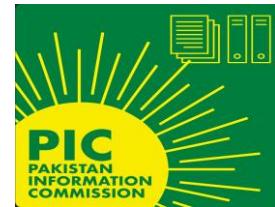


**Pakistan Information Commission
Information Service Academy
Zero Point, Islamabad**



Appeal No 061/06/19

Mukhtar Ahmed Ali (Appellant)

Vs.

National Assembly Secretariat Islamabad (Respondent)

Date:	December 17, 2019
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Order

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 06/05/2019, to the Commission, stating that he submitted an information request to the Secretary, National Assembly, vide letter no. RTI/Info Rq/2019/116, dated 10-4-2019 under the Right of Access to Information Act 2017 requesting following information.
 - a) “Total sanctioned strength of staff members of National Assembly (category-wise) against different positions/ pay-scales i.e. from pay scale 1 to 22 (category-wise).
 - b) Total vacancies in the National Assembly against different pay-scales/ positions (category-wise); and dates since which these positions have been lying vacant.
 - c) Number of staff members who are not regular but have been engaged on daily-wage basis or through short-term or long-term contracts against various positions/ pay-scales (category-wise).
 - d) Number and types of positions created anew since January 1, 2017.
 - e) Total number of female staff members (category-wise) against various positions/ pay-scales. The response may distinguish between the short-term/ temporary staff members and regular ones.
 - f) Total number of persons with disabilities working in the National Assembly against various positions/ pay-scales (category-wise). The response may distinguish between the short-term/ temporary staff members and regular ones.
 - g) Total number of transgender persons working with the National Assembly against various positions/ pay-scales (category-wise). The response may distinguish between the short-term/ temporary staff members and regular ones.
 - h) A certified copy of the latest approved Service Rules of the National Assembly”.

The Appellant stated that an officer of National Assembly responded vide letter No. Nil dated 02/05/2019 and asked the appellant to submit an attested copy of CNIC. On May 6, 2019, the Appellant sent certified copy of his CNIC and simultaneously submitted a complaint to the commission for decision on whether the designated officers are empowered under the existing law and rules to require applicants to submit certified copies of their CNICs.

2. The Appellant also submitted that there should be no such requirement in the light of following arguments:

- “Right to information is a fundamental right under Article 19A of the Constitution, and it can’t be limited or constrained by making its implementation conditional to furnishing of certified documents. Here, it may also be noted that a large number of Pakistani citizens don’t have CNICs and, therefore, this requirement will exclude them from the exercise of their fundamental right of access to information. Even those who have CNICs may not find it convenient (especially in rural areas) to make photocopies and then get them certified from a gazetted officer. Therefore, such a requirement would put the poor and those living in rural areas at further disadvantage.
- It is nowhere explicitly provided in the law that the designated officer would first ascertain the identity of the applicant or examine his documents before processing his application for access to information. Therefore, any designated officer, who makes such a demand, exceeds his lawful authority, and causes undue inconvenience for applicants.
- Section 11(3) of the Act states that: “Any written request which identifies the information or record sought in sufficient detail to enable the public body to locate it, and which includes a complete address and contact details for delivery of information or record, shall be treated as a request”. This provision doesn’t place any additional burden on applicants and, therefore, any application that meets the prescribed requirements in this section should be decided on merit, without further bothering applicants.
- In any case, the information that is harmful to any of the state or public interests is not to be disclosed or provided under this Act. Therefore, any additional requirements like furnishing of CNICs would not serve any useful purpose, except that these will burden applicants, especially the poor, and add to the workload of designated officers”.

B.Proceedings

3. In response to Commission’s Notice Ref. No. Appeal-061-06/19, dated July 4, 2019, the Respondent submitted following arguments for demanding certified copy of CNIC:

- (a) “Copy of CNIC was, undoubtedly, demanded from the applicant because under the Right of Access to Information Act, 2017, an applicant has been defined as “a citizen of Pakistan”.
- (b) In order to ascertain the citizen of Pakistan, copy of CNIC always plays a pivotal role under section 2(e) of the National Database and Registration Authority Ordinance, 2000, citizen means “a person who is, or is deemed to be a citizen Pakistan, under the Pakistan

Citizenship Act, 1951”.

(c) Under sections 4, 5, 6, 7, 8 & 9 of the Pakistan Citizenship Act, 1951 (II of 1951), the citizenship has been defined and clarified through various means. If a person is citizen, he acquire the CNIC which is *sine qua non* for provision of requisite information.

It is also brought to the kind notice of this honourable forum that annexing a copy of CNIC alongwith application was a prescribed condition in the Freedom of Information Rules, 2004, framed under the Freedom of Information Ordinance, 2002. Although the rules under the Act are yet to be framed; however, the wisdom was borrowed from erstwhile enactment coupled with National Database and Registration Authority Ordinance, 2000 and Pakistan Citizenship Act, 1951”.

