

**Pakistan Information Commission
Government of Pakistan**

1st Floor, National Arcade, 4-A Plaza
F-8 Markaz, Islamabad
Website: www.rti.gov.pk
Phone: 051-9261014
Email: appeals@rti.gov.pk
@PkInfoComm



**In the Pakistan Information Commission, Islamabad
Appeal No 1442-11/21**

Syed Raza Ali Shah

(Appellant)

Vs.

Secretariat, Senate of Pakistan

(Respondent)

ORDER

Date: March 31, 2022

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated October 29, 2021, to the Commission, stating that he submitted an information request to the Secretary, Senate of Pakistan on October 15, 2021 under the Right of Access to Information Act 2017 but did not receive any response from the public body.
2. The information sought by the Appellant is as follows:
 1. "List of Senators including Chairman of Senate and Senate officials of those who visited foreign countries (Country wise breakup) on public exchequers during the period of August 2018 to date.
 2. Detailed information about total budget spent on these foreign visits. (Chairman, senators and senate official's wise breakup).
 3. Please also mention the total number of visits (if someone made official visit more than once).
 4. Information about total budget allocated for these visits and total amount spend on these visits during the period of FY 2018-19, 2019-20, 2020-21 & 2021-22.

Sr. No	Name	Designation	No. of persons accompanied the visit	Country Visited	Period of Visit	Purpose of visit	Amount spent

B. Proceedings

3. Hearing in the instant Appeal was held on December 16, 2021.
4. In the hearing, representative of Senate Secretariat gave oral arguments which are also contained in the written response submitted before this commission. The text of the written response is as under:
 - “1) That right of access to information in all matters of public importance is a fundamental right provided and recognized by the Constitution of Pakistan, 1973 and further explained by the Right of Access to Information. Act, 2017. However, a fine balance is required to be maintained between the right to information and right to secrecy or right to shield actions when it is in the interest of the department to do so, as both rights stem out of the same Act of Parliament.
 - 2) That the information or record asked by the appellant does not strict sense falls within the ambit of expression "public record" as envisaged by Section 6 of the Right of Access to Information Act, 2017.
 - 3) That under Article 6 of the Qanoon-e-Shahadat Order, 1984 nobody is permitted to give any evidence derived from unpublished official record relating to affairs of State, except with the permission of head of department and the head of department being sole judge in the instant case has turned down the request for provision of record.
 - 4) That under Rule 8 of the Right of Access to Information Rules, 2019 the appellant is bound to attach a certificate with the appeal stating therein that he/she has not already or concurrently filed any application, complaint or suit before any other forum or court. However, said provision of Rule 8 has not been adhered to in the instant case hence the appeal is not maintainable in its present form.

On Facts:

That in terms of Rule 258 of the Rules of Procedures and Conduct of Business in the Senate, 2012 read with Section 7(f) of the Right of Access to Information Act, 2017, the Honorable Chairman Senate is authorized to declare any record of the Senate Secretariat as classified. By invoking said provisions of law, the Honorable Chairman Senate is of the considered view that the information asked for in the instant appeal IS classified. Its disclosure IS detrimental to interests of Pakistan, prejudicial to foreign policy and potentially damaging to inter parliamentary relations with other States. It is important to provide here that said authority of the Honorable Chairman Senate to declare certain information as classified is absolute, unqualified and final to which no exception could be taken. Further, the Honorable Pakistan Information Commission lacks jurisdiction to sit in appeal over the decision of Honorable Chairman or to interpret provisions of Section 7 (f) in a different way which otherwise is sole prerogative of superior judiciary.

Prayer: In view of above legal and factual position, it is humbly prayed that the appeal may kindly be dismissed with costs meritless”.

5. The Appellant submitted his rejoinder and its text is as under:

“It is with reference to your letter dated March 1, 2022. Regarding Appeal No. 1442-11/21.

2. Kindly note that I have reviewed the response from the Senate Secretariats, which was shared with my by your office. My submissions with respect to the Senate Secretariat reply, dated January 7th 2022, are as follow:

1. Para 1 is correct to the extent "That right of access to information in all matters of public importance is a fundamental right provided and recognized by the Constitution of

Pakistan, 1973 and further explained by the Right of Access to Information Act, 2017. However, the latter portion of the Para 1 is vehemently denied. It is a misinterpretation of the law to assume that there exists a right to shield action when it is in the "interest of the department" to do so. While secrecy for the benefit of the public is allowed, the "interests of the department" is neither defined in the Act nor shielded by the Act or Article 19-A of the Act.

2. The contents of Para 2 are hereby denied as they are incorrect. I have requested information concerning functions and duties performed by Senators in their official capacities as members of the Aiwān-e-Balā and as beneficiaries of public funds. Moreover, Section 5(d) of the Right of Access to Information Act, 2017 (the "Act") allows access to information about 'decisions, which can be about any matter including visits of Senators. Section 5(d) reads as follows:

"(d) relevant facts and background information relating to important policies and decisions which have been adopted, along with a statement of the policies adopted by the public body and the criteria standards or guidelines upon which discretionary powers are exercised by it".

