

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 1302-08-2021

Faizullah Khan

Versus

Department of Plant Protection

Date of Hearing: 3.11.2021

Fawad Malik: Information Commissioner

A. APPEAL

1. Mr. Faizullah Khan through an application dated 23-07-2021 addressed to the Director General, Department of Plant Protection (DPP), desired the recipes of various pesticides registered with Department of Plant Protection, during the period of last five years. The detailed particulars of the requested information are:

1	2	3	4	5	6
<i>Sr.no</i>	<i>Name of Manufacturer /Undertaking with complete address</i>	<i>Product Common Name</i>	<i>Product Chemical Name</i>	<i>Recipe(s) Registered with the DPP (name of the materials along with percentage)</i>	<i>DPP Reference No. with Date</i>

2. The Deputy Director (Registration), Department of Plant Protection vide letter No. F.1-13/2021-Reg dated 06th August, 2021 replied the application to the following effect:

“Reference your letter dated 23-07-2021 on the above mentioned subject, please clarify as to whether there is any provision in the Right of Access to Information Act, 2017, which allows the provision of a third party's product recipe to any other party. As otherwise the sharing of such information can lead to a breach in confidentiality (implied or expressly written) with the parties whose product recipes are being shared. However, the information regarding all registered pesticide products is available on the website of the Department of Plant Protection.”

3. The applicant resisted the reply submitted by the respondent organization and reiterated the provision of the information vide letter dated 12.08.2021 as hereunder:

APPEAL NO. 1302-08-2021

“Kindly refer to your letter No. F. 1-13/2021-Reg dated 06.08.2021, on the subject cited above.

2. It is stated that except record of all public bodies mentioned in Section 7 of the Right of Access to Information Act, 2017 and information exempted from disclosure under Section 16 ibid, Right to have access to Information cannot be denied. It would be appreciated that the information asked for, does not fall under Sections 7 & 16 of the above said Act.

3. It may be added here that Rule 14 of Agricultural Pesticides Rules 1973, notified by the Federal Government of Pakistan, vide SRO 1187(1)/173 dated 08.08.1973 and Rule 15 of Punjab Agricultural Pesticides Rules 2018, notified by the Government of Punjab vide Notification No AS(TF)1-6/2017 dated 30.05.2018 require every importer, manufacturer and formulator of the pesticides to print conspicuously, legibly and indelibly following information on the containers of their (pesticides) product and every tag or label attached there to:-

- a. Name of the product,*
- b. Name and address of the manufacturer or formulator or the person in whose name the pesticide is registered,*
- c. Net contents,*
- d. Registration number,*
- e. Date of manufacture / formulation*
- f. Date of test,*
- g. Normal storage stability.*
- h. The name and percentage by weight of active ingredient and total percentage by weight other ingredients,*

4. It may be further added that Sub Rule 4 of Rule 12 A of Federal Government Agricultural Pesticides Rules, 1973 and Sub Rule 4 of Rule 13 of Provincial Government of Punjab Agricultural Pesticides Rules, 2018 bound the importers, manufacturers or formulators that they shall along with the pesticides etc., forward warranty to their distributors / retailers, as to their quality, quantity and active ingredients, emulsifiers, stabilizer and solvents shown as weight by weight (w/w) and weight by volume as the case may be, registered with the Department of Plant Protection. Sub Rule 3 of Rule 12 A of Federal Government Agricultural Pesticides Rules, 1973 and Sub Rule 3 of Rule 13 of Provincial Government of Punjab Agricultural Pesticides Rules, 2018 restrain Distributors or Retailers, not to accept any pesticide, herbicide, weedicide, medicines or essential drug for use in agriculture, if it is not properly packaged or sealed or does not bear label containing the prescribed information.

5. From the above provisions of laws, it may be observed that the information asked for, are neither classified nor confidential and are open for public consumption under the Federal as well as Provincial Laws relating to Pesticides. Right to have access to the above said information, therefore cannot be denied under the Right of Access to Information Act, 2017.

APPEAL NO. 1302-08-2021

6. I would therefore urge upon your honour to kindly supply the subject information on priority please. I also hereby authorize Mr. Irfan Ahmed S/O

Sarwar Ali holding CNIC No. 42201-0900722-7 to collect the said information from your office on my behalf. Fee (if any) shall be deposited by him on my behalf."

4. The appellant preferred his appeal dated August 26, 2021 under the Right of Access to Information Act, 2017 before the Pakistan Commission on access to information, Islamabad. He alleged that the request for information has not been provided by the Department of Plant Protection.

B. PROCEEDINGS.

5. During the course of hearing Miss Huma Nazir Kiyani and Miss Zoba Khalid, Entomologists assisted the Commission on 13.10.2021 and 3.11.2021 respectively. Apart from the copies of the sections 13(3) and 29(2)(e)(i) of the Agriculture Pesticide Ordinance 1971, copy of rule 24 & 26 of the Agriculture Pesticides Rules 1973, the detailed reply/arguments along with the annexures is submitted. The text of the reply is reproduced hereunder:

1. *"Regarding International practice, it is to inform you that the Environmental Protection Agency (EPA), which is pesticide registration body of the United States of America, states on its website that inert Ingredients in a pesticide formulation are confidential business information (Annex-AI). Furthermore, the EPA also provides a Form to pesticide registration applicants regarding a Confidential Statement of Formula (Annex-AII) to further signify the secrecy of pesticide recipes. The Pesticide Registration Toolkit of the Food & Agriculture Organization (FAO) of the United Nations also states in the "Data protection and confidentiality" section (Annex-All) that:*

"WTO Members are required to provide for two forms of protection of undisclosed test or other data pursuant to Article 39.3 of the TRIPS Agreement (Pakistan is a member of the WTO as well as a signatory of the TRIPS Agreement). The first is against unfair commercial use. The second form of protection of test data is against disclosure, except where necessary to protect the public, or unless steps are taken to ensure the data are protected against disclosure, except where necessary to protect the public, or unless steps are taken to ensure the data are protected against unfair commercial use."

