

Pakistan Information Commission
Government of Pakistan

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In the Pakistan Information Commission, Islamabad

Appeal No 1345-09/21

Pervez Said

(Appellant)

Vs.

Capital Development Authority

(Respondent)

Order

Date: November 11, 2021

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated September 15, 2021, to the Commission, stating that he submitted an information request to Chairman CDA, on August 11, 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:-
 - “Please provide the reasoning for the unregulated construction along the nullah in E-11/3 that caused the flood damage and resulting deaths.*
 - i. What is the procedure for regulating buildings and structures that have been constructed without an NOC from the CDA or in the event approvals once granted by CDA are later disallowed?*
 - ii. What is the reasoning for the initial approval of the illegal construction on the nullah in E-11/3 and later disapproval? Had construction taken place after the first approval?*
 - iii. iv) Who are the officers within the Authority with responsibility to grant approvals and NOCs for this particular zone i.e. E-11/3?”.*

B. Proceedings

3. In response to the notice dated September 30 2021, the Respondent submitted its response which is as under:

The requisite information as requested in your application provided by the Concerned formation of the authority is hereby appended below;

S#	Requested Information	CDA's Reply
i.	Please provide the reasoning for the unregulated construction along the nullah in E-11/3 that caused the flood damage and resulting deaths	As Per right of Access to Information Act 2017, Your request does not fall in the ambit of “Information” within the meaning of said Act, as the same is not based on any record.

ii.	What the procedure for regulating building and structures that have been constructed without NOC from CDA or in the event approvals once granted by CDA are later disallowed?	CDA has already publicized its laws, rules, regulations, and procedures required for any permission on its official website. The applicant may access to those details to get required information
iii.	What is the reasoning for the initial approval of illegal construction on the nullah in E-11/3 and later disapproval? Had construction taken place after the first approval?	CDA has not approved any construction which is unauthorized / illegal under its prevalent laws. Moreover as per Right of Access to Information Act 2017, your request does not fall in the ambit of "Information" within the meaning of said Act, as the same is not based on any record.
iv.	Who are the officers within the Authority with responsibility to grant approvals and NOCs for this particular zone i.e. E-11/3?	As per prevalent position the Directorate of Housing Societies, CDA deals with the issues of Lay out Plans of Societies and standalone projects in t 11, whereas Directorate of Building Control (Nort deal with issues of Building plan approval in whe E-11 Sector.

C. Issues

4. The instant appeal has brought to the fore following issue:
 - a. Can the general query of seeking 'reasons' pertaining to the unregulated construction along the nullah in E-11/3 that caused the flood damage and resulting deaths be considered as 'request for information' under the Right of Access to Information Act 2017, henceforth referred to as the "Act"?
 - (b) Has the Respondent provided information permissible under the Act to the Appellant?

D. Commission's View on Relevant Issues

5. This commission holds that the general query of seeking 'reasons' pertaining to the unregulated construction along the nullah in E-11/3 that caused the flood damage and resulting deaths constitutes 'request for information' under Section 11 (3) of the Act. While the Appellant has not specifically mentioned access to the enquiry report pertaining to this tragic incident, it is obvious that all such 'reasons' are documented in enquiry reports.
6. This commission holds that the response of the CDA as whether illegal construction has taken place after the first approval related to nullah in E-11/3 is legally untenable. The response that "CDA has not approved any construction which is unauthorized / illegal under its prevalent laws" is evasive. The Respondent, CDA, if it maintains records pertaining to illegal constructions after the grant of first approval should have been provided to the Appellant.
7. This commission maintains that the Appellant has sought information about specific officers who granted approvals and NOCs in E-11/3 not the specific Directorates such as Directorate of Housing Societies, CDA Directorate of Building Control (North. As such, the designations of the officers who gave final approvals and NOCs should have been provided.

8. 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.
9. 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

10. Appeal is allowed. Public Information Officer, CDA is directed to provide enquiry report pertaining to the tragic incident mentioned in item (i) of the requested information in para 2 of this Order, records/information if it maintains pertaining to illegal constructions after the grant of first approval and information about specific officers who granted approvals and NOCs in E-11/3 to the Appellant at the earliest but not later than 10 working days of the receipt of this Order, with intimation to this office.
11. The Respondent is 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.
12. The Respondent is 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.
13. Copies of this order be sent to Public Information Officer, CDA and the Appellant for information and necessary action.

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on: November 11, 2021

This order consists of 3 (three) pages, each page has been read and signed