Moreover, Section 6 (b) of the Act declares expenditure undertaken by a public body in the performance of its duties and functions as public record. Foreign visits undertaken by members of the Upper House of Parliament in their official capacity matters of considerable importance and are based on decisions made under Section 5(d) quoted above and involve expenditures under Section 6 (b) of the Act. It is important to mention that Section 8 of the Act requires public bodies to ensure disclosure of information within the time limit prescribed by Section 5 of the Act (6 months of commencement of the Act). Furthermore, the information I have applied for does not fall within the ambit of Section 7 of the Act, that is to say, it is not information exempted from disclosure. Hence, it is concluded that the information requested in the instant matter falls within the purview of the Act and the public body is under a statutory obligation to accept my request.

3. The contents of Para 3 are hereby denied. My Right to Information is guaranteed by the Act, which gives effect to my fundamental right to information as guaranteed by Article 19-A of the Constitution. It is important to note that Section 25 of the Act provides an overriding effect and, therefore, any contradictory provisions contained in other laws like the Law of Evidence are without any legal consequence in relation to the application of this Act. Therefore, the quoted provisions of the Qanun-e Shahadat Order cannot be relied upon as a viable defense to deny access to information, which is a fundamental right.

4. With respect to Para 4 - I hereby solemnly affirm that I have not already or concurrently filed any application, complaint, or suit before any other forum or court with regard to the instant matter.

On Facts:

At the outset, it is important to note that the Rules of Procedures and Conduct of Business in the Senate, 2012 (the Rules"), are termed as delegated legislation within the preface of the same, and therefore, cannot be construed as a legitimate defense against the

fundamental right to information guaranteed by primary laws (ie, the Constitution and the Act).

As far as the procedure provided in Section 7(f) of the Act regarding the exclusion of record, it may kindly be noted that the Chairman Senate is the custodian of the House of Federation and can't claim in any manner to be the Minister in Charge of the Federal Government.

Moreover, the undersigned would like to draw your attention towards the United Kingdom (the "UK") parliamentary expenses scandal of 2009¹. A major political scandal resulted in a large number of resignations, sackings, de-selections, and retirement announcements together with public apologies and the repayment of expenses. In the above-captioned matter, a request under the Freedom of Information Act 2000 for the release of details of MPs expenses claims was allowed by an information tribunal. The tribunal's order was challenged by the House of Commons authorities on the grounds that it was unlawfully intrusive but nevertheless was upheld by the higher courts of the UK. Given such best practices from around the world, it is requested that the instant matter is considered in the view of considerations like transparency and the importance of public accountability in a democracy and that my request for information should be granted.

It may also be noted that the international visits of the Prime Minister of Pakistan are discussed and debated upon in the Aiwana-e-Bala to ensure transparency concerning the correct use of the people's money. However, in this instance, no reasonable justification has been provided with respect to the refusal of my application. In other words, the Senate has been termed above a democratic Government's obligation to share information with its citizens.

Under the Act, the primary function of the Commission is to decide an appeal filed under Section 17 of the Act against a decision or no decision of the designated official of the Public Body. The power to issue directions to public bodies stems from Section 20(e), which states. "Order a public body to disclose information to an applicant or to take such other reasonable measures as it may deem necessary to remedy any failure to implement the provision of this Act.

Moreover, Section 17(4) of the Act provides: "The public body shall in an appeal under sub-section (1), bear the burden of proof of showing that it acted in accordance with the provisions of this Act". Therefore, there is a statutory duty on the Senate Secretariat to show its compliance with respect to the letter and spirit of the Act, which remains unfulfilled."

C. Issues

6. The instant appeal has brought to the fore following issues:
 - (a) Is the instant Appeal maintainable under the provisions of the Right of Access to Information Act, 2017, henceforth referred to as the Act, 2017?
 - (b) Can the requested information about foreign visits of Senators including Chairman of Senate and Senate officials, number of these visits, total budget allocated and total budget spent on these visits be disclosed under the Act, 2017?
 - (c) Is disclosure of requested information about foreign visits of Senators including Chairman of Senate and Senate officials, number of these visits, total budget allocated and total budget spent on these visits detrimental to interests of Pakistan, prejudicial to

foreign policy and potentially damaging to inter parliamentary relations with other States?

(d) Is the authority of the Honorable Chairman Senate to declare certain information as classified, “absolute, unqualified and final” under the provisions of the Act, 2017?

(e) Can this commission determine as to whether or not reasons submitted by a public body under Section 7 (f) of the Act, 2017 meet the threshold of the harm from the disclosure of the requested information outweighing public interest?

