



**In the Pakistan Information Commission, Islamabad**

**Appeal No 2069-07/22**

**Hafiz Arfat Ahmed**

**(Appellant)**

Vs.

**Islamabad Club**

**(Respondent)**

**ORDER**

**Date:** September 13, 2022

Zahid Abdullah: Information Commissioner

**A. The Appeal**

1. The Appellant filed an appeal, dated July 07, 2022 to the Commission, stating that he submitted an information request to the Administrator, Islamabad Club 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:

*“That the Appellant is an advocate of Supreme Court of Pakistan and practicing law at Islamabad. On 24-05-2022, the Appellant submitted an Application under Section 11 of the Right of Access to Information Act, 2017 (hereinafter referred to as "the 2017 Act") to the respondent (hereinafter "the Club") seeking the following information/record/documents:*

- i. *Membership criteria/complete procedure for grant/refusal of membership for all categories with particular focus on Non-Service category.*
- ii. *Membership fee schedule for all categories.*
- iii. *Copy of the decision (along with all annexures/enclosures, if any) made by the Competent Authority whereby the last revision in Membership Fee for Non-Service category was made and the fee was increased from Rs 2 Million to Rs. 3.5 Million.*
- iv. *List of Applicants with their respective profiles/backgrounds whose membership was approved by the Balloting Committee on 28-04 2022 Copy of complete proceedings conducted by the Balloting Committee on 28-04-2022*
- v. *List of Officers of National Accountability Bureau (NAB) with their grades/designations who are members of the Club. The year of their Membership is also required.*
- vi. *List of Officers of Federal Investigation Agency (FIA) with their grades/designations who are members of the Club. The year of their Membership is also required.*

- vii. *List of officers belonging to Pakistan grades/designations Administrative Service with their*
- viii. *List of total employees of the Club along with detail of their total salaries*
- ix. *Detail of direct and indirect taxes paid by the Club in last financial year 2020-2021.*
- x. *Total area of the Club and the property tax paid by the Club in respect thereof in last 10 years.*
- xi. *Copy of Islamabad Club Membership Regulations 2022. (The of this instrument is appearing on the website of the Club under the caption "CLUB's LEGAL STATUS, RULES & REGULATIONS but it appears that the Management of the Club has made it inaccessible for general public as the given link does not open the document.)*
- xii. *Copy of relevant rules providing remedy of Appeal/Representation/Review against refusal of application for membership.*
- xiii. *List containing names of Advocates (of High Court and Supreme Court) who are members of the Club. The year of their Membership is also required.*
- xiv. *Total revenue of the Club in last financial year i.e. 2020-2021 from all outlets/facilities operating in the Club."*

## **B. Proceedings**

- 3. The record on the file suggests that the Respondent submitted its response on the intervention of this commission on June 09, 2022. The Respondent was represented by learned counsel Advocate Wasim Abid in the hearing held on August 18, 2022. He submitted preliminary arguments and sought more time which the commission granted.
- 4. Hearing on the instant Appeal was fixed for August 25, 2022 vide letter dated August 18, 2022. The Respondent was represented by learned counsel Advocate Wasim Abid. He submitted written response and also maintained that the instant appeal be dismissed on the ground that the Appellant has not produced before this commission certificate required under Rule 8(2) of the Right of Access to Information Rules 2019. He also argued that the Appellant had vested interest in seeking the information and as such his request for information did not constitute a matter of public importance under Article 19-A of the Constitution of the Islamic Republic of Pakistan. He further argued that the Appellant was not able to prove that the requested information was public record and that the burden of proof was on the Appellant to establish the proof. The learned counsel also opined that the disclosure of the requested information will adversely impact on the "protection of their life, home, family and honour" of "respectable members of the Islamabad Club including advocates of the Supreme Court and High Court as well as officers of NAB, FIA and PAS as well as its employees". He also argued that the Respondent, Islamabad Club is a non-juristic person and as such the Appeal should be dismissed.

## **C. Issues**

- 5. The instant appeal has brought to the fore the following issues:
  - (a) Can the instant appeal be dismissed on the ground that the Appellant has not produced before this commission certificate under Rule 8(2) of the Right of Access to Information Rules 2019?
  - (b) Can supposed 'vested interest' be ground for terming subject matter of the requested information as not a matter of public importance under the Right of Access to Information Act, 2017, henceforth referred to as the Act, 2017?

