Freedom of Information). Human Rights Act 1998 guidance can be found can be found in OG 71.

This operational guidance looks at the rather narrower question of what information the Commission is able to pass to and accept from other public authorities to enable them to carry out their functions. It also looks at the circumstances in which other public authorities are able to disclose to the Commission to enable it to carry out its statutory functions. The legal framework which creates the 'gateway' through which information passes between the Commission and other public bodies is contained in sections 54 to 59 of the Charities Act.

**IMPORTANT NOTE:** We should bear in mind that other public authorities may also have a statutory 'gateway' for information and that it may be possible to rely on that gateway instead of, or as well as, sections 54 to 57. Legal advice must be taken where it is our intention to rely on the legislation of another regulator.

In many cases we manage our relationships with other regulators and agencies for the exchange of information by use of Memoranda of Understanding, which set out the parameters for when and how information is exchanged within our, and their, legal remit. The Intelligence and Tasking team manage the operational relationships with other regulators and agencies. Disclosures between us and other agencies are made under the Act. We may also make disclosures using FIN-NET (Financial Intelligence Network) - these too fall within the Act. A list of operational contacts is available on ERIC – this includes details of when contact must be made through the Intelligence and Tasking team and when case officers can engage directly.

**IMPORTANT NOTE:** We must record all exchanges made under the Act. The Intelligence and Tasking team will provide advice on who to contact in other agencies if details cannot be found in the list of operational contacts. It is important that when a caseworker engages with another regulator or agency they record this in MSD using the relevant power activity for a disclosure under section 54 or 57.

Other regulators do not always understand the Charity Commission's role as a regulator and can be reluctant to share information. The model text for letters provides a standard paragraph which helps to explain our role and the limitations attached to any information we provide. Please seek advice from the Intelligence and Tasking team if another agency is still reluctant to share after you have provided this information.

**B.2 What we consider when we make disclosures to other relevant public authorities**

This section looks at the practical issues we need to address before we provide information to another relevant public authority. This applies to cases where we decide to make a disclosure as well as when we receive requests for information. See checklist at C1.

**B2.1 What we need to consider for disclosure under sections 54 to 59**

Unlike applications for information under Data Protection Act and the Freedom of Information Act we have discretion about what information (if any) we provide under sections 54 to 59. We may therefore consider whether we wish to:

* disclose all information;
* disclose particular pieces of information;
* not disclose anything;
* provide a summary only.

**IMPORTANT NOTE:** seek legal advice if the police are seeking information under these sections in relation to a money laundering or terrorism offence **as a criminal offence may be committed if we do not provide the information.**

On receipt of a request for information under section 56 and 57 we should consider the following questions.

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| **Overarching Question**  | **What do we need to think about?**  | **What do we need to do?**  |
| **Do we have a written request for information?** | Section E2.1 explains what we mean by "information" for the purposes of the Act. Section E1.1 explains what we mean by "disclosure" under the Act and confirms that we have discretion about the information we disclose. Not all requests come in writing, often we can be asked to disclose information in meetings where we might be uncertain whether it is appropriate. We might also consider making a disclosure to another regulator without any request from them.  | Before any meeting with other regulators, case officers need to be familiar with any Memorandum of Understanding or other information sharing arrangement we have with that particular regulator and decide which information it may be necessary or appropriate to disclose at the meeting. They should take advice from legal and the Operational Contact beforehand. Where a verbal request is made for information and we are unsure if it can be disclosed we should ask for a written request. For example it would not be sufficient for the police to ask us for "everything you know about x". We need to know what sort of information they want and why in order to respond proportionately. Where we take the decision to make an unsolicited disclosure to another regulator it should be done with legal advice and recorded in MSD.     |
| **Does the individual or organisation making the request fall within the definition of a relevant public body?**  | Public bodies are defined in section 54(3) &56(4) of the Act. Section E1.5 sets out what constitutes a relevant public body.  | The most obvious public bodies we deal with are the police, other government departments and local authorities. A useful starting point is whether we have a Memorandum of Understanding with that organisation or whether the Intelligence and Tasking team can provide any information about them. If we don't know we should ask. The internet is a useful source of background information but legal advice should be taken where there is uncertainty.   |
| **What functions are carried out by the requesting organisation or individual?**    | If this is an organisation we don't know a lot about looking at its functions will help us decide whether it is a public body and whether we can share information. Section E1.5 sets out what we need to find out about organisations that are not established by statute.  | If we don't know what an organisation does we must ask, and in particular, how will this information help them to carry out their functions (see the next question).    |
| **Will disclosing the information enable or assist the relevant public authority to discharge any of its functions or how otherwise is the information relevant to the discharge of its functions?**    | We need to make sure that the information we provide is for the purposes set out in section 54. See section E1.3. We must not provide more information than has been requested without good reason. Any additional unrequested information would need to fall within section 54.   | We must ask if we are uncertain how this information will help in discharging the functions of that organisation or how it is relevant to them.  |
| **Will disclosing the information enable or assist the Charity Commission to discharge any of its functions?**    | We need to consider how disclosing the information to the relevant public body will further our functions or objectives. | It will generally not be difficult to conclude that assisting another regulator when seeking compliance with the law will (directly or indirectly) promote our statutory objectives. If you have any doubt seek legal advice. |
| **Are we certain about what information is being requested?**      | We need to be precise about the information being requested. This will help us make a decision on what, if anything, we disclose. There may also be other considerations that give us reason not to disclose particular information. See the next section which sets out our considerations on human rights and data protection, and section E2 which explains what we mean by "public interest" and "confidentiality" under the Act.   | Where we decide that we can proceed with the disclosure we need to identify the material in our possession which is relevant to the request. When identifying material we need to keep a record of what we will disclose and why and what information we have considered and the reason for non-disclosure. This provides an audit trail for the decision making process.  |

**B2.2 Consideration of human rights when making disclosures under the Act**

Any time a public body shares information about an individual or legal entity (which may include a charity) human rights are likely to be engaged. The Human Rights Act gives effect to the rights and freedoms guaranteed under the European Convention on Human Rights and the Commission, as a public authority, must not act in a way which is incompatible with Convention rights. We must seek to find a fair balance between the protection of individual rights and the interests of the community at large. According to the European Court for Human Rights case law, any restrictions on individual rights must be strictly proportionate to the legitimate aim they pursue and must not go beyond what is necessary to achieve that purpose. This means that the extent of the information we decide to disclose must be a proportionate response to the request and a proper use of our powers.