D. Discussion and Commission’s View on Relevant Issues

7. This commission holds that the instant Appeal is maintainable under the provisions of the Act, 2017 on the following grounds:
 - (a) This commission is first forum of appeal if the requested information is delayed or denied by a public body.
 - (b) This commission took cognizance of the instant Appeal after determining that communication of the Appellant with the Respondent, Senate Secretariat constituted request for information under Section 11 (3) of the Act, 2017.
 - (c) Furthermore, this commission has determined through different judgements that, being first forum of appeal, this commission can determine whether or not requested information can be provided to a citizen under the provisions of the Act, 2017, even if the matter is sub-judice at any other legal forum, unless specifically so prohibited by the competent court that this commission cannot make any determination regarding disclosure, or, otherwise of requested information.
 - (d) If the Appellant has not submitted before this commission that the subject matter of the requested information is not sub-judice before any other forum, the Respondent, Senate Secretariat has also not submitted before this commission that it is sub-judice before any other legal forum.
8. This commission upholds that the disclosure of the requested information about foreign visits of Senators including Chairman of Senate and Senate officials, number of these visits, total budget allocated and total budget spent on these visits is warranted by both the letter and the spirit of the Act, 2017.
9. The Senate Secretariat has submitted before this commission that “authority of the Honorable Chairman Senate to declare certain information as classified is absolute, unqualified and final to which no exception could be taken”.
10. With due deference to Honorable Chairman Senate, this commission holds that the authority of Hon’ble Chairman, Senate of Pakistan to declare certain information as classified is neither absolute, unqualified nor final” under the provisions of the Act, 2017.
11. This commission concurs with the point raised by the Appellant that “As far as the procedure provided in Section 7(f) of the Act regarding the exclusion of record, it may kindly be noted that the Chairman Senate is the custodian of the House of Federation and can't claim in any manner to be the Minister in Charge of the Federal Government”.
12. This commission is of the view that right of access to information in matters of public importance can only be restricted on reasonable grounds supported by law. This commission holds that only provisions of this Act can restrict disclosure of any information. That is why the citizens of Pakistan through their elected representatives have provided overriding effect to this Act through insertion of Section 25 which is as under:

“Act to override other laws--- The provisions of this act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force”.

13. The Respondent, Senate Secretariat has also submitted that “the Honorable Pakistan Information Commission lacks jurisdiction to sit in appeal over the decision of Honorable Chairman or to interpret provisions of Section 7 (f) in a different way which otherwise is sole prerogative of superior judiciary”.
14. The assertion of the Respondent, Senate Secretariat that “the Honorable Pakistan Information Commission lacks jurisdiction to sit in appeal over the decision of Honorable Chairman or to interpret provisions of Section 7 (f) in a different way” is contradictory to the provisions of the Act, 2017 and established principles of justice. Firstly, this line of reasoning runs contrary to the established principle that of justice nemo judex in sua causa. Secondly, the Burdon of proof, under Section 18 (5) of the Act, 2017 is on the public body to demonstrate that it acted in accordance with the provisions of the Act, 2017. As nobody can be judge of in his or her own cause, the head of a public body can only record reasons as to how disclosure of requested information is likely to cause harm than serve any public interest.
15. The Burdon of proof being on the public body and this commission being the Appellate body under the Act, 2017, the dictates of due course of law require this commission to decide on issues pertaining to an appeal, including, but not limited to, deciding whether or not reason submitted for exemption from the disclosure meet the threshold of harm test outweighing public interest.
16. Given its mandate to decide on appeals, the authority is vested in this commission to determine whether or not the recorded reasons meet the threshold of harm from disclosure outweighing public interest and issue Order accordingly.
17. The Respondent, Senate Secretariat submitted reasons in writing as to how harm from disclosure outweighs public interest as required under Section 7 (f) of the Act, 2017.
18. This commission maintains that the disclosure of requested information about foreign visits of Senators including Chairman of Senate and Senate officials, number of these visits, total budget allocated and total budget spent on these visits is neither likely to be detrimental to interests of Pakistan, prejudicial to foreign policy, nor this disclosure is likely to be potentially damaging to inter parliamentary relations with other States.
19. This commission is of the view that the disclosure of the requested information will not only strengthen the Senate Secretariat as an institution but will also help achieve stated objectives of the Act enunciated in its Preamble which are as under:
 - a. Making government more accountable to citizens’;
 - b. Greater level of participation of citizens in the affairs of the government’;
 - c. ‘Reducing corruption and inefficiency’;
 - d. Promoting sound economic growth’; and
 - e. Promoting good governance and respect for human rights.
20. This commission notes with concern that the Secretary, Senate Secretariat has neither implemented nor approached Islamabad High Court to set aside its earlier Orders. 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. 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.

E. Order

21. Appeal is allowed. Secretary, Senate Secretariat is directed to provide 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.
22. Copies of this order be sent to The Secretary, Senate Secretariat and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on: March 31, 2022

This order consists of 7 (seven) pages, each page has been read and signed.