



**CHARITY COMMISSION**  
FOR ENGLAND AND WALES

Mr Abdullah bin Ahmed  
By email: [request-664797-a9c03e92@whatdotheyknow.com](mailto:request-664797-a9c03e92@whatdotheyknow.com)

Charity Commission  
PO Box 211  
Bootle  
L20 7YX

Your ref:  
Our ref: C-520093

Date: 09 June 2020

Dear Mr Abdullah bin Ahmed,

## **RESPONSE TO REQUEST FOR INFORMATION**

Thank you for your email requesting information from the Charity Commission which I have dealt with under the Freedom of Information Act 2000 ("the Act").

You have requested the following:

"Re: Letter from you to the Kings Heath Masjid, Birmingham, B14 7TA, dated 15/02/2016 Ref C-432969-N2F7 signed by Mrs Morag Edwards CV1 @charitycommission.gsi.gov.uk

May I please request all correspondence relating to the above letter and any related correspondence. In particular the response from Kings Heath Masjid and any subsequent correspondence."

I can confirm the Commission hold information relevant to your request. However, we are unable to release this information to you as it is considered exemptions under sections 31, 40(2), 41 and 42(1) of the Act apply to the information. I provide details below of each exemption applied.

### **Section 31**

Section 31(1)(g) states that:

*"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—*

*(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)"*

### **On track to meet your deadline?**

Visit [www.gov.uk/charity-commission](http://www.gov.uk/charity-commission) for help on filing your annual return and accounts

**t:** 0300 066 9197 (General enquiries)

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

Relevant purposes in subsection (2) include:

- ascertaining whether any person has failed to comply with the law;
- ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise;
- protecting charities against misconduct or mismanagement in their administration.

The information you are seeking is held by the Commission in furtherance of its statutory objectives and functions as outlined by sections 14 and 15 of the Charities Act 2011.

These include (but are not limited to) increasing public trust and confidence in charities, promoting compliance by charity trustees with their legal obligations, identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking appropriate remedial or protective action in connection with misconduct or management therein.

It is considered that the disclosure of the information requested would be likely to prejudice these functions.

If the details of all communications which may be subject to regulatory engagement by the Commission are routinely disclosed, individuals, charities, and other parties, would be reluctant to co-operate or enter in to open and frank discussions with the Commission in the course of its work. In addition, disclosure would prejudice the consideration and assessment of any regulatory action the Commission might decide to take. This would adversely affect the Commission's ability to regulate efficiently and effectively in accordance with our statutory objectives and functions under the Charities Act 2011.

This is a qualified exemption which means that it requires the Commission to balance the public interest in disclosure against the public interest of non-disclosure. Please see below for the outcome of the test we have undertaken.

#### Public Interest Test

Arguments for disclosure:

- Public authorities such as the Charity Commission have a wider duty to be transparent and accountable for the decisions they make.
- Disclosure of the requested information would help to inform public debate on issues of regulatory significance and demonstrate that the Commission is effectively and efficiently regulating the charity sector.
- Disclosure of this information would help to educate and inform the public by detailing how the Commission handles regulation issues, providing a fuller picture of the how the Commission fulfils its statutory functions and duties.

#### Arguments against disclosure:

- If the Commission routinely disclosed details of correspondence it holds in connection with its regulatory functions, it would have a detrimental impact on the public's confidence in our ability to handle matters confidentially. As a result, charities, individuals and organisations would be reluctant to come forward in the future for fear of their identities and communications being disclosed in response to a request for the information held.
- Disclosure would negatively impact the relationship the Commission has with the sector. If charities and the public at large believed that the Commission routinely disclosed their correspondence this would undermine the trust underpinning how we engage with charities, third parties and the sector in general.

#### Outcome:

In balancing the public interest of disclosure against the public interest in withholding the information, it is the Commission's view that, in this instance, the greater public interest lies in withholding the information.

#### Section 40(2)

Personal information is withheld under section 40(2) of the Act as the information constitutes third party personal data for the purposes of the General Data Protection Regulation (GDPR)/Data Protection Act 2018 (DPA). Section 40(2) provides that personal data about third parties is exempt information if one of the conditions set out in section (3) is satisfied, namely whether any of the data protection principles would be contravened by the disclosure.

Disclosure of this information would breach the first principle at Article 5(1)(a) of the GDPR. Under this principle personal data is required to be processed lawfully, fairly and in a transparent manner. To disclose personal data in response to an FOI request would be at odds with this principle unless there is a legitimate interest in doing so, and this was in line with the expectations of the data subjects concerned. In this instance, the individuals concerned would have no expectation that their personal data would be disclosed in this manner and it would be unfair on them to do so.

#### Section 41(1)

Information is considered to be exempt information if it was obtained by the public authority from any other person (including another public authority), and the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

We can confirm that some of the information we hold possesses the necessary quality of confidence and has been provided to us in circumstances that would warrant us to handle

the information confidentially. We consider that disclosure of the information in question would cause harm and be detrimental to the parties concerned for which the Commission would be legally liable.

#### Section 42(1)

We consider that the exemption under section 42(1) of the Act is engaged as some of the information held by the Commission are communications with or between Commission lawyers. I have not provided this information as it is considered privileged legal advice which is exempt from disclosure.

When applying this exemption, we must consider whether the public interest in not releasing the information outweighs the public interest in releasing the information. Although we recognise that there is a public interest in the accountability of the Commission which favours disclosure, the Commission's view is that there is much greater public interest in relying on the exemption as it enables the Commission to seek and receive clear, open and frank legal advice on particular matters which arise. Making the Commission's privileged legal advice on a case by case or point by point basis available to the public is likely to impact on the legal advisers' ability to provide such legal advice. This would hinder the Commission in exercising its regulatory functions since it is essential that the Commission has access to clear, open and frank advice about the extent and limitations on its powers and the legal context in which it finds itself.

We have therefore concluded that the public interest in withholding privileged legal advice outweighs the public interest in disclosing it to the public.

This concludes our response to your request.

If you are dissatisfied with the handling of your request or the decision which has been reached, you have the right to ask for an internal review. Internal review requests must be submitted within two months of the date of this response and should be addressed to the Charity Commission at PO Box 211, Bootle, L20 7YX (email: [RIGA@charitycommission.gov.uk](mailto:RIGA@charitycommission.gov.uk)).

If you are not satisfied with the internal review, you are able to appeal to the Information Commissioner. Generally, the ICO cannot make a decision unless you have exhausted our review procedure. The ICO can be contacted at the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF (email: [casework@ico.org.uk](mailto:casework@ico.org.uk)).

Yours sincerely,

Lucy Breakspere

Information Rights and Complaints Manager