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| **Question**  | **What we need to consider**  | **Example or action needed**  |
| **Does the request or disclosure involve information about individuals?** | If so: Is the disclosure for a legitimate aim? (See OG71 A2  Convention Rights) and Is the disclosure proportionate to this aim? (See OG71 B2 How Human Rights affects the Charity Commission)  | Our consideration will not be limited to our own functions but also to those of those of the organisation with whom we are sharing information. What is legitimate will depend on which convention right is engaged, for instance, Article 8 the prevention of crime or national security is a legitimate aim where we supply information to the police about criminal activity we have uncovered and economic well-being of the country in respect of disclosures to HMRC.    Proportionality would cause us to think about how much information we give to ensure that we are disclosing only the narrowest set of information in order to meet the request.  It would also give us cause to think about who information is given to, for instance is it proportionate that it should be given to FIN-NET where the information is disseminated amongst all its members.   |
| **Are safeguards in place to minimise the interference with the rights of the individuals in question?**  | We would need to ensure that data is transmitted in a secure way and to a named person. See departmental protocols about sending information securely. | The Document and Data Security Policy sets out rules to which we should adhere. Security policies can be found on ERIC.   We have arrangements with some regulators or agencies about exchange of information and procedures for any exchange. These arrangements are set out in memoranda of understanding (MOUs). They are listed in the IME area on Knowledge Base and should be checked before we intend to provide or receive information. Consult the Operational Contact if you are uncertain about exchanging information.   |
| **Are there any other repercussions that could cause harm (including reputational) to the individual/charity concerned?**  | If yes;  Is the disclosure in the public interest and proportionate to the public interest? - see section E2.2. | The level of what we disclose in the public interest will depend upon which convention right is being engaged. Examples of where our compliance work might impact on human rights principles can be found in section 3 of OG117 A1. These examples may easily apply to other work within the Commission.  |

Where information relates to more than one charity separate requests will be needed for each charity and we should take care not to disclose information about a second charity for which no request has been received.

**B2.3 Confidentiality**

We need to take particular care with information we regard as 'Confidential' as we may not be able to disclose it. Confidential will not always mean 'sensitive' personal information (for instance previous convictions or medical information), which is considered in the first instance under data protection principles set out in B2.4 below. To avoid inappropriate disclosure of confidential information we need to think about the following issues.

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| **Question**  | **What we need to consider**  | **Example or action needed**  |
| **Is the information we are considering for disclosure confidential?**  | What is the nature of the information? Why do we have it in the first place?   | In general terms correspondence with the Commission (letters, emails, details of phone calls or meetings) is not confidential.  Information is treated as confidential only where there is good reason for doing so. Section E2.2 onwards sets out the circumstances where we treat information as confidential. Section E2.6 sets out the type of information that would be considered confidential.    |
| **Do the circumstances in which the information was given or requested make it confidential?**  | Who gave us this information?   What was the reason it was given to us or why did we ask for it?   Are there any legal restrictions on that information that make it confidential? Is the information given to us expressly or impliedly to us in confidence?   Does the information relate to actual or intended legal proceedings?  Is it internal legal advice (including the original request for advice)?   Does the information allege misconduct or any kind of criminality?   Does the information contain personal data? Does the information contain material which, for any other reason, seems inappropriate to disclose?  | The following circumstances are likely to give rise to confidential information:   * Protected disclosures given to us by a whistleblower. The Public Interest Disclosure Act 1998 (PIDA) gives statutory rights and protections to whistle blowers. The Commission is a 'prescribed person' for receipt of disclosures under PIDA. As such we have responsibilities towards a whistleblower and therefore we need to be very careful before revealing a whistleblower's identity.
* Information received by us "in confidence" in connection with our functions - see section E2.3 which sets out relevant factors for agreeing to receive information subject to a duty of confidentiality.
* The information was obtained using our statutory powers, or threat of them, under section 47 or 52 and 53 of the Charities Act.
* Information that contains defamatory statements or sensitive personal data.
* Charity auditors or independent examiners have rights and obligations of disclosure to us in certain circumstances. See Web guidance [CC32](https://www.gov.uk/government/publications/independent-examination-of-charity-accounts-examiners-cc32) which explains matters of 'material significance' to be reported by independent examiners. OG15 Charity Accounts and Reports considers the legal basis for making reports by charity auditors and what must be reported. Similarly we need to take care about revealing any such disclosure in information we provide.
 |
| **Should we disclose information that is confidential?**  | Even where information is confidential we need to ask:   Is it in the public interest that we disclose it?   Are we required by law **not to** disclose it?   Are we required by law **to** disclose it? | For legal reasons we **will not** disclose generally (although in some cases we may be able to if it is in the public interest - always seek legal advice): * Legal advice taken by a charity and copied to us but with no suggestion that legal privilege is being waved.
* Internal legal advice including the original request for advice.
* Information provided to us under the Act on terms that we cannot by law disclose it, eg from HMRC.
* Information obtained under Part 1 of the Regulation of Investigatory Powers Act 2000 (RIPA). An example may be where we find out about a previous conviction. However, we must disclose RIPA information about money laundering or terrorism even where it is confidential.

For legal reasons we **must** disclose: * Information about money laundering or suspected terrorist activity.
 |

**B2.4 Consideration of data protection principles when making disclosures**

The provisions of the Data Protection Act 1998 will apply in considering whether we can disclose information under the Act and we must pass personal data to another relevant public authority only where we can comply with the data protection principles, in particular, the first data principle about processing information lawfully and fairly.

So that we may conform to those principles we need to ask the following questions.

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| **Question** | **What we need to consider** | **Example or action needed** |
| **Does the information contain 'personal data' or 'sensitive personal data' for the purposes of the Data Protection Act?**  | We must identify the nature of the information that may be disclosed and whether it is 'personal data' or 'sensitive personal data' as set out in Data Protection Essentials.  | Examples of this type of information may be where: * a PNC disclosure reveals an alleged criminal offence; or
* where the disclosure indirectly reveals a person's religion (by confirming someone is a trustee of a religious charity where religious membership is a prerequisite to trusteeship).
 |
| **Where we are dealing with 'personal data' or 'sensitive personal data', what are the relevant data protection principles we must apply in disclosing the information?**  | We must ensure that the information is: * accurate and up-to-date;
* ·         will be transmitted in a secure manner;
* will not go outside the European Economic Area;
* necessary to enable the public authority to perform its function;
* contain only adequate and relevant (and not superfluous) information.

**Also**, the disclosure must satisfy: * ·         our guidance in Data Protection Essentials;

**and** if it is 'sensitive' personal data:   * ·         one condition in Schedule 3 of the DPA – see Data Protection Essentials.
 | If there is any uncertainty about the nature of information or what should or should not be included legal advice must be taken. Information for transmission beyond the European Economic Area will require additional checks, advice should be taken from Compliance Intelligence Unit. Other advice about security matters can be found in the Security area of ERICThe Compliance area of Connect also has a: * List of Operational Contacts with other Regulators.

