

In the Pakistan Information Commission, Islamabad

Appeal No. 015-03/19
Shumaila Hussain Shahani
V/S
Federal Investigation Agency

Appeal No. 018-03/19
Shumaila Hussain Shahani
V/S
Federal Investigation Agency

Appeal No. 020-03/19
Shumaila Hussain Shahani
V/S
Federal Investigation Agency

ORDER

Date: 25.11.2019

Fawad Malik. Information commissioner

1. Three Appeals Nos. 015-03/19, 018-03/19 and 020-03/19 were filed by Shumaila Hussain Shahani (appellant) before the Commission complaining therein that she submitted three separate requests to the Federal Investigation Agency, Cyber Crime Wing (public body), under the Right of Access to Information Act 2017, but her requests were not acceded to within the stipulated time. Since Common question of Law is involved in all the said appeals between the same set of parties in all the said appeals, therefore all the three appeals are being decided conjointly through a consolidated order.

A. THE APPEALS

2. The appellant filed above stated three appeals No. 015-03/19, 018-03/19 and 020-03/19 before the Pakistan Information Commission on 08.01.2019 alleging therein that her three information requests dated 03.07.2018 submitted to the Federal Investigation Agency, Cyber Crime Wing Islamabad were not acceded to as required under Section 14 of the Right of Access to Information Act 2017, despite the passage of over six months. The information requested in the appeals Nos. 015-03/19, 018-03/19 and 020-03/19 respectively is as follows.

- *How many people have been arrested under prevention of Electronic Crimes Act, 2016 ?*
- *Please provide total number of cases registered to date under prevention of Electronic Crimes Act, 2016 with their FIR numbers ?*
- *How many cases are registered under Section 24 of prevention of Electronic Crimes Act, 2016. Provide FIR numbers ?*

B. PROCEEDINGS

3. Through notices dated 14.03.2019 and 2nd set of notices dated 26.06.2019 in all the three appeals, the commission asked the public body to submit reasons as to why the required information has not been provided to the appellant. Both the notices were not responded by the Public body/respondent, hence the appeals were fixed for hearing on 29.07.2019 and the respondents were informed vide notices dated 11.07.2019, accordingly.

4. On 29.07.2019, Usama Khilji appeared on behalf of the appellant whereas nobody appeared on behalf of the Respondent hence the

(3)

commission directed to issue notices to the DG F.I.A Islamabad and 2nd notices dated 26.08.2019 and 07.10.2019 followed by the Final notices dated 11.10.2019 were issued wherein the Commission called upon the Director General FIA to explain the reasons for not providing the requested information, otherwise the Commission will take action under Section 20(f) of Right of Access to Information Act 2017 and the appeals were fixed for hearing on 29.10.2019.

5. On 29.10.2019 again no one appeared on behalf of the public body / respondent at the time of hearing of the appeals while the appellant sent her representative, however on 30.10.2019 Director Cyber Crimes Wing - FIA submitted the reply denying the requested information as follows:

The Cybercrime Wing-FIA is not bound to provide any such information / data to the applicant under Section 16 of the Right of Access to Information 2017.

6. The reply of the public body was shared with the appellant whereupon she filed rejoinder to the reply, the same is reproduced as under:-

“On November 09, 2019, I received a letter dated November 04, 2019 from the Commission enclosing FIA’s letter addressed to you as a response to my RTI requests dated July 03, 2018, appealed on January 08, 2019. Through the letter I have also been communicated by the commission that if I do not object to the letter within seven (07) working days from the receipt of the letter the commission would presume that I am satisfied with the FIA’s response and the case will be closed.

On October 30, 2019, FIA wrote a response to three of my RTI requests pending as appeal nos. 015-03/19, 018-03/19 and 020-03/19 citing Section 16 of the Right of Access to Information Act, 2017 as the reason for non-disclosure and non-provision of information in these three appeals only. I wish to point out that FIA has yet to respond to the remaining four RTI requests pending with the commission.

Through this letter I wish to communicate to the commission my dissatisfaction with the FIA's response on the following grounds:

1. The RTI requests pertain to information regarding the number of cases registered under Prevention of Electronic Crimes Act 2016 (PECA). When cases are registered and go to trial, they become a part of public record. Proceedings conducted in courts are open to the public. Therefore, the information requested is public record. The RTI requests made to FIA are as follows:

- a. Please provide total number of cases registered to date under Prevention of Electronic Crimes Act, 2016 with their FIR numbers?
- b. How many cases are registered under Section 20 of Prevention of Electronic Crimes Act, 2016. Provide FIR numbers?
- c. How many cases are registered under Section 21 of Prevention of Electronic Crimes Act, 2016. Provide FIR numbers?
- d. How many cases are registered under Section 24 of Prevention of Electronic Crimes Act, 2016. Provide FIR numbers?
- e. How many people have been arrested under Prevention of Electronic Crimes Act, 2016? Provide case numbers?
- f. How many people have been granted bail under Prevention of Electronic Crimes Act, 2016? Provide case numbers?
- g. How many cases are pending under Electronic Transactions Ordinance, 2002?

