Pakistan Information Commission
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In the Pakistan Information Commission, Islamabad

Appeal No 1295-08/21

Naeem Sadiq **(Appellant)**

Vs.

Employees Old Age Benefit Institution **(Respondent)**

<u>Order</u>
Date: April 05, 2022
Mohammad Azam: Chief Information Commissioner

A. The Appeal

1. This commission has received an appeal from Naeem Sadiq dated August 23, 2021 stating that he submitted information request dated August 09, 2021 under the Right of Access to Information Act 2017 to the Employees Old Age Benefit Institution. The Respondent public body has refused to provide requested information to him. Therefore, the appellant has filed his appeal to the Commission.

2. The information sought by the Appellant is as under:

"1. Monthly Salary and total salary paid by the EOBI to the Chairman during the period 2019-2021.

2. Amount spent on Medical Treatment, medicines and Lab Tests of the Chairman and his family that were paid by the EOBI during these two years.

3. Amount paid by EOBI to Chairman for salaries relating to his driver and domestic staff.

4. Amount paid by EOBI during this period by EOBI to Chairman for interest and telephone.

5. Amount paid by EOBI for the travel, TA/DA/Hostel expenses and the Chairman.

6. Amount paid by EOBI to the Chairman for car, petrol and maintenance during his period.

7. Amount paid by EOBI for Gulf Club or any other club membership of the Chairman.

8. Any other payments, perk, expenses incurred by EOBI on the Chairman during this period."

B. Proceedings

3. This commission through a notice dated September 02, 2021 sent to the Deputy Director General / Public Information Officer, Employees Old Age Benefits Institution called upon the Respondent to submit reasons for not providing the requested information.

4. Through another notice dated September 29, 2021, the Respondent was directed to submit written arguments along with supporting documents within 15 working days, otherwise, the appeal will be decided Ex-Partee in the light of the record available on the file and the Right of Access to Information Act, 2017.

5. The Respondent on October 26, 2021 submitted its response which is as under:

1. “That the instant appeal is not maintainable under the law due to the reason that requisite record/information does not fall within the meaning of section 6 of the Right of Access to Information Act, 2017, hence, the instant appeal is liable to be dismissed.

2. That the Employees Old-age Benefits Act, 1976 (herein referred to as the “EOB Act, 1976”) was promulgated on the 15th April, 1976 to repeal and re-enact the law relating to the old-age benefits to persons employed in industrial, commercial and other organizations employing five or more persons. It extends to the whole of Pakistan. It applies to every industry or establishment in which five or more persons are employed by the employer directly or through any other person. That the additional benefits which the Act, 1976 provides include old-age pension to a worker if he is over sixty years of age or, in the case of woman, fifty-five years, or if he has retired from insurable employment.

   That nonetheless, pursuant to section 7 of the Information Act, 2017, the following record will be excluded from publications.

   a) noting on files, subject to a final decision by the public body;
   b) minutes of meetings, subjects to a final decision by the public body;
   c) any intermediary opinion or recommendations subjects to a final decision by the public body;
   d) <u>record of the banking companies and financial institutions relating to the accounts of their customers;</u>
   e) record relating to defence forces, defence installations or connected therewith and ancillary in defence and national security excluding all commercial and welfare activities:
   f) record declared as classified by the minister-in-charge of the federal government provided that the minister-in-charge of the federal government will 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;
   g) <u>record relating to personal privacy of any individual; and</u>
   h) <u>record of private documents furnished to a pubic body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third party.</u>

   (Emphasis added)

   That section 16 of the Right to Information Act, 2017 is very much clear regarding the stance taken by the EOBI which is reproduced below:

   “Section-16. Information exempt from disclosure. - (1) Subject to the provision this Act,-

   (a) a public body shall not be required to disclose exempt information,-

(i) provided that where only part of a record or the information falls within the scope of the exceptions provided for in this Act, that part shall be severed and the residual record or information shall be provided to the applicant,;

(ii) if its disclosure is likely to cause damage to the interests of the Islamic Republic of Pakistan in the conduct of international relations.

Explanation- In this section, "international relations" means relations between Islamic Republic of Pakistan and

(i) the government of any foreign State; and

(ii) organizations of which only States are members.

