

Pakistan Information Commission

Government of Pakistan

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In the Pakistan Information Commission, Islamabad

Appeal No 1282-08-2021

Muhammad Ikram Shah

(Appellant)

Vs.

Federal Board of Revenue

(Respondent-1)

Collector of Customs, Model Customs Collectorate

(Respondent-2)

Order

Date: November 11, 2021

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated August 23, 2021, to the Commission, stating that he submitted an information request to Collector of Customs, Model Customs Collectorate, on July 26, 2021 under the Right of Access to Information Act 2017 but did not receive the requested information from the public body.
2. The information sought by the Appellant is as under:-
“The undersigned has been informed that your collectorate has issued confiscated "Arms and Ammunition to the officers and staff of customs and to all field formation officers of customs working under your kind and administrative control. Hence, the following information may kindly be provided as provided under section (11) of the "ACT

Sr.NO	DESCRIPTION OF ARMS AND AMUNITION	NAME & DESIGNATION OF THE OFFICERS TO WHOM ISSUED.	DATE OF ISSUANCE	MODE OF PAYMENTS /CASH DEMAND DRAFT /PAY ORDER ETC.ETC.	NAME AND DESIGNATION OF THE COMPETENT AUTHORITY WHO APPROVED
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B. Proceedings

3. The respondent submitted its response to the information request and notice of the commission sent to Public Information Officer, FBR on August 28, 2021 which is as under:
“The matter has been thoroughly examined and it is found that the subject request could not be entertained because the applicant did not submit his application through designated officer against payment of fee as per the procedure laid out in Section 10(1) and Section 13(2) (a) of the Right of Access to Information Act 2017, reproduced as under
10. Functions of designated official:

(1) Subject to the provisions of this Act and the rules made thereunder the designated official shall be responsible for ensuring that requests are dealt with promoting full compliance by the public body of its obligations under this Act. 13. Procedure for acceptance and refusal of requests:

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

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

(b) The request has been rejected In light of the above, it is requested that the applicant may be advised to his application through the designated officer, failing which it cannot be entertained as per provisions of the Act.”

4. On October 11, 2021 the Appellant shared its response which is as under:

“Kindly refer to Pakistan Information Commission's Islamabad's sharing" letter dated 05 10 2021 enclosing reply "information C No 08(06)PRV/2019/6769-70, dated 14.9.2021 of the Collector of Customs M.C.C Islamabad routed through Secretary (DT-FATE). FBR's letter dated 28.9.2021 in the instant appeal Kind attention is invited to Section 2() of the "ACT" which defines "designated official" in terms of Section 9 in the following terms

"Section 9 (a) Public body means-ony Ministry, Division, attached department or Sub-Ordinote Office set up/ established by or under Federal Law".11-10-2/

Hence, plain reading of the above would reveal that "Collector, MCC Islamabad" is the "designated official to carry out its functions and responsibilities under the Act Obviously therefore, the letter dated 26.7.2021. followed by reminder dated 11.8.2021 were addressed to the Collector of Customs, M.CC. Islamabad by the Appellant seeking information as contained therein within the scope of Section 5(1) (d) (C) of the "Act" which ought to have been disclosed on FBR Website but failed.

3. However, the learned Registrar of the Honorable Pakistan Information, Islamabad vide her letter dated 26.8.2021 followed by reminder dated.15.9.2021 forwarded the information request of the Appellant to Secretary, (DT-FATE), F.8.R (perhaps being designated officer). In turn the F.B R forwarded the said information request to the Collector of Customs, M.C.C. Islamabad vide letter C.No.4(61)S-FOIFATE)/2021/123689-R, dated.02.9.2021. Accordingly the reply to the information request was sent to the Board (being designated officer) by Collector, M.C.C. Islamabad. Conversely in Para (3) of the reply dated.14.9.2021 (supra) referred to in Para (1) above directing Appellant to route application through the designated officer" failing which it cannot be entertained as per provisions of the "ACT" does not appeal to reason and seems without substance.