The data requested should already be available on their website under Section 5 (i) of the 2017 Act.

2. Access to information is a statutory right under the Right of Access to Information Act 2017. The Act can only be interpreted so as to advance its purposes as set out in the preamble, to promote the right of access to information and facilitate and encourage promptly the disclosure of the information. The purposes of the Right of Access to Information Act, 2017 set out in the preamble include improved access to records held by public authorities and promotion of the purposes of making the Government more accountable to its people. (see Section 3(2) of the Right of Access to Information Act, 2017 and its preamble)

3. *Statutory right to access to information is further endorsed and bolstered by Article 19-A of the Constitution of Pakistan. This must be liberally construed to afford maximum right or benefit to citizens to expand the right to information.*

4. *The purpose of Section 6 of the Act is clear: to ensure that as much information kept by a public body as possible is brought into the ambit of 'public record' so that public body remains accountable to the citizens of Pakistan and that the later have access to all information and data which is of public importance and /or has a bearing on public's interests or rights. The information requested through the RTI requests made pertain specifically to Section 6(a) and 6(d) of the Act:*

(a) Policies and guidelines

(d) Final orders and decisions, including decisions relating to members of public.

5. *Denial of information has to be "subject to reasonable restrictions under the law." While Section 16 lists certain restrictions, it is to be interpreted strictly and not used arbitrarily to defeat the Act. The FIA, in its letter, has not mentioned any section of the law under which it believes the information to be exempt from disclosure. Section 16 of the 2017 Act provides a list of exemptions. Assuming the FIA believes the requested information to fall within this list, it must cite the specific section and provide cogent reasoning.*

6. *Furthermore, the Federal Government must have declared the said material as 'classified' as per Article 99(3) of the Rules of Business (1973), which states that the Cabinet Division is responsible for declaring material as classified. In issuing the declaration for information to be deemed classified, the federal government must under Section 24-A of the General Clauses Act 1897 provide justifications for the declaration.*

7. *Only in limited circumstances where disclosure may cause more 'harm than good' can such non-disclosure be justified. Nothing has been provided by the FIA in this regard to assume that the information can cause any harm. Further, when citing greater harm than good as a reason for non-disclosure, the public body must provide justifications and cogent reasoning.*

Reliance is placed on Indus Batteries Industries (Pvt) Ltd v/s Federation of Pakistan and Others before the Sindh High Court (2008 PTD 246)

8. *In order for public record to fall within the exclusions stipulated in Section 16, it must be declared as classified by the competent authority under the Act read together with the Rules of Business. The competent authority, in exercising rightful authority under law will have to provide valid and cogent justifications for its decision for curtailing a fundamental right of the citizens of Pakistan. In view of the Rules of Business, only the Cabinet Division or for limited purposes the Interior Division and Defence Division, have the authority to declare information as “classified,” not any other division or department of the Federal Government. The FIA does not fit the criteria of the competent authority; an order or exercise of executive discretion leading to denial of access to information would arguably be ultra vires of the law.*

Therefore, in view of the above, I believe there is no reason to withhold information requested through RTI requests by me via requests dated July 03, 2018 and appeals dated January 08, 2019. The information falls under Section 5(i) of the Act and should already be available to the public. The information falls under section 6 sub sections (a) and (d) of the Act and has been declared to be public record. Section 16 has to be interpreted strictly and not used arbitrarily to defeat the Act. When denying information, it must be done subject to reasonable restrictions under law and procedure laid down by the law, not arbitrarily. The application of the restriction and denial of information must be qualified with cogent reasoning, which the FIA’s response fails to do”.

C. DISCUSSION AND COMMISSION’S VIEW ON RELEVANT ISSUES

7. The First Information Report (FIR) is a Report registered at the Police Station on the complaint of the complainant on the basis of which the Police Machinery is activated and set in motion followed by the investigation. The FIR is a public document which cannot be denied from sharing under the Right of Access to Information Act. 2017.