- (c) Is the burden of proof that the requested information is public record on the Appellant, or, the Respondent?
- (d) Is the Respondent, Islamabad Club a non-juristic person?
- (e) Will the disclosure of the requested information adversely impact on the “protection of their life, home, family and Honour” of “respectable members of the Islamabad Club including advocates of the Supreme Court and High Court as well as officers of NAB, FIA and PAS as well as its employees” as maintained by the Respondent?
- (f) Is the disclosure of the requested information warranted under the provisions of Act, 2017?

**D. Discussion and commission’s views on relevant issues:**

6. This commission holds that the instant Appeal is maintainable under the provisions of the Act, 2017 on the following grounds:
  - (a) This commission is first forum of appeal if the requested information is delayed or denied by a public body.
  - (b) This commission took cognizance of the instant Appeal after determining that communication of the Appellant with the Respondent, Islamabad Club constituted request for information under Section 11 (3) of the Act, 2017.
  - (c) Furthermore, this commission has determined through different judgements that, being first forum of appeal, this commission can determine whether or not requested information can be provided to a citizen under the provisions of the Act, 2017, even if the matter is sub-judice at any other legal forum, unless specifically so prohibited by the competent court that this commission cannot make any determination regarding disclosure, or, otherwise of requested information.
7. This commission holds that the Respondent, instead of dwelling upon the ‘vested interests’ of the Appellant for seeking the information, it should have decided on his request for information under the provisions of the Act, 2017.
8. The right of a citizen to have access to certified information/records cannot be restricted if an Appellant has been seeking, or, intends to seek justice at any other legal forum. In fact, access to certified information/records becomes all the more important as right to information is linked with all other basic human rights, including right of access to justice.
9. This commission holds that every citizen of Pakistan has locus standi to seek information from public bodies and under Section 11 (5) of the Act, 2017, officials are specifically forbidden to ask the applicant to submit reasons for seeking information. This also means that the officers are not supposed to dwell upon the motives for seeking the information.
10. This commission holds that the Respondent, Islamabad Club cannot shift burden of proof on the Appellant for establishing that the requested information is permissible under the Act, 2017 under its Section 17 (4) which states that “public body shall, in an appeal under sub-section (1), bear the burden of proof of showing that it acted in accordance with the provisions of this Act”.
11. So far as the question of Islamabad Club being a public body is concerned, this commission has already settled this issue in APPEAL NO. 341-02-2020, in the case of Nadeem Umer VS Islamabad Club. The relevant excerpts from the Order in that Appeal are as under:

“The basic point in the appeal is to decide whether the Islamabad Club remains outside the jurisdiction of the Commission and do not fall in the category of “public body” as defined in section 2(ix) of the Act because the Club in its reply has objected the maintainability of the

appeal. It has been argued that the Islamabad club is non-juristic person and, in this regard, reliance is placed on (PLD 2019 Isl 331) titled Administrator Islamabad Club vs Aisha Mustafa.

The Commission after going through the Article 19.A of the Constitution of Pakistan, the Right of Access to Information Act 2017 and the reply submitted by the Islamabad Club is of the considered view that the Islamabad club is a “public body” within the meanings of the Act for the following reasons;

