

Public Disclosure:
Charities have a responsibility to inform the public - not just the IRS
- about their finances. Here's what your organization must reveal
and how to reveal it.

By Layton E. Olson

What information should a charity provide about itself to the public? What information must it provide?

Those are key questions for development officers and others who are responsible for maintaining the organization's image, as well as its finances. After all, public perception of an organization can have a strong impact on its ability to raise funds and conduct its work.

Fundraising professionals need to know the sorts of information that the organization is sending out to the public -- particularly data on fundraising costs and matters of concern to prospective donors. They also need to know what information the Internal Revenue Code requires the organization to make available.

How does this IRS information fit into the spectrum of information that a charity provides to the general public and to donors? Within the organization, who is responsible for supplying this information? Who are the people likely to request such information? And what are the likely consequences of disclosing it -- or not disclosing it?

What Charities Must Disclose

Federal law requires that all charities make a public information file of documents that have been previously filed with the IRS. This file must be available for on-site inspection during regular business hours at the charity's principal office and at any satellite office housing three or more paid staff.

This file must contain a copy of the original tax-exempt application sent to the IRS. (For organizations set up prior to July 16, 1987, the application needs to be included only if the group actually has a copy of it.) The original application will include a copy of the group's charter and bylaws and a description of its purposes and programs. Also required in the file are the

three most recent IRS annual returns, Form 990s and supplemental schedules.

A charity's IRS annual return reports expenses for programs, for fundraising and for administration, along with names of board members and officers and their compensation and benefits. It also includes the names of and compensation levels for the five highest-paid staff persons (if compensation is over \$50,000) and five highest-paid professional advisors. A charity may opt to remove certain information -- such as names and addresses of major financial contributors -- from its tax return before placing the return in the public information file.

Who Asks for Information?

Among the most influential people who request information are reporters working on stories comparing different kinds of charities. They are usually looking for data such as total budget and compensation of chief executives. Others who might want access to information are researchers and interested citizens.

Whether a request for information comes in writing or over the phone, a charity should be ready to respond quickly. The organization may tell the inquiring party to come into the office or, in the interest of good public relations, may send out copies of documents at no charge or for a nominal fee.

Many charities do not pay much attention to their public information file until someone asks to see it. For small and midsize organizations, years could pass between requests. But any nonprofit should be prepared for the eventuality.

The nonprofit should appoint someone in the central office and, perhaps, at a branch office to maintain documents for the file (and update it annually); to respond to requests; and to maintain a log of those who have made requests to review the information. This person should be identified internally as the public's contact person.

What should be the responsibility of individual fundraisers? At a minimum, they should be able to answer these questions:

- Who is responsible for the public information file at our organization?

- What is in the file and how would a person perceive our organization based on this information?
- Does this information accurately portray our charity?

Of course, the kind of information provided to the IRS -- and therefore included in the file -- doesn't always offer a full, accurate picture of the charity. IRS forms focus on financial data, and they are not the easiest documents to digest. Even the experts have trouble making sense of certain technical definitions when comparing figures from different charities.

To balance the picture, a charity may want to make other materials readily available -- for example, a copy of an annual report or brochures on particular programs.

How Much Should You Reveal?

Financial and compensation information is always sensitive. That's why several charitable institutions stick to the letter of the disclosure law. When they respond to a request, they want to know exactly who is requesting the information. They may decide to have a public affairs person present during the inspection of materials, and they may choose to keep the circulation of information as narrow as possible. After all, they figure, if they don't voluntarily provide a copy of their IRS returns, the returns cannot be duplicated and circulated to others.

What is the downside of failing to cooperate with requests for information? Organizations that gather data from both large businesses and large charities find that almost all business provide basic information on their board members and finances in response to a letter. But less than half of large charities respond to an initial letter requesting information. A sizable number of charities never provide such information, even in response to follow-up phone calls and letters.

If a charity denies access to its public information file, it could be open to an examination of its practices and a fine of \$10 for each day the failure continues. But lack of disclosure by a given charity often has a more negative impact on public perception of the charitable sector as a whole than on the particular institution involved.

A story in the newspaper may note that information was not available from the charity, regardless of the reason. In the general press, this frustration can lead to a perception that charities are not as cooperative as they ought to be. The public often assumes that if reporters have a hard time getting information, the charity has something to hide.

Public Disclosures and Congress

Congress relies on the IRS to provide oversight of charities. In the past decade, the IRS has continued to expand the data required on the six-page annual information return Form 990 and on the Schedule A to report on activities and compensation to staff and consultants. If a charity has the basic systems needed to report this information, the IRS assumes the charity has the capacity to carry out its duties.

Congress sees public disclosure as a way of ensuring accountability. By making IRS information available to the public, the public can keep tabs on charities. It's a form of private oversight of the charitable sector. Public disclosure also helps individuals decide whether to support a given charity.

Public disclosure is like mom and apple pie. It's hard for Congress to oppose it, regardless of how much of an inconvenience it may be for nonprofits. Disclosure laws are much easier for Congress to enact than complex formulas that measure, for example, whether nonprofit salaries are reasonable.

Just as individual institutions have an interest in ensuring that their information tells the whole story, the nonprofit sector as a whole has a stake in finding better ways to respond to requests for information.

One disclosure option worth considering is a one-to-two page summary of the most sought-after information on the annual IRS return: budget, salary, program and organizational change data. This summary could use a standard format agreed upon within the philanthropic sector in consultation with the IRS and state attorneys general. The approach would be especially useful for national organizations that file group exemption returns on behalf of their many chapters.

Such a summary might also be used by state attorney general offices receiving citizen calls. For example, the Illinois attorney general requires all charities to file a one-page summary of information from Form 990. The

attorney general's office can then duplicate and send out the form to any member of the public requesting information.

Now is the time for charities to think about ways of establishing public information files that meet the legitimate needs of potential donors, oversight agencies, and others -- and that also meet their own legitimate need to portray themselves accurately. Today on paper, tomorrow: online.

Layton E. Olson is an attorney and an expert on state and federal regulation of charities. This article originally appeared in Advancing Philanthropy, the quarterly magazine of the National Society of Fund Raising Executives. Copyright © 1994 NSFRE. Reprinted by permission. For information on subscribing to Advancing Philanthropy, contact NSFRE, 1101 King St., Suite 700, Alexandria, VA 22314; phone (703) 684-0410; fax (703) 684-0540.