"For data on agricultural or public health pesticides, the pesticide registration authority is usually responsible for developing and administering pertinent national legislation, including its adherence to International obligations on intellectual property rights."

“It should be noted that the same toolkit also mentions that the option of having a specific period of confidentiality is up to the specific WTO member country's legislation, and that there is no provision in the Agricultural Pesticide Rules 1973 or the Agricultural Pesticide Ordinance 1971 which allows for the secrecy of pesticide product recipes to be shareable after a specific time period has passed.”

2. *“The term "recipe" is defined either in the Agricultural Pesticide Rule 1973 or in the Agricultural Pesticide Ordinance 1971. However, the Rules state in the respective checklists of forms-1, 16 & 17 that the recipe (also called composition) of the formulated product should be analysed by internationally accredited lab or GLP certified laboratory. For reference, please note some example product recipes from internationally accredited / GLP certified labs as well as from international pesticide / manufacturers (with redacted information to preserve confidentiality) as (Annex-B).”*

6. The appellant is not satisfied with the reply. He has reiterated for the provision of the requested information through his letter dated 13.11.2021.

C. COMMISSION'S VIEW

7. The appellant has asked for the name of manufacturer, undertaking with complete address, product common name, product chemical name, recipe(s) registered with the DPP (name of the materials along with percentage) and DPP reference number with date from the Department of Plant Protection, for the period of last five years. The respondent organization has not objected the provision of the information and record except the undertaking with complete address and recipe(s) registered with the DPP (name of the materials along with percentage).
8. For appraisal Sections 13(3) and 29(2)(e)(i) of the Agriculture Pesticide Ordinance 1971 and rules 24 & 26 of the Agriculture Pesticides Rules 1973 are reproduced hereunder:

Agriculture Pesticide Ordinance 1971.

Section 13(3): The secrecy of the formulae of (--) pesticides, samples of which are submitted to the pesticides Laboratory for analysis or test, shall be duly safeguarded in the manner prescribed.

Section 29(2)(e)(i):

Agriculture Pesticides Rules 1973.

Rule 24: Access to information.

No person other than an officer of the Pesticide Laboratory authorized in writing by the Director shall have access to the information deposited in the Laboratory.

Rule 26: Disclosure of information.

No person on the staff of the pesticide laboratory shall disclose to any person not on the staff of the Laboratory any information relating to the

composition of a particular pesticide acquired the course of his duties in the laboratory.

The pesticide registration authority is responsible for developing and administering appropriate national legislation, including its adherence to International obligations on intellectual property rights. According to pesticide registration body of the United States of America, the inert Ingredients in a pesticide formulation are confidential business information.

9. The appellant in his rejoinder has failed to point out the provision of the Right of Access to Information Act, 2017 which allow the provision of the recipe(s) registered with the DPP (name of the materials along with percentage) to the any third person. On the other hand the organization has argued that the inert Ingredients in a pesticide formulation are confidential business information. Sections 13(3) and 29(2)(e)(i) of the Agriculture Pesticide Ordinance 1971, rules 24 & 26 of the Agriculture Pesticides Rules 1973 along with the World Trade Organization (WTO), an intergovernmental organization that regulates and facilitates international trade between nations, does not allow the access to the recipes registered with the Department of Plant Protection. Government of Pakistan being a member, use the World Trade Organization to establish, revise, and enforce the rules that govern international trade. Furthermore the agreement under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO).The pesticide registration authority is responsible for developing and administering pertinent national legislation, including its adherence to International obligations on intellectual property rights.
10. The appellant has desired the recipes of various pesticides registered with Department of Plant Protection, during the period of last five years. Section 16(g) of the Right of Access to Information Act, 2017 exempt the information and record obtained in confidence from the third party containing a trade secret and its disclosure is likely to constitute actionable breach of confidence and also would prejudice the commercial and financial interests of the third party. The record of private documents furnished to the public body either with an express or implied condition that the information contained in such documents shall not be disclosed to a third party is excluded from the declaration of public record under section 7(h) of the Act.

11. For what has been discussed above the Commission is of the considered view that there is no provision in the Right of Access to Information Act, 2017, which allows the provision of a third party's product recipe to any other party.

D. ORDER

The appeal is partly allowed. The Deputy Secretary, Department of Plant Protection, Ministry of National Food, Security and Research is directed to furnish the appellant the following information:

- i) name of manufacturer,
- ii) undertaking without address after severing the information touching the private privacy of the individual e.g. CNIC, Postal address, Phone Number, Bank account number or any other information related to his family members,
- iii) product common name,
- iv) product chemical name, and
- v) DPP reference number with date from the Department of Plant Protection.

The Deputy Secretary is directed to provide the information not later than ten days of the receipt of this order.

He is further directed to implement the sections 5 & 8 of the Act, under intimation to this Commission within one month of receiving this order.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 09.11.2021

Certified that this order consists of six (6) pages, each page has been read and signed.