C.Discussion and Commission’s View on Relevant Issues

4. The Right of Access to Information Act 2017 does not require applicants to establish proof of citizenship while submitting request for information. Section 11 (3) says: “Any written request which identifies the information or record sought in sufficient detail to enable the public body to locate it, and which includes a complete address and contact details for delivery of information or record, shall be treated as a request”.

5. Section 17 (4) requires a public body to bear the burden of proof of showing that it acted in accordance with the provisions of this Act. The Public Information Officer claims for himself the privilege of demanding certified copy of CNIC of the applicant which the Act does not specifically extend to a PIO. The PIO maintains that “If a person is citizen, he acquire the CNIC which is *sine qua non* for provision of requisite information. The Public Information Officer also maintains that “annexing a copy of CNIC alongwith application was a prescribed condition in the Freedom of Information Rules, 2004, framed under the Freedom of Information Ordinance, 2002”.

6. The commission is of the view that the prescribed condition in the Freedom of Information Rules, 2004 of affixing CNIC along with the application was in contravention of the provisions of Freedom of Information Ordinance 2002 which, in any case is repealed.

7. The elected representatives of the people, in their collective wisdom, have not restricted right of access to information only to CNIC holding citizens of Pakistan because members of vulnerable groups who do not have access to CNIC cannot be excluded from the exercise of their fundamental human right. How can functionaries of the state attach conditionality of the provision of CNIC for the exercise of a human right when the state of Pakistan has yet to provide CNIC to all eligible citizens of Pakistan. For example, according to Election Commission of Pakistan, electoral rolls have 12.542 million less women than men voters, which implies 12.542 women in Pakistan do not have CNIC as on April 9, 2019. That is why there is no provision of furnishing along with request for information certified copy of CNIC in the Right of Access to Information Act 2017. The commission is of the view that constitutionally guaranteed fundamental human right of access to information in matters of public importance should be interpreted by public bodies as a right of all citizens of Pakistan and not a privilege extended only to those who can first provide certified copies of their CNICs.

8. In a similar case of Dileep Amuthan v. Ministry of Defence,^{Sri} Lankan Commission maintained that Appellant is only required to note whether he/she is a citizen or not". The Sri Lankan commission also maintained that "Further, requesting for proof of citizenship can only be on objective grounds, for example when a request is made from abroad..."

9. Seen in the light of Section 6 and Section 16 of the Right of Access to Information Act 2017, the commission concurs with the point raised by the Appellant that "information that is harmful to any of the state or public interests is not to be disclosed or provided under this Act. Therefore, any additional requirements like furnishing of CNICs would not serve any useful purpose, except that these will burden applicants, especially the poor, and add to the workload of designated officers""".

10. The Commission is of the view that the requirement of CNIC by the public bodies for the provision of requested information also has serious privacy implications. Amicus curie of the commission Ms. Nighat Dad, a world-renowned privacy expert shared her input with the commission which is as under:

- a) The right to privacy is a constitutional right under **Article 14(1)** which guarantees that personal data is to be given protection, especially data held by public bodies. Article 14, unlike other articles relating to constitutional rights, does not contain explicit limitations or reasonable restrictions:

"Article: 14 Inviolability of dignity of man, etc.

(1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.

(2) No person shall be subjected to torture for the purpose of extracting evidence."

- b) In Pakistan, there are no **personal data protection laws** in place to protect citizens' data and information;¹ this means that the state is not fulfilling its constitutional duty to guard the personal data of citizens. There have been several cases of data leaks from government databases and misuse of personal data of citizens. For instance, it was reported in 2017 that Khyber-Pakhtunkhwa government's online citizen portal, powered through an android-based application, resulted in harassment of citizens who complained using the application. It has been reported that one complainant had an unidentified man turn up at his doorstep with his national identity number obtained from the portal, along with a print out of the entire complaint lodged through the

¹Currently, there is a draft of a Personal Data Protection Bill with the Ministry of Information Technology and Telecommunication but it has not been presented in parliament.

portal.² Personal information in the hands of public officials can result in the intimidation of citizens seeking to file complaints or ask questions. Given that the RTI law seeks to address the power imbalance between individual citizens and public institutions, protections need to be in place to ensure that the citizens overcome this power imbalance. An RTI law that does not create an enabling environment for citizens will not be effective, and as evident from the example cited above privacy protections are central to creating that environment.

- c) In the Aadhaar judgment passed by the **Indian Supreme Court** held that while the Aadhaar card scheme was constitutional with reference to the right to privacy, the practice of tying benefits and rights to the Aadhaar card can lead to a violation of the “right to receive benefits” which has now attained the status of fundamental right based on the same concept of human dignity.³ For instance, it was held that in so far as the school admission of children is concerned, the requirement of the Aadhaar card would not be compulsory as it is neither a service nor subsidy. Since the right to primary and secondary education is a fundamental right, that right could not be made dependent on the Aadhaar.
- d) In conclusion, until and unless a robust data protection law is enacted, collection of private information, unless explicitly required, should not be collected. Furthermore, making CNIC as a requirement for access to a fundamental right, such as the right to information, is too onerous a restriction.

