

Mr W Thackeray

**By Email Only**

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**Your Ref:**

**Our Ref:** JP-FOI-3040003

**Date:** 21 September 2010

Dear Mr Thackeray,

**Request for Information under the Freedom of Information Act 2000**

I write further to your revised Freedom of Information request as per your e-mail dated 4 June 2010. Please accept my sincere apology for the delay in responding to your request. Your revised request took longer than anticipated to search the Commission's records and prepare the relevant documents for release. This is mainly because of the age of the files and the amount of documents held.

The Commission holds the information you have requested and is able to provide you with the significant proportion of the information requested in hard copy format.

I have interpreted your request as being that you would like the information in electronic form. As I have advised in previous correspondence, is not reasonably practicable for the Commission to provide this information in an electronic format due to the number and nature of the documents, some are handwritten and the scanner cannot easily read these documents. Therefore much more resource would be required to produce scanned rather than photocopied documents.

If we did digitalise these documents it would be to meet your FOI request. There are no other business reasons for the Commission to hold these documents electronically and therefore the cost of creating electronic files, which would be significant, would be disproportionate to the resources available to the Commission. There are also time and cost implications of sending this information electronically because the information could not be attached to one email but would require numerous emails as there are limitations on the size of the emails that can be handled by the Commission's systems. Under section 11(2) of the Freedom of Information Act, the Commission can have regard to all the circumstances including cost in determining whether it is reasonably practicable to provide the information in the format requested.

On receipt of your preferred postal address, the disclosable information can be provided to you.

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on filing your annual return and accounts

**General Enquiries:** 0845 300 0218

**Textphone:** 0845 300 0219

**Website:** [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

On receipt of the information, you will note that some information has been redacted. This information is exempt from disclosure under the following sections of the Act:

#### **Section 40 Personal Information –**

I have redacted information which constitutes personal data; 'Personal data' is defined in section 1 of the Data Protection Act 1998 as:

- data which relate to a living individual who can be identified – from those data, or
- from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

The definition of 'personal data' is very wide. For example, it could include the fact that a particular person is the author of a document and the fact that a person attended a particular meeting.

Under section 40(2) of the FOIA, personal data of a third party will be exempt if its disclosure to a member of the public would contravene any of the 'data protection principles'. In my view disclosure would not be in accordance with the First Data Principle which requires personal data to be processed lawfully and fairly.

Section 40 is an absolute exemption and does not require the application of the public interest test.

#### **Section 42 - Legal professional privilege-**

Information has been withheld which constitutes a request for legal advice or is the legal advice provided. Legal Professional Privilege (LPP) is a legal rule which protects the confidentiality of legal communication. It covers all communications between a lawyer and their client provided the communications are directly related to the performance by the lawyer of their professional duty as legal adviser.

Section 42 is a qualified exemption and I have therefore considered the public interest test.

The Commission recognises that there is a general public interest in public authorities being transparent and accountable, and providing assistance to members of the public with regard to information held by them as far as possible.

However it is also in the public interest that the decisions taken by the Commission are taken in a fully informed legal context. The Commission therefore need high-quality, comprehensive legal advice for the effective conduct of its business. That advice needs to be given in context, and with a full appreciation of the relevant facts. If details of all communications between the legal advisors are routinely disclosed, this may effect open and frank discussions with the Commission which would adversely affect the Commission's ability to regulate effectively.

Without comprehensive advice the quality of the Commission's decision-making would be much reduced since it would not be fully informed and this would be contrary to the public interest.

It is the Commission's view that on balance the public interest lies in not disclosing the privileged legal information we hold.

If you are unhappy with our response to your FOI request, have a complaint or wish to request a review of our FOI decision, you should write to: Charity Commission Direct by email to [enquiries@charitycommission.gsi.gov.uk](mailto:enquiries@charitycommission.gsi.gov.uk) or by post to P.O. Box 1227, LIVERPOOL, L69 3UG. Please state what it is you are dissatisfied with, which will assist us when we review our response.

If you request a Decision Review you will be notified of our final decision. Please note that we will accept requests for a Decision Review up to a maximum of 3 months after the original decision. The 3 months will be calculated from the date on which you receive written notification of the original decision. You will be deemed to have received written notification on the day after the letter enclosing the decision was sent or the same day if the decision was sent by email.

If after this you remain unhappy with the decision, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted our complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely,

**Joanne Pinnington**  
**Deputy Corporate Information Manager**

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