According to Section 24.5 of the Police Rules 1934 Vol. III the First Information Report shall be registered at the Police Station. The original

copy shall be preserved in the Police Station for a period of 60 years. The other three carbon copies shall be submitted as follows:-

- (a) One to the Superintendent of Police or other gazetted officer nominated by him.
- (b) One to the Magistrate empowered to take cognizance of the offence as required by Section 157 Criminal Procedure Code.
- (c) One to the complainant unless written report in Form 24.2(1) has been received in which case the check receipt prescribed will be sent.

8. Section 154 Cr.P.C 1898 as well as Section 24.5 of the Police Rules 1934 are very clear that the informant has the right to get a copy of the F.I.R free of cost but the issue arise whether any other person is having rights to get the copy or the number of the F.I.R.

9. Article 85 of the Qanoon-e-Shahadat order 1884 deals with public documents and reads as follows:-

“85. Public documents. *The following documents are public documents.*

(1) *documents forming the acts or records of the acts.*

(i) *of the sovereign authority.*

(ii) *of official bodies and tribunals, and*

(i) *of public officers, legislative, judicial and executive, of any part of Pakistan, or of a foreign country,*

(2) *Public records kept in Pakistan of Private documents.*

(3) *Documents forming part of the records of judicial proceedings.*

(4) *documents required to be maintained by a public servant under law, and*

(5) *registered documents the execution whereof is not disputed.*

(6) *Certificates deposited in a repository pursuant to the provisions of the Electronic Transactions Ordinance 2002”.*

10. The denial of information through the reply by the public body is evasive and unsatisfactory. The public body has failed to mention specifically the subsection of Section 16 which exempts the public body

from disclosing the requested information. Furthermore mere reference of exemption clause or Section does not established the fact that the public body has acted in accordance with the provision of the act as provided under Section 17(4) of the Right of Access to Information Act 2017. The Respondent has not furnished any plausible or justifiable reasons for claiming the exemption clause provided in Section 16 of the Act.

“17(4) the public body shall, in an appeal under subsection (1), bear the burden of proof of showing that it acted in accordance with the provisions of this Act”.

11. According to Section 5(1) of Right of Access to Information Act, 2017 regarding publication and availability of record, the principal officer of each public body within 6 months of the commencements of the Act had to ensure the categories of information and record mentioned in Section 5 of the Act to be published and uploading over the internet. If the public body meet its obligations with responsibility and proactively published the record as required under the Act, surely the requested informations in the instant appeals would not have been filed, but the public body's failure make the citizen to invoke the jurisdiction of this commission.

12. Section 5(i) of the Right of Access to Information Act 2017 is reproduced as under:

“5(i) Reports including performance report, audit reports, evaluation reports, enquiry or investigation report and other reports that have been finalized”.

13. The FIR is a public document which is available at the Police Station, SP office and in the Court of Magistrate. Once the document (FIR) is submitted before the SP office and Court of Law, it becomes a public document and any person can ask for a copy of the same. Ref PLD 2007 Kar.415, 2012 YLR 1386.

Likewise the information pertaining to the total number of persons arrested in a particular crime is neither barred from disclosure under the Police Rules 1934 nor exempted under the Right of Access to Information Act 2017.

14. The requested information may reveal type, nature and frequency of Cyber Crimes committed in the country without compromising autonomy of F.I.A in its investigation of Cyber Crimes. The Commission maintains that public participation in the affairs of the Government is key to good governance and the citizen can have greater participation in the affair of the government through the exercise of their Right to Information. Instead of denying access to the requested information by broadly referring to Section pertaining to exemption and without providing sound arguments, F.I.A is legally obliged to proactively share this information through its Websites to ensure greater public participation in its functioning.

15. After going through the appeals, the reply submitted by the public body and the Act, the commission is of considered view that the disclosure of number of people arrested, number of cases registered and the number of FIRs in a particular crime as desired by the applicant in her applications are not exempted from disclosure rather the same should have been made public as required under Section 5 of Right of Access to Information Act 2017. Access to Information is statutory right under the Act, further endorsed by article 19-A of the constitution of Pakistan, therefore the citizen cannot be denied their fundamental and constitutional right.

D. ORDER

16. For the reasons mentioned above all the three appeals No. 015-03/19, 018-03/19 and 020-03/19 are allowed. 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 receipt of the order with copy to this office. The respondent is also directed to take immediate steps to proactively share through its

(10)

website 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 26.12.2019.

Copies of this order being sent to the respondent and the appellant for information and necessary action.

Muhammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 20.11.2019.

This order consist of 10(ten) page; each page has been read and signed.