NOTE OF FAWAD MALIK INFORMATION COMMISSIONER

I have examined the order of my learned fellows Commissioners. I really appreciate their views and contentions. I would like to add that Right to Information is not person related rather citizen specific. The matter herein issue in the instant appeal is whether the public body can ask the applicant to submit the identity card to establish his/her proof of citizenship under the Right of Access to Information Act 2017. My views on the relevant issues are

- Article 19-A of the Constitution of Pakistan is regulated by the Right of Access to Information Act 2017. Section 2(ii) and 11(1) of the Act as well as Article 19-A, of the constitution are, unambiguous for its interpretation. Sub Sec 1 of Section 11 of the Act clearly states that a citizen of the Islamic Republic of Pakistan can file a request to the public body for seeking any information under the Act. Sec 2(ii) of the Act requires the applicant to be a citizen of Pakistan. In other words to be a citizen of Pakistan is prerequisite and mandatory to seek any information under the Act.

² Sohail Khattak, “Problems arise for K-P’s problem-solving app”, *The Express Tribune*, July 5, 2017, <https://tribune.com.pk/story/1450427/problems-arise-k-ps-problem-solving-app/>.

³ “Writ Petition (Civil) No. 494 of 2012 & connected matters”, https://www.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_26-Sep-2018.pdf.

- A brief study of CHAPTER 1 of the constitution of Islamic Republic of Pakistan 1973 shows that the fundamental rights pertaining to Freedom of movement, freedom of assembly, freedom of association, freedom of trade, business or profession, freedom of Speech, Right of information and provision as to property etc are available for the “citizen”, while the rest are for “any person.” It is clear on a consideration and study of the chapter that framers of the constitution deliberately and advisedly made a clear distinction between fundamental rights available to “person” and those guaranteed to “citizens.” In other words all citizens are person but all persons are not citizen under the constitution.
- Keeping in view the distinction between a “Person” and a “Citizen,” it is established that Citizen is a person who is legally recognized as a member of a state with associated rights and obligations. Every right that a human being enjoys in any sphere of life, there are certain corresponding duties the other side of the coin that go hand in hand with these rights. Thus on the one hand are the rights of the citizen and the other side are his duties. So the citizenship is a legal status defining the relationship between an individual and the state defining both rights and duties each bear to each other. On the other hand “Person” contemplates continuity with a nation wide scope.
- Under Right to Information applicant is required to establish his citizenship and identity if asked for by the public body, while submitting request for information under Section 11 of the Act. For enforcing Fundamental Rights guaranteed under the constitution, it is the duty of all citizens to make their positive contribution, so that the life, liberty, property and dignity of the citizens are protected and secured as per mandate of the constitution.
- The appellant has raised an impressive and valid issue in the appeal that the Right to Information is a fundamental right under Article 19-A of the constitution and should have been available to the maximum number of Pakistanis to the exclusion of minimum and further that the information which is harmful to any of the state or public interests is not to be disclosed under the Act, then the attested copy of CNIC would amount to denying the fundamental right to a large number of people. It is an established principle of Law that where procedure has been provided for doing a thing in a particular manner then the same should be done in that manner and not in any other way or it should not be done at all, otherwise it would be considered non compliance of the legislative intent and would be deemed illegal. Ref. (PLD 2013 SC 255, PLD 2019 ISL 1,2019 PLC 238)
- Keeping in view Sections 2(11) and 11(1) of the Act and Article 19-A of the constitution, the prerequisite for applicant to be a citizen cannot be condoned or set aside, however the mode of proof of “citizen” can be relaxed. As the Act is silent on the mode of proof of citizen therefore the Commission can allow the applicant to prove the citizenship through any document i.e. CNIC, passport, cheque book,

driving license, or any other document for the issuance of which CNIC is instrumental.

D. Order

10.The appeal is allowed. All Public Information Officers designated under Section 9 of the Right of Access to Information Act 2017 are directed not to demand the provision of certified copy of CNIC when an applicant mentions that s/he is citizen of Pakistan. A Public Information Officer can only demand production of CNIC when it is warranted by objective grounds, i.e. a request for information seems to have been filed from abroad.

The Respondent is directed to provide the requested information to the Appellant at the earliest, but in any case, not later than 20 working days of the receipt of this order. Furthermore, the Respondent 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 by 17/01/2020.

11.Copies of this order be sent to the Respondent, the Appellant and all Public Information Officers for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
December 17, 2019
This order consists of 7 (seven) pages, each page has been read and signed.