Guidance contained in Data Protection Essentials allows for us to 'process' data where we have consent or agreement **or** it is necessary to process the data for specific reasons. Consent does not have to be in writing, where we do not have written consent we need a clear record that consent has been given. Data Protection Essentials also sets out what is deemed to be necessary. An example in the context of our work may be that it is necessary to process data for the administration of justice (passing of information to the Police where that particular piece of information would be instrumental in preventing a crime). Data Protection Essentials contains information related to to sensitive personal data about: * racial or ethnic origin;
* political opinions;
* religious belief (or beliefs of a similar nature);
* trade union membership;
* physical or mental health;
* sexual life;
* commission or alleged commission of any offence by the person;
* proceedings (or results of proceedings) relating to any offence committed or alleged to have been committed by the person.

Data Protection Essentials provides guidance concerning the processing of data where: * we have permission that is **explicitly** given; or
* where processing the information is necessary for specific reasons which are also set out in Data Protection Essentials.

We also need to ensure that we mark sensitive personal data appropriately so that it will not be used for onward transmission or used for any purpose other than those stated.   |

**B2.5 Minimising risk of an action for defamation**

In passing on information we need to take care to minimise any risk of an action for defamation from those who may be named within it.

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| **Question** | **What we need to consider** | **Example or action needed** |
| **How do we avoid disclosing potentially damaging information?**  | We must identify anything that may be defamatory. A test for this would be to ask "would the reputation of those named be lowered in the estimation of right-thinking members of society in general?" Where there is something that is potentially damaging but which we consider should be disclosed for us to reasonably perform our function, the disclosure must be supplied: * in the belief that the information is true;
* in good faith;
* in the public interest.

Legal advice must be taken on any issues of what may or may not be disclose  | We need to look closely at any information of a confidential or personal nature to check whether the content is potentially damaging. Defamatory information might include a description of misconduct/mismanagement or an indication of an adverse interest in a person by the Commission or even an inference of this.  |

Section C1 contains a checklist for disclosures under sections 54 to 57.

Section G1 provides particular wording for covering letters where we disclose information under the Act, which sets out the basis on which the information is disclosed.

**IMPORTANT NOTE:** You must take legal advice on any issues of what can or cannot be disclosed.

**B2.6 Reporting criminal activity to the police**

Our conduct as Civil Servants in this respect is set out in guidance maintained by the [Ministry of Justice](http://www.justice.gov.uk/downloads/information-access-rights/data-sharing/annex-h-data-sharing.pdf). Commission staff are bound to notify the police if they come into possession of information which indicates that a crime has been or is about to be committed. You should report evidence of criminal or unlawful activity to the police or other appropriate authority. These reports should be made in accordance with the Act and include cases where we compile detailed information packs to report potential criminal or regulatory concerns outside the Commission's jurisdiction to another regulator (usually the police). We have a Memorandum of Understanding with ACPO (Association of Chief Police Officers) that sets how we report matters on a local basis.

In reporting matters to the police we must ensure that we adhere to the principles set out in this guidance and we must be clear about what we know and what we have been told. In cases where a loss to a charity is trivial, or where we uncover offences that are very old, staff should consult the Intelligence Unit to obtain a view on whether we should provide information to the police in order to properly discharge our duties.

Occasionally trustees of charities may approach us to ask whether they might forgo reporting a crime that has taken place within a charity on the basis that they have been offered restitution in return for an undertaking not to report the offence to the police.

Our [guidance to charities](https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity) is that they should inform the police and the Commission of any suspected criminal activity within or involving the charity as soon as possible after the incident. This includes where an individual may have committed an offence that calls into question their suitability to be involved in a charity, whether as a trustee, member of staff or volunteer.

If we are approached by the trustees for advice on whether to report the matter, we are bound to pass information to the police if the trustees fail to do so but we must make clear that we are passing on information and have no direct knowledge of the alleged offence.

Reporting matters that might be of relevance to other public authorities is not bound by the same Civil Service Code and relies solely on sections 54 to 59 when making the decision whether to disclose but subject, of course, to confidentiality issues -  see 2.3 above.

**B2.7 Witness statements**

**IMPORTANT NOTE:** We are bound by law to provide a witness statement to the police when asked. Some of the information that will be put in the statement may have come to us under the provisions of the Act and potentially will be subject to disclosure under criminal evidence rules and other disclosure obligations under criminal law. Therefore, it is important to discuss the wording of the statement with a legal advisor before and during the drafting process. Key draft paragraphs should be prepared firstly as a word document and discussed with a lawyer before being transferred to the statement. We have an agreed draft witness statement which is found in Investigations and Inquiries template for giving a criminal witness statement. Where any information included in the statement was not generated from within the Commission or is subject to any restrictions (including protective markings), this should be made clear to the legal advisor.

The Operational Contact should also be informed of the disclosure and a proper audit trail maintained as described below.

**B2.8 Recording disclosures**

The officer making a disclosure under the Act is responsible for recording it in MSD. If there is any uncertainty about what is required, please consult the Intelligence and Tasking team.

**Charts and Checklists
C1 Checklist for Section 56 and 57 Disclosures**

**Decision making guidance**

**Initial questions**

* Do we have a written request?
* Is it a public authority?
* Do we know the relevant functions for which the information is requested?
* Is the disclosure enabling or assisting the public authority to discharge these functions, or it is otherwise relevant to those functions?

**Human Rights**

* Does the disclosure involve information about individuals?
* If so, is the disclosure for a legitimate aim within Article 8 (e.g. prevention of crime, or national security), and
* Is the disclosure proportionate to that aim (e.g. are we disclosing only the narrowest set of information to meet the aim)?
* Are safeguards in place to minimise the interference with the individuals in question (e.g. is the data being transmitted securely, and only to a named person)?
* Are there any other repercussions that could cause harm to the individual / charity concerned (including reputational)? If so is the disclosure in the public interest, and proportionate to the public interest?

**Confidence**

* Check the information is not legally privileged, nor obtained from a whistle-blower, nor obtained from another public authority under the Act.
* Was the information obtained using our statutory powers of compulsion (s.47or s.53) - if so are we satisfied that disclosure is in the public interest?

**Data Protection**

* Does the information contain 'personal data' or 'sensitive personal data' for the purposes of DPA?
* If so, are the relevant data protection principles / DPA schedules complied with by the disclosure? E.g. is the information: accurate and up-to-date, to be transmitted in a secure manner, not going outside of the EEA, necessary (i.e. reasonably required) to enable the public authority to perform its function, contains only adequate and relevant (and not excessive) material?

**Defamation**

* Is the information defamatory (i.e. would it tend to lower those named in the estimation of right-thinking members of society in general)?
* If so is the information supplied either true, or supplied in good faith without malice and in the public interest?

