

Pakistan Information Commission

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In Pakistan Information Commission Appeal No 255-01/20

Rana Nauman Ashraf

(Appellant)

Vs.

National Highways Authority

Through its Chairman

(Respondent)

Order

Date: August 25, 2020

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 08-01-2020, to the Commission, stating that he Submitted an information request to the Chairman, National Highways Authority dated 24-12-2019 under the Right of Access to Information Act 2017.
2. The information sought by the Appellant is as follows:
 - a) سر آپ کے ماتحت موٹروے پر سٹور یا دوکانوں میں چیزوں کے ریٹ کون سیٹ کرتا ہے؟ کیا دوکانوں والے اپنی مرضی سے سیٹ کرتے ہیں؟
 - b) وہاں پر موجود تمام دوکانوں میں کھانے پینے یا دیگر تمام چیزوں کے ریٹ لسٹ مہیا کی جائے۔
 - c) وہاں پر موجود تمام دوکانوں میں کھانے پینے یا دیگر تمام چیزوں کے ریٹ سو فیصد سے زیادہ ہیں ان کے خلاف شکایات کہاں درج ہوسکتی ہے؟
 - d) چالانوں میں اضافے کے بارے میں مکمل تفصیل مہیا کی جائے۔
 - e) اگر دوران سفر کسی دوکان دار یا آپ کے کسی ماتحت کے خلاف شکایات درج کرونی ہوتو کیا طریقہ کار ہے؟
 - f) اگر دوران سفر کیس کا غلط چالان کرے تو فوری کیا طریقہ کار ہے اس کے خلاف کارروائی کا کیا طریقہ کار ہے؟
 - g) اگر آپ کے ماتحت تشدد کرے تو اس کے خلاف کارروائی کا کیا طریقہ کار ہے؟
 - h) کیا موٹروے پر موجود تمام دوکانوں کو ریٹ لسٹ مہیا کی گئی ہے اس کے خلاف ورزی کرنے والوں کے خلاف فوری کیا کارروائی ہوسکتی ہے؟
 - i) پورے پاکستان میں موٹروے پر موجود تمام دوکانوں کے ریٹ بہت زیادہ ہیں جو کہ لوگ برداشت نہیں کرسکتے اس کی کیا وجہ ہے ریٹ اتنے زیادہ کیوں ہیں؟
 - j) ریٹ لسٹ مہیا کی جائے
 - k) اور سفر کرنے کے ریٹ مہیا کئے جائیں۔
 - l) اپنے قانون کی کاپی مہیا کی جائے

B. Proceedings

3. Through a notice dated 24-02-2020 sent to the Chairman, National Highways Authority, the Commission called upon the Respondent to submit reasons for not providing the requested information.
4. The Respondent through a hearing notice dated 24-07-2020 was directed that the above-mentioned appeal is pending decision before this Commission. The text of the notice is as under:

“In pursuance of the Standard Operating Procedures issued by the Government of Pakistan for the Covid-19 and to ensure public safety, the personal appearance before the Commission at the time of hearing, is condoned for the time being. Therefore, you are directed to submit your written reply and arguments to Pakistan Information Commission within fifteen days of the receipt of this notice.

Copies of the supporting documents may be annexed with the written arguments. If the written arguments are not submitted within 15 days, the appeal will be decided Ex Parte in the light of the record available on file and the Right of Access to Information Act 2017”

5. The Respondent did not respond to the notice of the commission.

C. Discussion and Commission’s View on Relevant Issues

6. The questions for the consideration of the commission are as under:
 - (a) Should a citizen have access to requested information in accordance with the provisions of the Right of Access to Information Act 2017, hereafter referred as Act?
 - (b) Did the Respondent follow procedure laid down in the Act in responding to the request of the citizen?
7. The requested information belongs to the category of information which public bodies are legally bound to proactively disclose, through their web sites, under Section 5 (1), (b), (c), (d) (e), (g), and (i) of the Act. The requested information is also public information under Section 6 (a), (b), (c) and (d) of the Act.
8. Section 10 (1) of the Act fixes responsibility on the designated Public Information Officer, (PIO) to ensure that “requests are dealt with promoting full compliance by the public body of its obligation under this Act”.
9. In the instant appeal, the head of public body, deemed to be Public Information Officer, (PIO), as required under Section 9 of the Act when a PIO is not designated by the head of a public body, failed to perform following obligations under the Act.
 - I. Failure to provide “written acknowledgement in response to” a request for information filed by citizen as required by Section 10 (1) of the Act.

II. Failure to follow procedure enunciated in the Act for acceptance and refusal of request for information laid down in Section 13 (2) of the Act which is as under:

“(2) The designated official shall process the request and by notice in writing inform the applicant that---

a) A request has been acknowledged and the applicant is entitled to receive the information or record, subject to the payment of the prescribed fee. On payment of the fee the designated official shall provide the requested record, or

b) The request has been rejected-

i. On the basis that it does not comply with the provisions of this act and the rules made there under but only after requisite assistance has been offered to the applicant as mentioned in sub-section (2) of section 10;

ii. On the basis that the information is already available in a generally accessible form in which case the notice shall indicate to the applicant the place from where the information may be found;

iii. On the basis that it is incorrect, because it relates to information which is substantially the same information that has already has been provided to the same applicant during last six months; or

iv. In whole or in part, on the basis that the information is exempt subject to section 7 or section 16, in which the notice shall specify the exact exception, relied upon and specifying details regarding the right of the applicant to appeal against this decision”

v. Failure in following the timeline for responding to the information requests as required under Section 14 (1) and (2) of the Act as the PIO did not respond to the information request at all.

10. The PIO not only delayed and denied access to the requested information, the PIO also failed to comply with the duly sent notices of the commission.

11. Had the Respondent gone through the Act after receiving request for information of the citizen and notices of this commission, clearly referencing the Act, it would have saved time and resources of this Commission. It also demonstrates that the Respondent has not taken any steps for the implementation of the Act. It demonstrates that the powers vested in officers are not being exercised “reasonably, fairly, justly, and for the advancement of the purposes of the enactment” as required under Section 24A (1) of the General Clauses Act 1897.

12. This commission is of the view that the willful delay or denial of the requested information causes undue cost to citizens and the commission. Citizens have to approach this commission for the exercise of their fundamental constitutional right of access to information which involves cost both in terms of money and time.

13. Citizens of Pakistan through their elected representatives have included the provision of imposing fine on public official who wilfully delay or deny access to the requested information so that they do not have to pay the undue cost in terms of time and money in exercising their right of access to information because of the dereliction of the duty of a public official.
14. The commission has no option but to fulfil its legal obligation and offset this trend of raising cost in terms of time and money for citizens, the commission and the superior judiciary.
15. If directions of the commission in this Order are not followed, it will be left with no option but to invoke Section 20 (f) of the Right of Access to Information Act 2017.

D. Order

16. The appeal is allowed. The Respondent is directed to provide the requested information to the Appellant, with intimation to this office, at the earliest, but in any case, not later than 10 working days of the receipt of this Order.
17. The Respondent is directed to notify Public Information Officer, (PIO), under Section 9 of the Act, put the notification on its web site as required under Section 5 (1) (b) of the Act and put name, designation and contact details of the PIO on its web sites as required under Section 5 (1) (h) of the Act and submit compliance report to the commission within 10 working days of the receipt of this order.
18. 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 19/09/2020.
19. Copies of this order be sent to the Chairman, National Highways Authority and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on: August 18, 2020

This order consists of 4 (four) pages, each page has been read and signed