4. The requested information is Public Record under Section 6(d) of the "ACT". The answering Respondent has also failed to appoint a "Public Information Officer violating Section 9 & 10 of the "ACT". The name, designation and Telephone Nos of the "designated officer" and "Public Information Officer" may also be called for future correspondence.

5. In view of the above, it is very respectfully requested that answering Respondent (Collector, M.C.C. Islamabad) may very kindly be advised to furnish the information requested by the Appellant within ten (10) days as contemplated under Section (14) of the "ACT" Dated. 11.10.2021?"

5. The hearing was held on November 11, 2021 and hearing notice was sent to both the Respondent 1 and the Appellant on October 25, 2021. However, the Respondent-1 did not attend the hearing.

C. Issues

6. The instant appeal has brought to the fore following issues:
- (a) Does the contention of the Respondent-2 that “the subject request could not be entertained because the applicant did not submit his application through designated officer against payment of fee as per the procedure laid out in Section 10(1) and Section 13(2) (a) of the Right of Access to Information Act 2017” hold water in the light of the provisions of the Right of Access to Information Act 2017, henceforth referred to as Act?
 - (b) What is prescribed fee for getting access to the requested information and how is it to be determined?

D. Commission’s View on Relevant Issues

7. This commission holds that the commission sent notice to Respondent-1 as the Respondent-2 is its attached department. The Respondent-1 duly forwarded the notice as well as the request for information of the citizen to the Respondent-2.
8. This commission maintains that the contention of the Respondent-2 that the Appellant has not submitted fee along with the information request is legally untenable. Exercising powers vested in this commission under Section 27 of the Act, Pakistan Information Commission has notified „Schedule of Costs“. Under this, there is no fee for filing information request and there is no fee for first 50 pages. However, public bodies can charge Rs. 2 per page for every extra page.
9. If the Respondent-2 has issued confiscated "Arms and Ammunition to the officers and staff of customs and to all field formation officers of customs”, the disclosure of the information as to who issued and to whom these confiscated arms and Ammunition were issued against what fee is a matter of public importance and as such this information should be made available to the Appellant. The disclosure of this information is warranted by both the letter and the spirit of the Act.
10. This commission has observed that information of public importance mentioned in Section 5 of the Act is not being published through the web site of federal public bodies. In fact, the Web sites of federal public bodies contain generic information and not specific information as required under Section 5 the Act. This is despite the fact that Principal Officer of each public body was required to ensure proactive disclosure of information through web site within 6 months of the commencement of the Right of Access to Information Act, 2017.
11. This commission maintains that the information proactively published under Section 5 of the Right of Access to Information Act 2017 should be ‘accessible’ for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. Apart from the interpretation of ‘accessible’ in section 5 of the Act, section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 requires federal public bodies to ensure accessibility of web sites to the special needs of persons with disabilities and it is as under:
“The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.

E. Order

12. Appeal is allowed. If the Respondent-2 has issued confiscated "Arms and Ammunition to the officers and staff of customs and to all field formation officers of customs, Collector of Customs, Model Customs Collectorate is directed to provide requested information in para

2 of this Order to the Appellant at the earliest but not later than 10 working days of the receipt of this Order, with intimation to this office.

13. The Respondents are directed to proactively publish all categories of information through its web site as required under Section 5 of the Act and submit the compliance report to the commission in the 'Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017'. This template is available under 'Information Desk' category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission at the earliest but not later than 10 working days of the receipt of this Order.
14. The Respondents are directed to ensure accessibility of the information proactively published on its web site under Section 5 of the Right of Access to Information Act 2017 for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities and submit compliance report to this effect using 'Web accessibility checklist'. This checklist is available under 'Information Desk' category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission at the earliest but not later than 10 working days of the receipt of this Order.
15. Copies of this order be sent to Collector of Customs, Model Customs Collectorate, Public Information Officer, FBR and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on: November 16, 2021

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