**Commission's Privacy Statement** [1]

* Is one of the following conditions satisfied in relation to the disclosure?
	+ - we have the data subject’s consent; or
		- we are legally obliged to disclose; or
		- it is necessary for the proper discharge of our statutory functions; or
		- is necessary in compliance with our function as regulator of charities; or
		- it is to a relevant public authority and is both necessary and subject to an overriding public interest

**[1]** This Policy, agreed by the Board, although not itself reflecting a legal requirement, should also be taken into account in our decision making in this context, and the reason for any departure from it should be carefully recorded.

**Case Studies**

**D1 Documentation required in high profile/sensitive case reporting a crime to the police**

The example below sets out our initial considerations at D1.1 and the resulting report to the police at D1.2. We need to show that we have made the appropriate considerations before releasing information and this is set out in the decision to release document. The report at D1.2 reminds the recipient of our functions under the Charities Act 2011 and presents the facts of the case.

This is a very formal disclosure but the principles remain the same even where the report is not likely to be so extensive.

**IMPORTANT NOTE:** **THE INFORMATION CONTAINED IN THIS CASE STUDY IS SENSITIVE PLEASE DO NOT USE TEXT TO CUT AND PASTE INTO OTHER REPORTS**

**D1.1 Example of documentation when taking the decision to release information (Charity A)**

**Decision Document**

**Final Version Dated \_/\_/\_**

Case: **\_** CRM case number

Charity name

Charity number

**Document produced by:** Case Officer Name

**Additional Input From:** Legal Officer names & titles, Line Manager names & titles

**Decision**

To make a referral to the police (under section 56 and 57 of the Charities Act 2011) for the police to consider possible criminal actions by the trustees of [CHARITY NAME]

**Reason**

The trustees have been unable to account for either the activities of the charity or the financial transactions in the bank account. The activity of money flowing in and out of the charity's bank account and the source of money not being clearly demonstrated led to concerns that there may have been criminal activity in this charity.

**Considerations**

Section 56 and 57 of the Charities Act 2011

* + I have considered the statutory gateway outlined above. I have considered each part and am satisfied that the information in the referral can be disclosed to the police for the following reasons:
	+ The disclosure is made for the purpose of enabling or assisting the police to discharge their functions of investigating crime.
	+ No information disclosed has been received from HMRC.
	+ The disclosure will not contravene the Data Protection Act.

In reaching my decision I have taken into consideration advice from my managers and legal division.  I have considered the following to ensure that the Commission is acting fairly and reasonably within the law:

* MOU with ACPO.
* Human Rights.
* Confidence.
* Data Protection.
* Defamation.

Considering each in turn:

**MOU with ACPO.**

I have read the document and printed a copy on file to show this consideration. This also shows the version I have used as all guidance is subject to change and subsequent versions may alter the procedures. In making this referral I have ensured that the Commission's SPOC was aware of the referral and sought the assistance of a Commission intelligence officer with the referral to ensure compliance with the purpose and spirit of the MOU. In making the referral I am satisfied the referral meets the spirit of the guidance, although I have departed slightly from the guidance by making the referral myself to speed things up.

**Human Rights**

I have considered the trustees' human rights and in particular consider that Art 8 (interference with private life) may be engaged. The information disclosed is for a legitimate aim in the prevention and detection of crime. As a civil servant I understand I am under an obligation to report such matters to law enforcement. Any interference with the trustees' right to a private life is likely to be justified as being in accordance with the law (under sections 56 and 57), and for the prevention or crime. The proposed disclosure of information, email exchanges and copies of documents has been made securely through recorded delivery mail and with the assistance of the Commission's Intelligence and Tasking team to ensure it was sent to the correct place. The disclosure is of information which is limited to that which is likely to be relevant to the police. The disclosure is therefore proportionate to the legitimate aim.

In considering the trustees' human rights we are aware that there may be repercussions for the individuals as they may be subject to a police investigation. We are also aware that there may be implications for the employment of a trustee because of the nature of their employment [details have been removed so that this example cannot identify an individual case but we would need to provide details of the person, their employment and show we have considered this in human rights terms] . However it is in the public interest for the police to investigate activity which is potentially criminal in nature.

**Confidence**

Information provided by other authorities will not be forwarded without the specific permission of that authority. In this case information has been received from another government department [state the department's name] but I have email authority that this information can be forwarded.

Information obtained under section 53 Orders is confidential. However it is in the public interest for the police to be given this information to consider any criminal activity further.

**Data Protection**

Some personal data will be disclosed. In my opinion, all information to be disclosed is relevant to the concerns in this matter. Addresses, dates-of-birth, and other personal details are necessary for the correct identification of the individuals. The disclosure is being made within the UK. In considering what to provide to the police, it is important to provide enough information to enable the police to consider our concerns seriously enough to investigate further. Being vague on details might lead the police to dismiss our concerns and not take them forward.

In reaching this position I have considered the data protection principles as explained in the Commission's guidance, specifically the requirements which outline what personal data is, but also that disclosure (or the processing of personal data) can be made where at least one of the conditions in Schedule 2 of the 1998 Act applies. In this case I consider that it is necessary for the administration of and also in the exercise of the functions of the Charity Commission as a government department.

I am also aware that the information being disclosed includes sensitive personal data. For example that one of the trustees has spent convictions and allegations of criminal activity are being made about all the trustees. I have also referred to the physical condition of one of the trustees as I have mentioned his/her [details of medical condition]. I am therefore aware that I also have to be satisfied that at least one of the conditions of Schedule 3 is satisfied. These conditions include that the processing is necessary for the administration of justice and I am satisfied that this condition applies as the referral is made to allow the police to consider whether to investigate a crime. The Commission as a civil regulator is unable to consider this aspect and therefore must refer it to the police as the relevant law enforcement agency.

Furthermore, from reading our guidance, section 29 of the DPA provides exemptions for the processing of information for the prevention and detection of crime.

**Defamation**

The information disclosed may be defamatory because it has the potential to impact on the reputation of the trustees' including the reputation of one of the trustees who is employed as [details of employment role]. However, I am providing information in the public interest for the prevention and detection of crime. I have taken reasonable steps as part of the Commission's multi disciplinary approach to team work to ensure that the information gathered is correct. The trustees have been provided with a number of opportunities to provide us with explanations and therefore a fair process has been followed. I believe the information I intend to provide is accurate and true.

Case Officer signature and date

**D1.2 Example of Report to the police in respect of Charity A**

**RESTRICTED**

**Memorandum**

**To:** \*\*\*\*\*\*\*\*\*\* Police

**From:** Case Officer

           Charity Commission - contact details

**Date \_/\_/\_**

**Subject** - Charity name and number

**Purpose of this report**

The Charity Commission has conducted an investigation into the charity called [\*\*\*\*\*\*\*\*\*\*\*], registered charity number [\*\*\*\*\*\*\*]. This brief has been prepared to notify the police of suspicious activity in the charity's bank account which may potentially involve a criminal activity.

