



Appeal No 052/06/19

Mukhtar Ahmed Ali (Appellant)

Vs.

Federal Board of Revenue, Islamabad (Respondent)

Date: August 6, 2019

Present: **Muhammad Alam Zaib Khan**, Public Information Officer (Respondent)

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 Chairman, Federal Board of Revenue, vide letter number RTI/info Req/2019/114, dated 10/04/2019 under the Right of Access to Information Act 2017.

The Appellant stated that an officer of FBR responded vide letter No: C. No.4(12)S(FOI-FATE)/2019/59105-R dated 29/04/2019, and denied the requested information by referring to exemption mentioned in Section 16 (b) (iii) of the Act. The Appellant also enclosed the letter of the FBR whereby he has been denied the requested information.

The Appellant, inter alia, also stated that “Even a cursory look at the requested information shows that it is about general statistics, and its disclosure is not likely to harm any of the protected interests mentioned in the Act.

It is, therefore, requested that the FBR may be directed (a) share the requested information without further delay, (b) proactively disclose and update such information on periodic basis on its web site, and (c) improve its capacity to decide information requests in a competent manner, while paying due attention to citizens’ rights, instead of summarily dismissing such requests on frivolous or totally unrelated grounds”.

2. The information sought by the Complainant, through application dated 19/02/2019, is as follows:

- a) Total sanctioned strength of staff members in your organization (category-wise) against different positions/ pay-scales i.e. from pay scale 1 to 22 (category-wise).
- b) Total vacancies in your organization 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 your organization 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 in your organization 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 your organization.

3. In response to the application, the Respondent vide letter dated 29/04/2019 denied access to the requested information by stating as under:

“I am directed to convey that your application has been examined by the competent authority and is of the view that the right to information under the Right of Access to Information Act 2017 is subject to regulation and reasonable restrictions imposed by law, whereas, the requisite information is exempt from disclosure under Section 16 (b) (iii) of the Right of Access to Information Act 2017 which states that:

The information may be exempt if its disclosure is likely to -Reveal the identity of a confidential source of information”.

B. Proceedings

4. Through a notice dated 18/06/2019 and, later, through a reminder notice dated 11/07/2019, the Commission called upon the Respondent to submit reasons for not providing the requested information.

5. Through a letter dated 11/07/2019, the Respondent shared with the commission the same reasons for not providing the requested information as provided to the applicant.

6. The hearing date was fixed for 06/08/2019 through the hearing notice sent on 19/07/2019 and both parties were informed accordingly.

7. The Respondent appeared before the commission at the time of hearing and stated that he had provided reasons for not providing the requested information after the approval of his senior officers. However, the Respondent did not submit any correspondence to this effect.

8. When asked to read Section 5 (a) of the Act, the Respondent was unable to provide any reason for referring to Section 16 (b) (iii) for not providing the requested information to the applicant.

C. Discussion and Commission's View on Relevant Issues

9. The commission is of the view that even a plain reading of the requested information shows that it belongs to the category of information which public bodies are legally bound to proactively disclose under Section 5 (a) of the Right of Access to Information Act 2017. The information which should have been proactively disclosed by the public body is being protected from sharing with a citizen in the name of 'not revealing the identity of a confidential source of information'.

10. The points under the consideration of the commission are, firstly, the request of access to information which should have been proactively disclosed through web site and the application of an exemption clause which is entirely irrelevant and misplaced for the denial of the access to the requested information. Secondly, the lack of preparation on the part of the Respondent as he did not submit before the commission record pertaining to the correspondence with his seniors seeking approval for providing requested information and the response of the officers in this regard.

11. Federal Board of Revenue, other than merely invoking an exemption clause of the Act, has not provided any arguments for withholding requested information from the citizen. The requested information can only be withheld from a citizen by invoking an exemption clause on justifiable grounds. The commission is of the view that mere referral 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.

12. While FBR has failed to provide any cogent arguments for withholding the requested information, benefits of bringing this information in the public domain are too obvious to be missed. The requested information may reveal whether or not FBR is properly staffed to carry out its functions and responsibilities. Whether or not job quota in a federal public body for persons with disabilities, minorities and residents of different provinces is being observed in letter and spirit, to mention just a couple of examples.

13. Public participation in the affairs of the government is key to good governance and citizens can have greater participation in the affairs of the government through the exercise of their right to information. Instead of denying access to the requested information by referring to an exemption clause without providing sound arguments, FBR is legally obligated to proactively share this information through its web site to ensure greater public participation in its functioning.

14. It is incumbent upon the designated Public Information Officers to submit all the record before the commission at the time of hearing. Any correspondence seeking approval for sharing the requested information and the response thereof is important to determine the role played by officers in the process of deciding on the information requests and fixing responsibility in delaying or denying access to the requested information. As the buck needs to stop somewhere, the commission will fix responsibility on the Public Information Officer in case no communication pertaining to seeking approval is submitted before the commission.

D. Order

15. The appeal is 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 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 10/09/2019.
16. Copies of this order be sent to the Respondent, the Appellant and Chairman, Federal Board of Revenue for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
August 7, 2019