(b) Information may be exempt if its disclosure is likely to-

(i) Result in the commission of an offence;

(ii) Harm the detection, prevention, investigation or inquiry in a particular case;

(iii) Reveal the identity of a confidential source of information;

(iv) Facilitate or escape from legal custody; or

(v) Harm the security of building, a vehicle, a system; any property or computer system, including a or a communication

(c) Information is exempt if its disclosure under his Act would involve invasion of privacy of an identifiable individual, including a deceased individual, other than the applicant. This exception shall not apply where-

(i) the third party has consented to the disclosure of the information;

(ii) the person making the request is the guardian of the third party or the next of kin or the executor of the will of a deceased third party; or

(iii) the third party is or was an official of a public body and the information relates to this functions as a public official;

(d) information is exempt if and so long as its disclosure is likely to cause-

(i) damage to the economy as a result of premature disclosure of a proposed introduction, abolition or variation of any tax; duty; interest rate, exchange rate or any other instrument of economic arrangement;

(ii) damage to the financial interests of the public body by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body for acquisition or disposal of property or supply of goods or services; or

(iii) damage to lawful commercial activities of the public body;

(e) information may be exempt if its disclosure is likely to cause serious prejudice to the-

(i) defence or security of Pakistan; or

(ii) the capability, effectiveness of armed forces of Pakistan or other law enforcement agencies;

(f) information may be exempted if its disclosure is likely to endanger life, liberty, health or safety of any individual;

(g) information may be exempted if-

(i) the information was obtained from a third party and on its communication it would constitute an actionable breach of confidence; or

(ii) The information was obtained in confidence from a third party and it contains trade secret or if communicated it may prejudice the commercial or financial interests of that third party;

(h) Information may be exempt it is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it;

(i) Information may be exempt it its disclosure is likely to-

(i) cause prejudice to the effective formulation or development of government policy;
(ii) frustrate the success of a policy, by premature disclosure of that policy;
(iii) undermine the deliberate process in a public body by inhibiting the free and frank provision of advice or exchange of views;
(iv) Undermines the effectiveness of a resting or auditing procedure used by a public body;
(v) prejudice the proceedings in a court or a tribunal; and
(vi) privileged information shared between counsel and the client;

(j) information in respect of a crime may not be exempt, except the information relating to-

(i) the prevention or detection of crime;
(ii) the apprehension or prosecution of offenders;
(iii) the administration of justice;
(iv) the operation of the immigration controls excluding ECL;
(v) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained;
(vi) <u>any civil proceedings which are brought by or on behalf of a public body</u> or arise out of an investigation conducted;

(k) the exemptions set out in section 16 of this Act shall cease to apply after every twenty years and that record of public bodies shall be made public.

3. that appellant filed an application before the office of DDG(LAW)/PIO starting that he submitted an information request to EOBI under the Information Act, 2017 and sought the following information from it;

1. Monthly Salary and total salary paid by the EOBI to the Chairman during the period 2019-2021.

2. Amount spent on Medical Treatment, medicines and Lab Tests of the Chairman and his family that were paid by the EOBI during these two years.
3. Amount paid by EOBI to Chairman for salaries relating to his driver and domestic staff.
4. Amount paid by EOBI during this period by EOBI to Chairman for interest and telephone.
5. Amount paid by EOBI for the travel, TA/DA/Hostel expenses and the Chairman.
6. Amount paid by EOBI to the Chairman for car, petrol and maintenance during his period.
7. Amount paid by EOBI for Gulf Club or any other club membership of the Chairman.
8. Any other payments, perk, expenses incurred by EOBI on the Chairman during this period.

4. That EOBI has firm belief upon supremacy of law and is following all the applicable laws, rules and regulations strictly as prescribed by is statute and other applicable legislation; therefore, the EOBI cannot refuse to make compliance of any applicable law in any manner whatsoever.

5. That the EOBI has already launched its website (www.eobi.gov.pk) in order to facilitate and provide relevant and important information to its stakeholders regarding the following matters and which is updated from time to time:

a. purpose/objective for the institution/EOBI;
b. Institutional strategy;
c. Rules & Regulations;
d. EOB Act, 1976;
e. Relevant forms;
f. Regional & Field Officers,
g. Tenders;
h. Management of EOBI;
i. Orientation programs;
j. Labour policy
k. Financial Data;
l. Actuarial Valuation;
m. EOBI investments;
n. PRIMACO
o. Procurement Plan;
p. CMS Officials;
q. News and Events;
r. Pension Rates;
s. Benefits of registration with EOBI;
t. Contributions; and
u. Other allied detailed information etc.

6. That requisite information is "personal data", therefore, the instant Appeal is not maintainable under the law, and hence, the same is liable to be dismissed with heavy costs.
7. That the appeal has been filed with unclean hand and concealment of material facts from this Honorable Commission.
8. That the appeal has been filed with malafide and ulterior motives which is liable to be dismissed.

ON FACTS:

That first Paragraph of the appeal needs no comment.

9. That second paragraph of the appeal is denied being misleading for the reason that the instant appeal is not maintainable under the law as requisite record is not public record rather it is personal data. Moreover, pay and perks were granted to Ex. Chairman EOBI as per relevant rules, regulations and applicable policy to vogue; hence, the instant appeal is liable to be dismissed. It is pertinent to mention here that EOBI has achieved the target on less than 50% strength of the approved staff/manpower which shows that officers and official have performed their duties efficiently.