This report and information contained within are provided to [\*\*\*\*\*\*\*\*\*] Police under sections 56 and 57 the Charities Act 2011 ("the Act"). This permits the exchange of information between the Commission and public authorities including the police, where the disclosure is made to assist the recipient in the discharge of his or her functions.

The information contained in the brief that follows is provided in accordance with the Memorandum of Understanding between the Charity Commission and the Association of Chief Police Officers.

**About the Charity Commission**

The Charity Commission is the independent regulator of charities in England and Wales. Its aim is to provide the best possible regulation of charities in England and Wales in order to increase charities' effectiveness and public trust and confidence. Most charities must register with the Commission, although some special types of charity do not have to. There are some 180,000 charities registered charities in England and Wales. The Commission provides a wide range of advice and guidance to charities and their trustees. Registered charities with an annual income of over £25,000 must provide annual information to the Commission. The Commission has wide powers to intervene in the affairs of a charity where things have gone wrong. The objectives, functions and powers of the Commission are set out in the Act.

**The Commission Investigation**

**1. The Charity**

This charity is an unincorporated association, governed by a Charity Commission model constitution adopted [Date}. [CHARITY NAME] was registered as a charity with the Commission on [Date]. It is established to [state charitable purposes].

Those responsible for the general control and management of the administration of a charity are called its trustees (section 177 of the Charities Act 2011 provides this definition).

The trustees in this charity from the point of registration until [Date] were as follows:

1.Trustee full name.

Address provided to the Commission of address & postcode details. Also connected to details of any other addresses.

Date of birth **\_/\_/\_\_**  .

Also known as - list any aliases we are aware of.

He has provided his occupation as an [state occupation] but we understand [give details as appropriate about what we know about the person's employment or benefit status]. Resigned Day/Month/Year

2. Trustee full name.

Address provided to the Commission of address & postcode details. Also connected to details of any other addresses.

Date of birth **\_/\_/\_\_** .

Also known as - list any aliases we are aware of.

Understood to be a [details of employment and/or other status]. Resigned [Date].

3. Trustee full name.

Address provided to the Commission of address & postcode details. Also connected to details of any other addresses.

Date of birth **\_/\_/\_\_**  .

Also known as - list any aliases we are aware of.

Previously employed as [details of employment including dates].

The following people were appointed to act as trustees with first [TRUSTEE NAME] since [Date].

4. Trustee full name.

Address provided to the Commission of address & postcode details. Also connected to details of any other addresses.

Date of birth **\_/\_/\_\_**  .

Also known as - list any aliases we are aware of.

Occupation, [State occupation]

5. Trustee full name

Address provided to the Commission of address & postcode details. Also connected to details of any other addresses.

Date of birth **\_/\_/\_\_**  .

Also known as - list any aliases we are aware of.

Occupation unknown.

Other information about the charity trustees and employees or officers -[this is an illustration of connected trustees].

The correspondent of the charity has been [CORRESPONDENT NAME] from registration to the current time.

[TRUSTEE NAME] is married to [TRUSTEE NAME] and [TRUSTEE NAME] is the sister of [TRUSTEE NAME].

The charity has office space at [FULL ADDRESS AND POST CODE].

**2. Background**

The Commission opened an investigation into the affairs of the charity following a referral being received from [Name of other regulator]. [Organisation name] referred the above information to the Charity Commission because in the course of their consideration of an application to [Organisation name] by the charity they were concerned that [CHARITY NAME] was not a properly functioning charity.

The contact point should you wish any further information on this is [CONTACT NAME], an [Role title] at [organisation name]She can be contacted via telephone [list telephone number].

The Commission assessed this information before opening an investigation on [date]. The Commission contacted the charity via its correspondent to establish what exactly they had been doing.

Our main issue was:

* Whether the charity was carrying out any activities to further its charitable purpose of [set out purposes].

However, we also had concerns which included:

* The use of the charity's bank account for non charitable activity.
* The fund raising methods of the charity, in particular [give brief details of the concern].
* Inconsistencies between the amounts of income and expenditure declared to the Commission and the amounts seen in the charity bank accounts.

When we used our powers under section 52 and 53 of the Charities Act to examine the account transactions and we found that the income and expenditure was greater than that declared to the Commission on the charity's annual return forms they had submitted to us each year from registration.

The apparent failure of the trustees to keep any records to demonstrate the activities of the charity, the income and expenditure of the charity and to demonstrate the decisions and meetings of the charity.

The Commission met with two of the three trustees (who identified themselves as TRUSTEE NAME and TRUSTEE NAME) on [date].The Commission has written to and emailed the trustees via the correspondent [CORRESPONDENT NAME] to request details with supporting information about exactly what [CHARITY NAME] has done since it was established.

It became apparent that the charity has kept minimal records and the trustees have not provided the information to clarify our concerns. The trustees did advise the Commission when we brought these issues to their attention that they will keep detailed records in the future and will take account of any advice and guidance the Commission can offer so that they are better run in the future.

**3. Use of the charity's bank account**

The charity has declared the following Income and Expenditure figures to the Commission, via the charity's annual return form (exhibit ##/1 - ##/4 - use local protocols for naming documents):

Financial Year Ending           Income Declared (£)                   Expenditure Declared (£)

[Insert year end dates followed by figures for income and expenditure in each year - use a table format]

An analysis of the charity's bank accounts obtained using the Commission powers under section 9 of the Act has revealed that the charity's actual income and expenditure is (exhibit ##/5 shows the bank statements obtained):

Financial Year Ending           Income as bank a/c (£)               Expenditure as bank a/c (£)

[Insert year end dates followed by figures for income and expenditure in each year - use a table format]

An explanation has been sought from the trustees on the discrepancies. They stated both in our meeting of [Date] and in emails dated [Date] and [Date] (exhibits ##/6 and ##/7) that they had [confirm details of action taken by the trustees].

They stated that they did this to [state reasons provided by the trustees for their actions and any subsequent actions they may have taken]. There are no records to demonstrate this and we have not received any information to confirm that this is correct (exhibits ##/6 and ##/7 give an indication of the Commission's attempts to get the trustees to account for the activities of the charity and the transactions at the bank).

The Commission has advised the trustees that it is unacceptable to use the charity's account in this way and the trustees have been advised that this activity must stop. The trustees have agreed and accepted that this was not a proper use of the charity's bank account.

The Commission has asked both in the meeting and since in emails for specific details of the origin of the monies paid into the charity's bank account, however no information to date has been received.

