

Pakistan Information Commission

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In The Pakistan Information Commission, Islamabad

Appeal No 305-02/20

Waseem Elahi

(Appellant)

Vs.

Cabinet Division

through Additional Secretary-I / Public Information Officer

(Respondent)

ORDER

Date: September 14, 2020

Zahid Abdullah: Information commissioner

A. The Appeal

1. The Appellant filed an appeal with the commission on 07-02-2020 in which he stated that he had requested information from Cabinet Division under the Right of Access to Information Act 2017. (hereafter referred to as Act)
2. The information sought by the Complainant, through application dated 23-01-2020, is as under:
 - “1. Complete list off all kinds of items/gifts lying in Toshakhana received from any person?
 2. Complete list of items and donors required.
 3. To whom it was given?
 4. What is the approximate value of these items?
 5. Where these items are stationed/lying currently?
 6. How many complaints and inquiries of fraud/theft/lost/misappropriation/embezzlement regarding these gifted items are currently underway and concluded in last 30 days?”

B. Proceedings

3. Through a notice dated 19-02-2020, the Commission called upon the Respondent to submit reasons for not providing the requested information within 07 working days of the receipt of the notice. This notice was sent to Secretary, Cabinet Division.
4. The Respondent through a letter vide F.No.9/4/2015-TK dated 28-02-20 stated that “the record relates to Toshakhana and the same has been declared as “**Classified**” and is

already covered under section-7(f&g) and section 16(ii) of Right of Access to Information Act 2017 which provides as follows:

Clause 7(f): Record declared as classified by the Minister-incharge of the Federal Government.

Clause 7(g): Record relating to the personal privacy of any individual.

Clause 16(ii): If its disclosure is likely to cause damage to the interest of the Islamic Republic of Pakistan in the conduct of International relations.

In the light of the above, we are regretted to inform that the above information cannot be provided”.

5. An interim order was issued by this commission dated March 09, 2020 which states that “this commission has already maintained that mere reference to an exemption clause does not mean that a public body has acted in accordance with the provisions of the Right of Access to Information Act 2017. Furthermore, if a record is exempted from disclosure under Section 7 (f) of the Act, reasons has to be recorded for exempting the record and producing before the commission for determination that the reasons are justifiable.

In exercise of the powers vested in this commission, Respondent is directed to appear before the Commission through Secretary, his representative or Public Information Officer designated under Section 9 of the Right of Access to Information Act 2017”.

6. The case was fixed for hearing before the Pakistan Information Commission on March 19, 2020.
7. The respondent through another letter which is neither dated, nor referenced nor signed stated:

“it is to clarify that the requested information is sensitive as gifts are exchanged between the Heads of States and Heads of Governments to give personal touch to inter-state relations. Disclosure of such information could create media hype and resulted in unwarranted stories, thus potentially damaging the interest of Pakistan in the conduct of international relations and jeopardizing inter-state relations. In view of sensitive nature the record pertains to Toshakhana has been declared classified by the Cabinet Division (**Flag-A**) with the directions of the Prime Minister's Office (**Flag-B**).

It is further stated that the said information was asked many times by the members of Senate, National Assembly as Starred Question which was regretted (**Flag C&D**). A private individual was also approach through Wafaqi Mohtasib and was regretted in consultation with the President of Pakistan (**Flag-G**).

The record relating to Toshakhana has already covered under Section 7(f&g) and Section 16(ii) of Right of Access to Information Act, 2017, therefore, the Hon'ble Information Commissioner is requested to dismiss the case”.

8. On July 27, 2020, the commission responded to the unsigned, undated and unreferenced letter by issuing an Interim Order text of which is as under:

“This commission received an unsigned, undated and unreferenced letter containing Cabinet Division (Flag-A) with the directions of the Prime Minister's Office (Flag-B). The letter also contained Flag-C and Flag-d pertaining to the starred questions asked by an MNA and a Senator and reasons on which requested information was denied. The letter also contained Flag-g containing decision of the President and the findings of Federal Ombudsman.

The unsigned, undated and unreferenced letter containing above mentioned Flag items cannot be treated as official communication.