- a. That admittedly through Islamabad Club (Administration) Ordinance 1978, the administration of the affairs of the club is vested in the office of the Administrator appointed by the Federal Government under section 6 of the Ordinance. The Administrator subject to any direction issued by the Federal Government is competent to exercise and perform all such powers and functions as may be necessary for the administration of the affairs of the club. The club is thus controlled by the Federal Government is encompassed within the meanings of the “public body” as defined in section 2(ix)(d) of the Right of Access to information Act 2017.
  - b. That in aid to and advice the administrator in the performance of the club affairs, the Federal Government appoints a managing Committee under section 6.A of the Ordinance 1978.
  - c. That it has been advanced in the arguments by the club that the land comprising the Islamabad club has been leased in favor of the club by the Capital Development Authority, Islamabad. The club makes payment on account of lease to the CDA on yearly basis. The copies of the pay orders in favor of CDA paid by the club reflect that an amount of Rs. 14,700/- on account of Annual Lease Rent of Islamabad Club land and Rs. 12,300/- on account of Annual Lease Rent of Polo Ground & Extension of golf Course for the year 2020-21 has been deposited in favor of the CDA. The lease agreement is a contract for the exclusive possession of land for life, for term of years, at will, or for any interest, usually for a specified rent or compensation. The club is thus utilizing the government land, on lease, under its use. On this score alone the club comes within the definition of “public body” as mentioned in section 2(ix)(h) of the Act”.
12. This commission holds that the disclosure of the requested information is warranted by both the letter and the spirit of the Act, 2017, including the requested information about the lists of members with their names, designations and their departments and professions.
  13. This commission maintains that the disclosure of the requested information will not adversely impact on the “protection of their life, home, family and Honour” of “respectable members of the Islamabad Club including advocates of the Supreme Court and High Court as well as officers of NAB, FIA and PAS as well as its employees” as maintained by the Respondent.
  14. This commission holds that names, designations and departments/professions of the members of Islamabad Club cannot be withheld on the ground of privacy as they are beneficiaries of subsidies provided by the government.
  15. This commission determines that the individuals who got membership of Islamabad Club should be seen as beneficiaries of public funds. The club provides facilities to its members on highly subsidized rates because of the land provided by the government on highly subsidized rates and far below the market value. As such, all members of Islamabad Club are beneficiaries of public funds.

16. This commission maintains that Section 5 (1) (e) of the Act, 2017 requires particulars about the recipients of any concession, permit, license or authorization granted by the public body” to be proactively published through the web sites of public bodies.
17. It is important to note that privacy/personal information is understood to be, broadly speaking, information/data pertaining to access control (username and/or password), financial information such as bank account, credit card, debit card, or other payment instruments, and, passports, biometric data, and physical, psychological, and mental health conditions, medical records, and any detail pertaining to an individual's ethnicity, religious beliefs etc.
18. The Act, 2017 envisages a situation wherein a document, which should be otherwise be made public but its parts may contain private information. In such an eventuality, the part containing private information can be severed from the document as mentioned in Section 16 (1) (i) of the Act, 2017 and the rest should be made public.
19. This commission maintains that the Respondent, Islamabad Club is legally bound to proactively publish on its web site under Section 5 of the Act, 2017 requested information pertaining to Islamabad Club Membership Regulations, rules providing remedy of Appeal/Representation/Review against refusal of application for membership, revenue and tax related details and membership criteria/complete procedure for grant/refusal of membership for all categories.
20. This Commission has observed that information of public importance mentioned in Section 5 of the Act is not being published through the web site of federal public bodies. In fact, the Web sites of federal public bodies contain generic information and not specific information as required under Section 5 of the Act. This is despite the fact that Principal Officer of each public body was required to ensure proactive disclosure of information through web site within 6 months of the commencement of the Right of Access to Information Act, 2017.
21. This commission has also noticed that even when Public Information Officer, (PIO) is designated under the Act, information to this effect is either not provided on the web site, or, if it is provided, it is not displayed at a prominent place on the web site.
22. This commission holds that the federal public bodies should ensure that the name, designation, telephone number and E-mail of the PIO is placed at top right corner of the home page of their web sites. Furthermore, as a PIO is designated by post, any change to this effect should be immediately updated on the web site.
23. This Commission maintains that the information proactively published under Section 5 of the Right of Access to Information Act 2017 should be ‘accessible’ for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. Apart from the interpretation of ‘accessible’ in section 5 of the Act, section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 requires federal public bodies to ensure accessibility of web sites to the special needs of persons with disabilities and it is as under:

“The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.

#### **E. Order**

24. 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 10 working days of the receipt of this Order, with intimation to this office.

25. Administrator, Islamabad Club is directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017 and submit the compliance report to the commission in the Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017'. This template is available under 'Information Desk' category at the web site of the commission [www.rti.gov.pk](http://www.rti.gov.pk). The compliance report be submitted to this commission within 10 working days of the receipt of this Order.
26. Administrator, Islamabad Club is directed to ensure accessibility of the information proactively published on its web site under Section 5 of the Right of Access to Information Act 2017 for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities and submit compliance report to this effect using 'Web accessibility checklist'. This checklist is available under 'Information Desk' category at the web site of the commission [www.rti.gov.pk](http://www.rti.gov.pk). The compliance report be submitted to this commission at the earliest but not later than 10 working days of the receipt of this Order.
27. 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: September 13, 2022

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