At the meeting on [Date] the trustees were asked to explain where the amount of £XXXXX which was paid into the charity's bank account on [Date]had come from. It was stated that this payment into the account was [details given by trustees]. The trustees have not provided details of this transaction or [other details of the transaction]. [Set out any disparities between facts and reasons provided].

The Commission is concerned that the multiple unaccounted payments in and out of the charity's bank account may be criminal in nature.

The Commission also asked about the funds that were [provide details of other actions ]. This information was obtained following a section 9 Charities Act Order and is exhibit ##/8). It was stated that this was not charity business, but also 'cash flow generation'. Trustee [TRUSTEE NAME] told us in a telephone conversation on [Date] (our record of this conversation is exhibit ##/9) that the trustees carried out personal transactions via the charity's bank account so the account did not look dormant. The trustees have been advised not to use the charity's bank account in this way again and they have agreed.

Undertaking non-charitable business in the charity's account is not permissible.Trustees of every charity must ensure that its finances are used appropriately, prudently, lawfully and in accordance with its charitable purposes. Only the charity's proper income should be placed in the charity's bank account and all expenditure out of the account must be reasonably and properly incurred by the charity. As stated, as a result of this concern the trustees have agreed to cease this activity in the future.

One of the trustees, [TRUSTEE NAME] has [details of previous relevant convictions]. Disclosures from [name other regulator] to the Commission revealed that he is suspected being involved in [details of alleged criminal activity] (exhibit ##/10 - permission has been obtained from [regulator's name] to disclose). Other interested authorities are [names of other regulators and their concerns] about [TRUSTEE NAME].

The Commission has now received information from the charity via [TRUSTEE NAME] regarding new trustees. Open source internet checks on [TRUSTEE NAME & ADDRESS] reveals a number of postings on 'message board forums' that indicate companies linked to him (in particular [COMPANY NAME AND NUMBER], now dissolved) are alleged to have committed [details of alleged criminal activity].

There are sensitivities in this case which need to be considered. The recently resigned trustee [TRUSTEE NAME] (and sister of [TRUSTEE NAME]) [provide details of particular sensitivities]. When we met with him/her on [Date] we were told that [details of information provided to us].

**4. Current Position**

The Commission's focus in any investigation is to ensure that any charity facing difficulties is placed back on a proper footing and restored to effective governance quickly.

The Commission has now provided detailed advice and guidance to the new trustees so that in the future the charity will be better administered and will insist that the charity should keep detailed books and records so it can demonstrate its future decisions and activities are in accordance with its governing document and in the best interests of the charity and its beneficiaries. The Commission will monitor the charity to ensure that our advice is followed and that an effective and well managed charity is in place to carry out its objects.

**5. Allegation**

The Commission is concerned that the transactions through the charity's bank account may be of a criminal nature. We have not advised the charity that **it** has referred these matters to the police.

In accordance with the MOU with ACPO the Commission is willing to provide our whole case file to the police to assist in these matters (excluding any documents which the Commission is under a legal duty not to disclose, and documents containing legally privileged material).

Case Officer name
Compliance Investigations Unit
Tel:
Email:

**Legal/Policy/Accountancy Framework
E1 Disclosures under sections 54 to 59**This section sets out the legal nature of disclosure within the Act.

**E1.1 What is disclosure?**

In the context of sections 54 to 59 of the Charities Act, disclosure is the process of giving and receiving information between the Commission and other public authorities.

These provisions authorise disclosure of *information,* not the transmission of *documents* or other evidence (although information will often be provided in the form of a copy document or a witness statement setting out facts). Desk Guidance is available on providing witness statements for use in criminal and civil proceedings. Legal advice must be taken where we are required to make such statements.

Sections 54 to 59 of the Charities Act 2011 provide us with the legal basis for disclosure. Unlike applications for information under the Data Protection Act or the Freedom of Information Act we have a degree of discretion about what information (if any) we provide unless other legal obligations apply such as where the information is being requested by the police in connection with money laundering or terrorism offences or by the court in litigation proceedings.

**E1.2 Sections 54 and 55 disclosure of information to the Commission**

Sections 54 and 55 deal with disclosure of information made **to** the Commission. Any 'relevant public authority' [See 1.5 below.] may disclose information to the Commission if the disclosure is made for the purpose of enabling or assisting us to discharge any of our functions.

Our objectives, general functions and duties are set out in sections 14, 15 and 16 of the Charities Act 2011. Amongst other things, we promote compliance by charity trustees with their legal obligations to control and manage their charity. We encourage and facilitate better administration of charities and identify and investigate apparent misconduct or mismanagement, taking remedial or protective action as appropriate. We do these things to increase public trust and confidence in charities and it is within this context usually that we may need to disclose information..

A disclosure may be subject to additional restrictions, for instance, on how it may be kept and used. about the type of information we can receive and how it might be stored and used. Section 57 also sets out particular limitations on the information disclosed to us by HM Revenue and Customs (HMRC).

**E1.3 Sections 56 and 57 disclosure of information by the Commission**

Sections 56 and 57 are concerned with disclosure of information **by** the Commission to other relevant public authorities. Subject to sections 56 (3) and 57(1) & (2)  we may disclose to any relevant public authority any information which:

* has been received by us in connection with our functions; AND
* the disclosure is made for the purpose of enabling or assisting the relevant public authority to discharge any of its functions; OR
* the information so disclosed is otherwise relevant to the discharge of any of the functions of the relevant public authority.

Section 56(3) provides that our power to disclose information is subject to any express restriction placed upon the information when it was disclosed to us. This section does not apply to information from HMRC, which is dealt with under section 57(1)&(2).

Section 57(1) &(2) prevents disclosure of information provided under section 52(1) by HMRC. Any information disclosed to us by HMRC can only be disclosed with the express consent of HMRC. Contravention of this section is an offence by the person responsible for the disclosure.

Section 57(3) to 57(8) sets out the penalties for illegal disclosure, the defences for an illegal disclosure and the definition of a 'responsible person'.

We cannot use our powers under sections 47 or 52 of the Charities Act 2011 for the purpose of obtaining and transmitting information to other organisations even if the onward disclosures are intended to be made under sections 54 to 59.

**E1.4 Section 58 disclosure to and by principal regulators of exempt charities**

Section 58 provides for the disclosure of information to or by the principal regulator of an exempt charity under the same principles as set out in sections 54 to 57. These powers of disclosure have appropriate safeguards in relation to information received from HMRC.

**E1.5 Section 54(3) and 56(4) what is a relevant public body?**

Sections 54(3) and 56(4) define a 'relevant public authority' as:

* any government department (including a Northern Ireland Department);
* any local authority;
* any constable; and
* any other body or person discharging functions of a public nature, (including a body or person discharging regulatory functions in relation to any description of activities). This includes any such body or person in a country outside of the UK (but only in relation to disclosure of information by the Commission under section 56).
* The power to disclose information to the Commission under section 54 does not extend to relevant public authorities in a country outside the UK. However, the Commission may be able to request information from public authorities outside the UK using section 20 Charities Act 2011 which provides that the Commission may do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties. Section 20 only covers what the Commission can do, so it would not provide the public authority with a power, but the public authority might have powers under the laws of its country which enable it to share information with the Commission.

