

Freedom of information reform – how could it affect the charity sector?

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In January the Information Commissioner's Office ('ICO') laid a report before Parliament on its proposals for improving and updating freedom of information law in the UK. This included recommended changes which would have a significant impact on charities operating within and alongside the public sector.

Who is affected?

The key proposal in the report which would impact the charity sector is to extend the reach of freedom of information law for those organisations delivering public sector contracts.

This would be achieved by, for example, greater use of 'designation orders' under section 5 of the Freedom of Information Act 2000 to designate organisations 'exercising functions of a public nature' where that is in the public interest.

Many of the organisations currently delivering public sector contracts and public functions are charities, e.g. certain housing associations, children's homes, and health service providers.

Therefore there is a clear scope for these reforms to catch charities and community bodies who are not already subject to freedom of information requirements.

Why now?

The ICO report summarises the aims of access to information laws as *'to increase Government's transparency and accountability' but also to deliver 'better decision-making, greater public participation in decision-making, the ability to understand the nature of decisions and greater confidence in how they are made... which in turn improves services.'*

The ICO also identifies an increasing need to improve this transparency, accountability and confidence in public services following the Carillion scandal of 2018.

Its view is that as more public functions are carried out by the private sector there is a risk of a lacuna opening up in the current freedom of information regime, where the public cannot obtain information on some of the services most crucial to them.

What does this mean for the charity sector?

There are a limited number of charities currently subject to the FOIA legislation. However, historically freedom of information laws have not been applied more broadly to charities carrying out public contracts.

It is true that charities and social enterprises serve a crucial role in delivering public services in communities across the country. This is also likely to increase with possible changes to procurement rules coming this year.

Following comments by David Lidington, Cabinet Office Minister, we expect the Public Services (Social Value) Act 2012 to be amended and revamped in 2019, so that instead of just 'considering' social value in procuring services public authorities will 'be required to take social and economic benefits into account in certain priority areas.'

The ICO's report also demonstrates a clear public interest in access to information on public services, including those delivered by charities. It refers to a YouGov poll showing that 83% of those surveyed considered it 'important' rather than 'not important' that members of the public are able to access information regarding the public services provided by charities.

However, it remains to be seen how these recommendations would apply to charities without causing a disproportionate burden and without affecting their work.

Many charities who rely on government contracts are already very stretched and compliance with freedom of information law, while serving a legitimate purpose, may prove a challenge.

The ICO itself notes that freedom of information law is not only about responding to requests for access, as ' FOIA and the EIR (Environmental Information Regulations) are not just about the 'pull' of information; both also impose proactive publication responsibilities. FOIA requires publication schemes and advice and assistance to the public who wish to make requests.'

There is also a risk that this report could be a catalyst for a change in government policy and a move for wider inclusion of charities under freedom of information laws more generally, with the aim to improve public trust and confidence in the charity sector rather than the public sector.

What happens next?

The ICO notes that 'we recognise that the Government would need to consult and assess the impact of our recommendations outlined below' and so charities should expect a broader consultation in the future, to which they and sector organisations can contribute.

For any charities looking to understand the current freedom of information regime and potential changes to the law, please do feel free to contact our team for further information.

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