



In the Pakistan Information Commission, Islamabad
Appeal No 1865-04/22

M. Awais

(Appellant)

Vs.

Pakistan State Oil

(Respondent)

ORDER

Date: July 27, 2022

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated April 12, 2022 to the Commission, stating that he submitted an information request to the BM, Pakistan State Oil on March 25, 2022 under the Right of Access to Information Act 2017 but did not receive any response from the public body.

2. The information sought by the Appellant is as follows:

“With due respect, it is stated that M Awais S/O Abdul Rahim CNIC 34101 4573115-5 has been appointed as Guardian / Manager by honorable court ASI-I Mr. Asif Bashir to look after and manage the health and properties affairs of his mentally disordered real father's Mr. Abdul Rahim S/O M. Yousaf

Mr. Abdul Rahim S/O M. Yousaf is dealer of PSO National Farm Station. Pasrur Road. Tehsil Daska Code: 32992. Therefore, kindly provide me the complete following details about National Farm Station which mention below

- *All Purchase record of PSO from 2002 to till date. (HSD.HSP.Credits • Provide complete attested copies of National Farm Station file which is Limits & Days) in Gujranwala office.*
- *Provide all details about the person who is dealing with PSO on the behalf of Abdul Rahim since last 22 years*

- *Who is receiving lease amount on the behalf of Abdul Rahim.*

Being guardian/ manager further transaction shall be conducted with due proses of law and with my knowledge. Because. I am bound to present all details in the honorable court at hearing You are also requested not to trams for dealership as well.”

B. Proceedings

3. The record on the file suggests that the Respondent submitted its response on the intervention of this commission on May 13, 2022 and its text is as under:

“This is with reference to your letter No. Appeal-1865-04-22 dated 23.04.2022 on the subject whereby copy of an Appeal dated 12.04.2022 (Appeal”), filed by Mr. Muhammad Awais S/O Abdul Rahim (Applicant), along with a letter dated 25.03.2022 sent by the

Applicant to BM PSO, Gujranwala, has been forwarded to us with the direction to provide reasons for not providing the record to the Applicant

Accordingly, without going into the merits of the Appeal and without prejudice to the rights available to PSO under the law which are hereby exclusively reserved, we submit our response as under

1. At the outset, it is submitted that the instant Appeal has been filed by the Applicant maliciously and without any reasonable or probable cause. The Applicant has not showed his intent, motive and purpose for requiring such record. Furthermore, the requisite information does not come within the ambit and scope of "Public Record", as defined in Section 6 of the Right to Access to Information Act, 2017 ("Act").

2. It is also barred by Section 7 of the Act, which excludes the requisite information from the definition of Public Record. We understand that for this reason alone, the instant Appeal is liable to be dismissed. For ease of reference, the relevant extract of Section 7 of the Act is reproduced below "7 Exclusion of certain record. Nothing contained in section 6 shall apply to the following record of all public bodies, namely:

(g) Record relating to the personal privacy of any individual; and (h) record of private documents furnished to a public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third party"

The requisite information also falls under the exemptions as provided under several sub sections of Section 16 of the Act. The relevant extracts from the Section 16 are given below for ready reference: Section 16(10) of the Act

16(1)(b) information may be exempt if its disclosure is likely to (ii) reveal the identity of a confidential source of information" Section 16(1)(c) of the Act 16(1)(c) information is exempt if its disclosure under this Act would involve invasion of privacy of an identifiable individual, including a deceased individual, other than the applicant

Section 16(d) of the Act 16(1)(d) information is exempt if and so long as its disclosure is likely to cause (i) damage to the financial interests of the public body by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body for acquisition or disposal of property or supply of goods or services or (iii) damage to lawful commercial activities of the public body." Section 16(1) of the Act 16(1)(i) information may be exempted if its disclosure is likely to endanger life, liberty, health or safety of any individual [Emphasis supplied.

4. The requisite information is also prohibited in terms of Section 16(1)(g)(i) and (ii) of the Act, as it relates to the third parties' trade secret, and its communication may prejudice the commercial or financial interests of the relevant parties. Moreover, the disclosure of such information may constitute an actionable breach of confidence. For ease of reference, we reproduce the relevant extracts below:

"(g) information may be exempted if

(i) the information was obtained from a third party and on its communication it would constitute an actionable breach of confidence, or

(i) the information was obtained in confidence from a third party and it contains a trade secret or if communicated it may prejudice the commercial or financial interests of that third Party.

We would also like to refer a decision of the Honourable Information Commission issued in the Appeal No. 001-04/19. Muhammad Muzammil Baloch Vs The Collector of Customs, Islamabad and the Chairman. FBR, Islamabad, whereby the said appeal on similar grounds was dismissed. The relevant extract of the decision is reproduced herein below for ease of reference

13. The Section 16 deals with the exception provided in the Act The subsection (g) of Section 16 of the Act rescues the public body from sharing the requested information as it is bound to constitute an actionable breach of confidence for the reason that it contains the trade secrets of individuals and if communicated it would prejudice the commercial or financial interests of the third party which is not placed as party in the instant appeal.