It should also be noted that the requested information has been sought under the Right of Access to Information Act 2017 and reasons for the exemption of the requested information have to be recorded under Section 7 (f) of the Right of Access to Information Act 2017 which is as under:

- a) “Records declared as classified by the Minister-in-charge of the Federal Government

Provided that the Minister-in-Charge of the Federal Government shall have to record reasons as to why the harm from disclosure of information outweighs public interest and further that information pertaining to allegation of corruption and violation of human rights shall not be excluded;”

In exercise of the powers vested in this commission, Respondent is directed to appear before the Commission through Secretary, his representative or Public Information Officer designated under Section 9 of the Right of Access to Information Act 2017. Take notice that the above cited appeal is fixed for hearing before the Pakistan Information Commission on August 23, 2020 at 11:30AM at the above-mentioned address. The Respondent is directed to submit recorded reasons for exempting requested information under Section 7 (f) of the Right of Access to Information Act 2017 before the date of hearing.

Note: The case record in the above cited appeal, if any, be produced before the Information Commission at the time of hearing.

Copies of this order, along with earlier Interim Order, the letter containing Flag-A,B,C,D and G be sent to the Secretary, Cabinet Division, Public Information Officer, Cabinet Division and the Appellant for information and necessary action”.

9. The Respondent through telephonic conversation identified the typographical error in the Interim Order of the commission, mentioning the date of hearing as August 23, 2020 which was Sunday.
10. The commission fixed the hearing for September 03, 2020.
11. Muhammad Ahad, Deputy Secretary, Cabinet Division, Nida Rehman, Section Officer, Cabinet Division and Mr. Muhammad Zafar, Section Officer, Cabinet Division attended the meeting. The Respondent wide letter F.No.9/4/2015-TK dated August 23 submitted the same reasons for not providing the requested information as earlier through undated and unreferenced letter.

12. The commission pointed out that the harm test has not been applied as required under Section 7 (f) of the Act as reflected by the recorded reasons in the Flag -B. The representatives of the Respondent said that the matter was placed before Secretary, Cabinet Division and informed the commission that there was no need for further time to place the matter before Secretary, Cabinet Division.

C. Discussion and Commission's View on Relevant Issues

13. The questions for the consideration of the commission are as under:
- a. Did the Respondent follow procedure for exempting requested information as laid down in the Right of Access to Information Act 2017, henceforth referred to as Act?
 - b. Do the recorded reasons submitted by the Respondent meet the threshold of the burden of proof for denying access to the requested information?
 - c. Does the Act allow for the blanket exemption of records?; and
 - d. Can records be classified forever or is there a time-limit in the Act to declassify records?
14. The Respondent has shared with the commission how a Member of National Assembly, a Senator and a citizen sought in the past to get access to the requested information and how access to the requested information was denied.
15. The Respondent has shared with the commission that National Assembly Secretariat shared with Cabinet Division Starred Question asked by MS. Uzma Riaz, MNA on January 08, 2019 which is as under:
- “Will the Minister-in-charge of the Cabinet Division be pleased to state:
- a) The value and types of gifts kept in Tosha Khana of the Cabinet Division at the present; and
 - b) Whether the present government intends to conduct any audit of the inventory of gifts/items of the said Tosha Khana? On January 11, 2019, Cabinet Division responded to Starred Question of the MNA which is as under:

“It is to inform that the record of Tosha Khana has been declared Classified by the Cabinet Division which already covers Clause 78 {q(iv)} of Rule of Procedure and Conduct of Business in the National Assembly, 2007. Therefore, it is, requested subject question may be disallowed”.
16. The Respondent also shared that on April 07, 2019, Senator Mian Muhammad Ateeq Sheikh asked through a Starred Question which is as under:
- “Will the Minister-in-charge of the Cabinet Division be pleased to state the number of Prime Ministers, the ministers, officers and other dignitaries who deposited the gifts, received by them from foreign countries/dignitaries, in Tosha Khana since 2009 indicating also the details and the value of those gifts?” On May 07, 2019, Cabinet Division responded to Starred Question of the Senator which is as under:

“It is to inform that the record of Tosha Khana has been declared Classified by the Cabinet Division which already covers Clause 50 {xvii(d)} of Rule of Procedure and Conduct of Business in the Senate 2012. Therefore, it is, requested subject question may be disallowed”.