PRAYER:-

In the light of above said circumstances, it is most respectfully prayed that the titled appeal may very kindly be dismissed in the interest of justice."

6. Response submitted by the public body was shared with the Appellant on October 28, 2021.

7. The Appellant through an email dated November 07, 2021 submitted rejoinder to the response of the public body, which is as under:

1. “Kindly refer to your Letter on above appeal dated Oct. 28, 2021 titled INFORMATION SHARING.
2. Sadly EOBI has provided absolutely no information in its response.
3. The first 5 pages of EOBI’s response are wastefully spent on reproducing Section 7 and Section 16 of the RTI 2017 Act. Thus they need NO comment, as these are not arguments but mere reproduction of RTI Law, already well known to PIC and any one dealing with RTI.
4. At para 4 EOBI describes its firm belief in supremacy of law. This is a good sounding platitude, but completely devoid of spirit, as the EOBI response fails to comply with the RTI law in providing the requested information.
5. At para 5, EOBI mentions of its website. Sadly, the website does not have a single piece of information requested by the applicant.
6. EOBI completely fails to understand that it is a government organization and that every penny given to its Chairman is paid from the tax payers funds. Thus every citizen of Pakistan has the full right to know the exact amount paid to every employee, from Chairman to Janitor.”

8. Rejoinder submitted by the Appellant was shared with the public body on November 09, 2021 with the directions to address the queries of the Appellant within 10 working days.

9. The Respondent vide letter dated EOBI/Law.Department/2021/965 dated November 22, 2021 submitted its response which was shared with the Appellant on November 25, 2021.

10. The Appellant on December 02, 2021 again submitted a rejoinder to the response of the public body which is as under:

1. *“The 2 year summary of expenses is faulty. It says a total of 2542 million were spent in law 2 years. However, if one sums up the expenses, they only add up to about 2270 million, thereby leaving an unexplained gap of about Rs. 300 million. The EOBI has thus tried to hide its expenses and did not provide full details that were asked for.*
2. *EOBI was asked to provide year wise expenses and even suggested a format in our letter, reproduced below.*

	Total amount spent under the heading	*Year 2019*	*Year 2020*

The organization has not provided year wise expenses for the two years and instead given a total that makes it impossible to find out what was actually spent in each year.

You are requested to kindly have correct information and year-wise information obtained from EOBI as, explained at Para 1 and 2.”

11. Rejoinder submitted by the Appellant was shared with the public body on December 08, 2021 with the directions to address queries of the appellant before December 22, 2021.

12. The Appeal was fixed for hearing on February 08, 2022 and both parties were informed through notices sent on January 12, 2022. No one appeared before the Commission to represent the public body in the hearing held on February 08, 2022.

C. Discussion and Commission's View on Relevant Issues

08. This commission has to decide,

1. Whether the public body has provided complete and relevant information to the appellant?
2. Whether the information requested by the citizens falls within the ambit of the public record

09. The information requested by the Appellant in the instant appeal is public record as it belongs to the Section 5 (g) of the Right of Access to Information Act, 2017, hereafter referred to as Act,

Section 5 (g) is as under;

> *"g) Detailed budget of the public body; including proposed and actual expenditures, original or revised revenue targets, actual revenue, receipts, revision in the approved budget and the supplementary budget;*

10. This Commission observes that the Respondent has provided collective information two financial years which do not clear that how much expenses occurred in each financial year. The Appellant in his information request and rejoinders has requested to provide him the expenditure details Year and Head wise break up.

11. Purpose of the Act is to ensure the Transparency in the business of the Government, as the Preamble of the Act states,

> *"Whereas Government believes in transparency and the right to have access to information to ensure that the people of Islamic Republic of Pakistan have improved access to records held by public authorities and promote the purpose of making the government more accountable to its people, of improving participation by the people in public affairs, of reducing corruption and inefficiency in Government, of promoting sound economic growth, of promoting good governance and respect for human rights".*

12. The Respondent should provide the Year and Head wise breakup of the required information / expenditure so that the Appellant is able to do analysis of the expenditure occurred in both financial years.

13. 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".*

D. Order

14. Appeal is allowed. Deputy Director General / Public Information Officer, Employees Old Age Benefits Institution is directed to provide complete information mentioned in para 2 of this Order to the Appellant, at the earliest but not later than 7 working days of the receipt of this Order, with intimation to this office.

15. The Respondent is also 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 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 within 30 days of the receipt of this Order.

16. Copies of this order be sent to Deputy Director General / Public Information Officer, Employees Old Age Benefits Institution and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
April 05, 2022
This order consists of 8 (eight) pages, each page has been read and signed