It is further held in the abovementioned Order to the effect that Article 18 of the Constitution of Pakistan provides freedom of trade and business to the citizen of Pakistan. If the requested information data is provided to the Applicant, it would tantamount to infringing their fundamentals rights guaranteed by the Constitution of Pakistan

In view of the above, the instant Appeal is liable to be dismissed in view of consistency.

6. Without prejudice to the above and our rights available under the law, this Appeal also warrants dismissal on this fact alone that the Applicant has miserably failed to establish and prove his relationship with Mr. Abdul Rahim as no CNIC copy or any other similar document was provided. Furthermore, he has claimed that he has been appointed as Guardian/Manager to take care of his mentally disordered real father's health and properties affairs in which also appointed Guardian/Manager of National Farm Station, however, no Court Order or any other pleadings etc have been provided to that effect.

In view of the above, we understand that the Applicant is not entitled to receive the requisite information and the documents from PSO. Therefore, we request the Information Commission to dismiss the Appeal of the Applicant.”

4. The Appellant submitted his response on May 25, 2022 and its text is as under:
Applicant is not satisfied with response of public body therefore applicant is contacting Pakistan information Commission within 7 working days after received letter dated 20-05-2022. 50, Applicant is submitting in written his objection against public body (PSO) This is with reference to letter No. Appeal 1865-04/22 dated 17-05-2022 received on the subject whereby copy of an Appeal dated 12.04 2022 (Appeal"), filed by Mr. Muhammad Awais 5/0 Abdul Rahim (Applicant), along with a respondent letter dated 13-05-2022 sent by Mr. Iftikhar Amanant RHCS Central Region PSO to Mr Ikram Ul Haq Registrant of Pakistan Information Commission.

I don't accept PSO response due to following reasons.

Applicant (M Awais S/O Abdul Rahim) is appointed Guardian/Manager under Section 29 of Mental Health Ordinance 2001 of Mr. Abdul Rahim 5/0 M Yousaf (Mentally Disorder person).

Applicant gave application along with attested copy of Court order, CNIC of Mr. M. Awais and Lease

Deed of National Farm Station to BM Gujranwala P50 (Mr Gul Hassan) dated 25-3-2022 by hand and after that BM gave receiving with his stamp and signature on application to M. Awais at the same time.

However, applicant sent Application, Attested Copy of Court order, CNIC of M Awais and Lease Deed by courier TCS details as following (TCS tracking slips attached)

TCS sent to	Dated	TCS Tracking ID
DM PSO (Gul Hassan) Gujranwala	26-03-2022	1466388233
RM PSO Lahore	26-03-2022	1466388235
MD PSO Karachi	26-03-2022	1466388234

Applicant also sent by E-mails with attachments of Attested Copy of Court order. (Email print attached)

Email sent to	Dated
DM PSO (Gul Hassan) Gujranwala	31-03-2022
MD PSO Karachi	31-03-2022
Imran Khan (Legal Karachi)	31-03-2022
Wafaqi Mohtasib PSO	06-04-2022

The Applicant has showed his intent, motive and purpose for requiring such record and details

National Farm Station Code 103402. For submission of accounts of moveable & immoveable properties of his real father Mr. Abdul Rahim (Mentally disordered person) in court according our order Section 37 of Mental Health Ordinance 2001.

Sec 37 of Mental Health Ordinance 2001:

37. Furnishing of inventory of immovable property, etc. Every guardian/manager appointed under this Ordinance shall, within a period of three months from the date of his appointment, deliver to the Court an inventory of the immovable property belonging to the mentally disordered person and of all assets and other moveable property received on behalf of the mentally disordered person.

1. The instant appeal has not been field by the applicant maliciously. The applicant has showed his intent, motive and purpose for requiring such record in applications to BM, RM & MD PSO, Meanwhile, the requisite information comes within the ambit and scope of "Public Record", as defined in Section 6 Declaration of Public Record Sub-Section (b)&(c) of the Right to Access to Information Act, 2017. 6(b): Transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties and function:

Reason for relying Section 6 (b): Lease agreement between Abdul Rahim & PSO

6(c): Information regarding grant of licenses, allotments and other benefits: and agreements made by a public body. Privilege, contracts Reason for relying Section 6 (c): Dealership agreement, Lease payment, etc.

2. The requisite information by applicant is not barred by Sec 7 of the Act, because court appointed M Awais Guardian/Manager of his real father Abdul Rahim who is dealer of National Farm station code 103402 So, the instant appeal is not liable to be dismissed. The relevant extract of sec 7 of the act does not apply in the applicant matter Reason of not applicability of 7(g): That requisite record requested by applicant is not personal privacy for applicant as guardian/manager of Abdul Rahim. Reason of not applicability of 7(h)

The applicant as a guardian/manager is not a third party so the document furnished to a public body is not confidential for him.