17. The Respondent also shared that Mr. Syed Aizaz Hussain “approached the Wafaqi Mohtasib on 08.04.2015 and 09.04.2015 respectively, for not providing required information by the Agency/ Cabinet Division regarding gifts and their types received by the Acting President, Mian Muhammad Soomro from different dignitaries during his tenure, the type of each gift, name of the dignitary and country who presented the gifts along with the date. The names of the gifts kept by the Prime Minister and value of each gift was also requested. He sought intervention of the Wafaqi Mohtasib for redress of his grievances”.
18. The Respondent shared findings of Federal Ombudsman “dated 24.06.2015, whereby it was observed that the stance of the Agency is based on assumption and not on facts and that the views of Foreign Office are also not in sync with the spirit of law as provision of requested information is unlikely to have any adverse impact on foreign policy or relations with the country concerned and that the complainant cannot be denied the requested information. It was advised to provide the requested information to the complainant within fifteen days”.
19. When the Respondent shared documents containing information about efforts by elected representatives and citizens to get access to the requested information and legal basis on which the requested information was denied in the past, this commission gave the Respondent another opportunity to record reasons for exempting the requested information under Section 7 (f) of the Act.
20. The manner in which the Respondent has handled the process of recording reasons by the minister-in-charge under Section 7 (f) of the Act in response to the notice of the commission has brought to the fore following issues:

In Flag-A, the person seeking requested information is different than the Appellant in the instant appeal;

In Flag-A, information is requested under the repealed Freedom of Information Ordinance 2002 and not under the Right of Access to Information Act 2017.
21. Flag B of the Cabinet Division has brought to the fore following issues:

That the specific direction of the commission for recording of the reasons by the minister-in-charge as required by Section 7 (f) has been ignored; and

That the views of the minister-in-charge with regard to subject matter in the instant appeal in the context of harm test suggested in Section 7 (f) of the Act, and, not included in the repealed freedom of Information Ordinance 2002, have not been recorded.
22. The citizens of Pakistan, through their elected representatives, have entrusted this commission with solemn responsibility to protect and promote their constitutional right of access to information in matters of public importance in accordance with the

provisions of this Act. One of the provisions of this Act requires a public body to meet the threshold of burden of proof under Section 17 (4) of the Act which is as under:

“The public body shall, in an appeal under sub-section (1), bear the burden of proof of showing that is acted in accordance with the provisions of this Act”.

23. In the instant appeal, the issue before the commission is to determine whether the public body, through the recorded reasons of the minister-in-charge has been able to demonstrate that “the harm from disclosure of information outweighs public interest” as required under Section 7 of the Act. Furthermore, whether the requested information can be exempted from disclosure under Section 7(g) of the Act?

24. This commission is of the view that public interest in terms of promoting transparency and accountability through the disclosure of requested information far outweighs any likely harm, if at all, to inter-state relations and right to privacy of elected representatives and public officials. A close scrutiny of the recorded reasons suggests that the Respondent has exempted the requested information from disclosure on the following grounds:

Requested information is sensitive as gifts are exchanged between the Heads of States and Heads of Governments to give personal touch to inter-state relations; and

Disclosure of such information could create media hype and resulted in unwarranted stories, thus potentially damaging the interest of Pakistan in the conduct of international relations and jeopardizing inter-state relations.

25. While giving ‘personal touch’ to inter-state relations through the exchange of gifts between the Heads of States and Heads of Governments is a normal practice in the conduct of international relations, relations between any two states are dictated by common interests. At best, the ‘personal touch’ supplements but in no way can supplant the role of common interests in determining the outcome of inter-state relations. In short, it is change in the shared common interests between two states, and not the exchange of gifts for personal touch between Heads of States and Heads of Governments which has any qualitative impact on inter-state relations.

26. The Respondent has also contended that disclosure of the requested information could create media hype and result in unwarranted stories, thus potentially damaging the interest of Pakistan in the conduct of international relations. What possible facts disclosure of certified information could bring in the public domain other than the following:

The description, type and value of the gift;

Whether or not the Protocol Officer or the Ambassador concerned reported to the Tosha Khana that the gift was received by a such and such dignitary from such and such head of the state or head of the government;

Whether the recipient of the gift chose to keep the gift after paying the retention price or deposited it in Tosha Khana? and

What was the price of the retained gift and how was it determined?