A Memorandum of Understanding may be a good starting point for telling us whether or not an organisation is a relevant public body. However, where none exists it is useful to apply the test of whether a body can be subject to judicial review. That test is whether the body is exercising a governmental function or simply acting as a domestic tribunal whose power comes from its contract between its members. The fact that a body derives its power from statute (or from the Royal Prerogative) is a reasonably clear indication that it is discharging public functions (for example, The Law Society). If a body carries out functions, some of which are of a public nature and some of which are of a non-public nature, it would be open to us to disclose information to enable it to carry out its public functions.

In the case of a body not established by statute, in order to form a view about whether it discharges functions of a public nature, we would need to ascertain:

* whether the body in question exercises statutory powers;
* the nature of the activity it regulates;
* why that activity needs to be regulated in the public interest;
* whether that body has been advised that its regulatory activity is susceptible to judicial review.

Section 58(7) defines 'enactment' and section 55(4) 'Revenue and Customs information'.

Section 59 states that nothing authorises the making of a disclosure under sections 54 to 59 which:

* contravenes the Data Protection Act 1998; or
* is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000, which ensures that the methods used to collect  conforms to Human Rights Act principles.

**E2 What do we mean by 'information' 'public interest' and 'confidentiality' for the purposes of the Act?**

In order to apply the provisions of the Act we need to be clear about the policy on its use, what we mean by 'information' 'public interest' and 'confidentiality' and the principles that apply when we accept or divulge information.

**E2.1 What is information?**

In the context of sections 54 to 59, information relates to knowledge and facts about someone or something. Examples of what can be treated or is recognised as a disclosure in the different areas of the Commission's work can be found at D1.1.

We are able to pass on information that has been received in connection with any of the Commission's functions. It follows that there may be difficulty in passing on information that has come to us accidentally, or unlawfully, or otherwise than in connection with our statutory functions.

Legal advice should be taken where information seems to have come to us in any of those ways.

**E2.2 What do we mean by public interest?**

There is no single definition for the term 'public interest'. The starting point for Government is that disclosure of information as a principle is in the public interest. However, legislation that relates information and the rights of individuals allows for levels of exemption from disclosure. When we deal with disclosure of information under sections 54 to 59 we must take account of the legal principles not only in the Charities Act 2011 but also in other legislation that may have and impact on the way we deal with the information in question (depending on how that information came to us, whether it maintains any quality of confidence and how we intend to use it). What is meant by public interest depends on which legal principle is being considered (for example human rights or confidentiality). We must be able to show that these legal principles have been properly considered within the context of our regulatory work and balanced in the wider interests of the public or the sector in general, against the specific interests of the individual and charity concerned. .

**E2.2 What do we mean by confidentiality?**

Whether or not the information is confidential will depend on the circumstances under which it was received and the nature of the information.

In general terms, correspondence with the Commission (letters, emails, telephone calls or meetings) is not as such confidential. We treat this information as confidential only where there is a good reason for doing so. **Where we determine that particular information is confidential it should be marked or flagged as such.** Where information sent to us is marked as confidential by the sender, we should always inform the sender whether or not we will treat the information as confidential (see E2.3 below). Just because a document is marked as confidential does not mean necessarily that a duty of confidence arises.

The core principles of the law on confidentiality are, broadly:

* A duty to treat information as confidential may arise from the terms of a contract (whether express or implied) where it may be imposed as a matter of law (that is, an equitable obligation).
* Key factors in establishing whether there is an equitable obligation are:
	+ - the nature of the information has the necessary quality of confidence;
		- the circumstances in which it was imparted; and
		- notice of its confidentiality.
* If it is in the public interest, confidential information may be disclosed.

In practical terms it can be argued that nearly all proposed section 54 to 59 disclosures will hit the public interest threshold, so the confidential quality is a consideration but not a bar to using this gateway. Also the consent of the data subject or author's consent may give us the basis to disclose the information but this may not always be appropriate for operational reasons.

**IMPORTANT NOTE:** We make a public statement (Information Charter - [Personal Information charter](https://www.gov.uk/government/organisations/charity-commission/about/personal-information-charter)) on our web site in general terms about our policy on holding, processing and disclosing information. Exceptionally, we may need to deviate from this policy for legal reasons. This must not be done without reference to a lawyer.

**E2.3 How do we decide if information received by us should be confidential?**

The good practice guidance 'Public Sector Data Sharing: Guidance on the law' available on the Ministry of Justice's website sets out the circumstances in which a public authority (such as the Commission) should accept information in confidence. The guidance relates to section 41 of the Freedom of Information Act but provides useful general guidelines about confidentiality which includes:

* public authorities should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the authority's functions and it would not otherwise be provided;
* public authorities should not agree to hold information received from third parties 'in confidence' if it is not confidential in nature;
* acceptance of any confidentiality provisions must be capable of justification to the Information Commissioner.

In considering whether **to agree** to hold information subject to a duty of confidentiality the FOI guidance explains that the following factors may be relevant;

* the nature of the interest which is to be protected and whether it is necessary to hold the information in confidence in order to protect that interest;
* whether it is possible to agree to a limited duty of confidentiality, for example, by clearly stating the circumstances in which the information would be disclosed;
* whether the information will only be provided on the condition that it is kept confidential and, if so, how the important the information is in relation to our functions;
* the nature of the person from whom the information is obtained and whether that person represents a public authority to which the Freedom of Information Act and the DCA's guidelines apply. Where the person supplying the information is also a public authority (apart from HMRC) we should be particularly cautious in agreeing to keep the information confidential.

**E2.4 Legal judgements that set out an implied duty of confidence**

The circumstances in which information is obtained may impose an implied duty of confidence even where the information is not obviously of a confidential nature. Where a public authority has statutory powers to compel individuals to provide information for a limited our purpose in the exercise of a legal power or to further a legal duty, a duty of confidentiality will often arise in relation to that information and the public authority may be prohibited from disclosing the information for other purposes - see **Marcel v Metropolitan Police Commissioner** [1991] 1 All ER 845. This principle also applies even where the information is provided following a threat of compulsion - see Barlow Clowes Gilt Managers Limited [1991] 4 All ER 385.

Section 47 of the Charities Act gives us power to demand information and copy documents for the purposes of an inquiry. We also have power under section 52 of the Act to compel the provision of information which is relevant to any of our functions. The standard templates for opening inquiry cases together with our guidance in CC46 provide an actual threat of compulsion and therefore such information can be treated as confidential.