3. The requisite information does not fall under the exemptions as provided under several Sub sections of Section 16 of the Act.

Reason of not applicability of Sec 16(1)(b) (iii) of the Act:

The identity of a confidential source of information is not applied in case of guardian/manager appointed by court. Reason of not applicability of Sec 16 (1) (c) of the Act: Requisite information by applicant falls under exception Sec 16 (1)(c)(i) of the act Exception Sec 16 (1) (c)(ii) of the act: The person making the request is the guardian of the third party or the next of kin

Reason of not applicability of Sec 16(1) (d) (ii) (ii) of the Act: Requisite information by applicant does not damage the financial interest and commercial activities of PSO because the applicant has no interest adverse to the interest of Abdul Rahim (Mentally disordered person) who is dealer of PSO National Farm Station Code: 103402

Reason of not applicability of Sec 16(1) (f) of the Act Requisite information by applicant does not endanger life, liberty, health or safety of any individual because the applicant has no interest adverse to the interest of Abdul Rahim (Mentally disordered person) who is dealer of PSO National Farm Station Code: 103402 4. Reason of not applicability of Sec 16(1) (a) (i) and (ii) of the Act: Requisite information by applicant is not prohibited in terms of sec16(1)(a)(i)and() of the act as it does not relate to third party trade secrets and its communication does not prejudice the commercial or financial interest of the relevant parties. Moreover, the disclosure of such information does not constitute an

actionable breach of confidence because the applicant has no interest adverse to the interest of Abdul Rahim (Mentally disordered person) who is dealer of PSO National Farm Station Code: 103402

5. The decision of Honorable Information Commission given in the Appeal No. 001-04/19: Muzammil Baloch Vs The Collector of Customs. Islamabad and the Chairman, FBR, Islamabad, is irrelevant in this appeal.

Article 18 of the Constitution of Pakistan provides freedom of trade and business to the citizen of Pakistan. It is also fundamental right of Mr. Abdul Rahim who is dealer/trader of PSO and Mr. M Awais is guardian/manager whose duty is to protect all the fundamental right of the Mr. Rahim.

6. Applicant gave application along with attested copy of Courts orders, CNIC of M Awais and Lease

Deed to BM Gujranwala PSO dated 25-3-2022 by hand after that BM gave receiving to M. Awais with his stamp & Signature at same time.

PSO maliciously, arbitrarily denying the fact that applicant does not provide copy of CNIC M Awais and court order. Meanwhile, PSO relying on the Sec 7(g) (h), sec 16 (1) (b) (iii), 16 (1) (c), 16 (1) (d) and 16 (1) (g) from Right to Access Information Act 2017 does not apply on the requisite information requested by applicant. The requisite information requested by applicant falls under Section 6 (b) (c) and exception of Section 16 (1) (c) (ii) of the act Right to Access Information Act 2017.

In view of above, arguments appeal should not be dismissed and is it is requested to Pakistan information commission please bound PSO to provide all details to M Awais Son of Abdul Rahim who has no interest adverse to the interest of Abdul Rahim (Mentally disordered person) who is dealer of PSO National Farm Station Code 103402. However Applicant attached again Attested Copy of Court orders, CNIC of M Awais for PSO in order to proof his purpose, intent for requiring record.

7. Hearing on the instant Appeal was fixed for July 21, 2022 vide letter dated June 23, 2022. The Respondent was represented by Muhammad Usman designation Manger Legal and department Legal

C. Issues

8. The instant appeal has brought to the fore the following issue: Can legal heir get access to the requested information pertaining to a third party held by a public body to seek justice?

D Discussion and commission's views on relevant issues:

9. The record available on the file demonstrates that the Appellant is the legal heir of his father whom the Respondent issued dealership. The Respondent has not raised the issue that the dealership was not issued to the father of the legal heir who has filed request to information.
10. This commission holds that the disclosure of Purchase record of PSO from 2002 to date to the extent of providing it to the owner of/legal heir of the dealership is permissible under the Act, 2017.

11. This commission also maintains that disclosure of information as to who receives lease amount on the behalf of the owner is permissible to the Appellant under the Act, 2017.
12. This commission also maintains that it is not the question of protecting commercial interests of the third party managing PSO National Farm Station but the question of right of access to justice for the owner of the dealership. The disclosure of the requested information to the Appellant, the legal heir of his father, the owner of the dealership will reveal as to how much business was conducted by the person, the third party and whether or not terms and condition were followed by the third party as agreed upon with the owner and his legal heir of the dealership. In short, based on this information, the Appellant will be able to exercise his right of access to justice.

E. Order

13. The Appeal is allowed. The Respondent is directed to provide the Appellant information requested in para 2 of this Order at the earliest but not later than 7 working days of the receipt of this Order, with intimation to this office.
14. Copies of this order be sent to the Respondent and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on: July 27, 2022

This order consists of 6 (six) pages, each page has been read and signed.