27. The opacity and secretive ways of running the affairs of the government breed corruption and damage interests of the people of Pakistan and not the media stories based on certified information. In CONSTITUTION PETITIONS NO.77 TO 85 & 89 OF 2011 & CMA NO.5505/2011 IN CONST.P.79 OF 2011, Jawwad S. Khawaja made pertinent observation about Role of rumours, conjectures and half truths in distorting our history and significance of access to information held by public bodies:

“It is an unfortunate facet of our history that during the 64 years since Pakistan's independence in 1947, the people of Pakistan have been, at times, disserved by a non-inclusive governance paradigm where information critical to them has been withheld from them...The people in quest of the truth have mostly been left with conjectures, rumors and half truths. Concealment of information has, in turn led to a distorted history of the country and to a destabilizing division in the polity...This paradigm has shifted through the recent incorporation of Article 19A in the Constitution. Article 184 (3) read in conjunction with Article 19A has empowered the citizens of Pakistan by making access to information a justice able right of the People rather than being largesse bestowed by the State at its whim. Article 19A has thus, enabled every citizen to become independent of power centres which, heretofore, have been in control of information on matters of public importance. What, it may be asked, is the intrinsic worth of information as a stand-alone fundamental right? The answer to this is simple. The very essence of a democratic dispensation is informed choice. It is through such choice that the political sovereign, the People of Pakistan acquire the ability to reward or punish their elected representatives or aspirants to elected office, when it is time for the People to exercise their choice. If information on matters of public importance is not made available to citizens, it is obvious they will not have the ability to evaluate available choices. Information on matters of public importance thus, is foundational bedrock of representative democracy and the accountability of chosen representatives of the people. It is in this context, both historical and conceptual, that the fundamental to information has to be seen. Through Article 19A in the Constitution, the citizens of Pakistan have also been freed from the caprice of a sorry fate and have become independent of whistle-blowers in foreign lands or the magnanimity of the likes of WikiLeaks or biographies of political actors, to get to the information they are now entitled to as of right under the Constitution”.

28. This commission fails to understand how could certified information based on records could adversely impact the conduct of inter-state relations? This assertion that disclosure of the requested information ‘could create ‘media hype’ and resulted in ‘unwarranted stories’, thus ‘potentially’ damaging the interest of Pakistan in the conduct of international relations is tantamount to not only shooting the messenger but also problematic on many other counts.
29. It is not certified information but absence of certified information that contributes to ‘media hype’ and resulted in ‘unwarranted stories’, creating trust-deficit between citizens and public institutions. Certified requested information will dispel rumours about the reporting of the gifts to ‘Tosha ‘Khana’ by the public officials and their retention price and which elected representative or public official retained which gift at what price.

30. The Respondent has also sought to exempt requested information from disclosure citing privacy clause of the Act. However, the Respondent has not given any reasons as to how legitimate privacy interests of the elected representatives and public officials entrusted to manage gifts received on the behalf of the citizens of Pakistan will be impacted if the requested information is brought in the public domain. The certified requested information pertains to the reporting of the gifts to ‘Tosha ‘Khana’ by the public officials and their retention price and which elected representative or public official retained which gift at what price. In other words, the requested information pertains to the public functions and not about the private lives of elected representatives and public officials. Therefore, information about the management of gifts received on the behalf of the citizens of Pakistan cannot be exempted from disclosure citing privacy concerns of the elected representatives and public officials entrusted with the task of management of these gifts.
31. The Respondent has also failed to decide request for information of the Appellant by juxtaposing it with Section 16 (1) (k) of the Act which is as under:

“exemptions set out in section 16 shall cease to apply after every twenty years and that record of public bodies shall be made public”.
32. When certified information about these gifts will be made available in the public domain for everyone to see, citizen of Pakistan will know that the gifts received on their behalf are being properly managed. Availability of the certified information about the gifts deposited in ‘Tosha Khana’ in public domain will not only make the entire process about the management of these gifts open and transparent, it will contribute to reducing trust-deficit between citizens and public institutions contributed by opacity and secretive ways of functioning of public institutions. Even citizens of the states on whose behalf gifts are received by our elected representatives and public officials will come to know that their gifts are properly managed, resultantly strengthening people-to-people and inter-state relations.

D. Order

33. Appeal is allowed. The Respondent is directed to share the information with the Appellant with intimation to the commission within 10 working days of the receipt of this Order.
34. The Respondent is directed to declassify and make public all records pertaining to ‘Tosha Khana’ that are more than 20-year-old as required under Section 16 (1) (k) of the Act.
35. The Respondent is directed to put contact details of the designated Public Information Officers on its web site as required under Section 5 (1) (h) of the Act and submit compliance report to this commission within 10 working days of the receipt of this Order.
36. 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 Act and submit the compliance report to the commission by 15/10/2020.

37. Copies of this order be sent to Secretary, Cabinet Division, Public Information Officer, Cabinet Division and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:

September 14, 2020

This order consists of 9 (nine) pages, each page has been read and signed