When we receive copies of legally privileged advice, that privilege can be waived expressly or implied by the client. However, where privilege is waived, our further disclosure of such advice to the police (to assist with a criminal investigation) will  not remove the cloak of privilege for police purposes - **British Coal Corporation vs Dennis Rye** (No. 2) [1998] 1 WLR 1113 (at 1121 - 11220). There seems to be no reason why disclose to any other relevant public authority should not be subject to similar protection.

**E2.5 Legal professional privilege (LPP)**

This is a legal rule that protects the confidentiality of legal communications between lawyers and their clients and includes legal advice that caseworkers receive from Legal Advisers about their case work. The [Ministry of Justice](http://www.justice.gov.uk/guidance/foi-assumptions-legal.htm) provides guidance on the nature of LPP disclosure of privileged advice.

In the light of recent cases, it is clear that the Commission will only be entitled to rely on the defence of qualified privilege in respect of a defamatory publication if the publication is consistent with its public law duties. This means that we should:

* only publish or disclose information for the purpose of and to the extent necessary for performance of our public duties; and
* in accordance with our obligations under the Human Rights Act (in order to claim qualified privilege the publication must be necessary for a legitimate aim and proportionate to a specified aim).

If the information published or disclosed affects an individual's reputation, there is an interference with his or her rights under Article 8(1), and so, in order to be justified under Article 8(2), the publication or disclosure must be necessary and proportionate to that aim.

**E2.6 Information that the Charity Commission will treat as confidential**

Depending upon the circumstances we will treat the following information as confidential:

* **Whistleblowing and complaints about charities**.
The identity of individuals who report to us their legitimate concerns about the management of a charity will generally be treated as confidential. Of course, we are not able to give an absolute guarantee of confidentiality as we may need to disclose information to another regulator in the public interest. Also, it may be possible for the individual complained about to deduce the identity of the informant. Moreover, confidentiality cannot be used by an informant to hide an improper motive. Our guidance OG 407 Public Interest Disclosure Act 1998 sets out how we should deal with whistleblowing disclosures.

**IMPORTANT NOTE:** Accountancy advice must be taken where whistleblowing disclosures come from a charity's auditor or independent examiner.

* **Information for which we ask in the course of an inquiry**.
We have statutory powers to compel answers to questions which we ask in the course of an inquiry. We can use information obtained by the use (or threatened use) of our statutory powers only for our statutory purposes. Outside those statutory purposes, such information will be treated as confidential.
* **Information which may properly be regarded as confidential**, for example commercially sensitive information. However, it is important to note that the information may cease to have the quality which made it confidential, for example if it is published and is therefore no longer confidential. This includes internal documents, for example briefing documents, where we repeat confidential information such as legal advice received by charities or information we have obtained using our information gathering powers under section 47 and 53.
* **A charity's own legal advice**.
Where a charity copies to us legally-privileged advice obtained from its own legal advisers, without generally waiving that privilege, we are bound to regard the advice as confidential. Confidentiality does not, however, extend to correspondence between the charity's legal advisers and the Commission unless it contains the legal advice.
* **Personal data**. Personal data will be treated as confidential except to the extent that disclosure is in accordance with the Data Protection Act 1998.

This list is not exhaustive and there may be other instances where we may wish to treat information as confidential. If you have doubts about the nature of information received and whether it should be treated as confidential you should seek legal advice.

We cannot pass on information **via the statutory gateway** which has come to us accidentally, or unlawfully, or otherwise than in connection with our functions. However, where the information relates to a serious crime offence, such as terrorism, we may be able to disclose the information to the police on other grounds outside sections 54 to 59. Legal advice must always be taken in such circumstances.

Other regulators may have their own legislation that they can use to disclose information to us an example of this may be where the police use the Serious Organised Crime Police Act 2005, section 33 to disclose information to us.

**E2.7 Disclosing confidential information**

Disclosing confidential information puts the Commission at risk of a legal action for breaching confidentiality. However, there are limited circumstances where confidential information should be disclosed by the Commission and there will be minimal risk of a successful action for breach of confidence. This is where it is in the public interest to disclose the information including for the prevention of crime or the interest in public safety. Legal advice should be sought in all instances where the disclosure of confidential information is being considered.

# Q & A

## F1 Why do we need this guidance?

We deal with a lot of information in our everyday casework and not all of that information is received or disclosed under sections 54 to 59. That said, we need to be able to recognise the nature of information we hold and when it is appropriate to use these sections.

## F2 What do we mean by disclosure?

This is the process of giving and receiving information between the Commission and other public authorities. This is set out in more detail at section E1.1 Legal Framework.

## F3 What is the definition of a 'relevant public authority'?

This is defined in sections 54(3) & 56() of the Charities Act. Section E1.5 of the Legal Framework looks in more detail at how we might identify whether organisations fulfil the criteria for a relevant public body.

## F4 What is information?

Section E2.1 sets out the what we consider as information in the context of sections 54 to 59.

## F5 What do we mean by confidential?

What we treat as confidential will depend on the nature of the information, the circumstances in which it was received by, or given to, us and the way it is treated or viewed by other parties. See Legal Framework sections E2.2, E2.3 and E2.4.

## F6 What information do we treat as confidential?

The most usual circumstances when we treat information as confidential are outlined at section E2.6 of the Legal Framework.

## F7 What questions do I need to ask as a caseworker when I have been asked for information?

Section B2.1 sets out the overarching questions we need to ask when we have a request for information or when we decide to disclose information to other relevant public authorities.

## F8 What do I need to say in correspondence with other public authorities?

We have a covering paragraph that should go out with all sections 54 to 59 disclosures so that other relevant public authorities know the basis upon which the information is disclosed. See Model Letters and Orders section G1.

# Model Letters and Orders

## G1 Wording to be included in covering letters where we disclose information to other public authorities under sections 54 to 59

When making a disclosure under sections 54 to 59 we need to make clear the basis upon which the information is being provided. We do this in the covering letter which should contain the following wording:

"The Charity Commission is a non ministerial government department. The information contained within this document is shared by the Charity Commission with you as a public authority by virtue of the statutory gateway provided under sections 54 to 59 of the Charities Act 2011, and the disclosure is made solely for the purposes of enabling or assisting you in the discharge of your functions. The information is provided on condition that it will be used only by the addressee and in accordance with its protective marking. Any onward disclosure or alternative use of the same information other than that specified by the Commission may be unlawful as a breach of confidence, or under General Data Protection Regulations and Data Protection Act 2018, and must not be undertaken without prior consent of the Commission. If the reader of this message is not the intended recipient, please note that any dissemination, distribution or copying of this message is strictly prohibited. If you have received this message in error please notify the sender immediately.