



In the Pakistan Information Commission, Islamabad
Appeal No 1512-12/21

Pervez Said (Appellant)
Vs.
Ministry of Information Technology and Telecommunication (Respondent)

ORDER

Date: October 04, 2022

Mohammad Azam: Chief Information Commissioner

A. The Appeal

1. This commission has received an appeal from Mr. Pervez Said dated December 02, 2021, stating that he submitted an information request dated October 26, 2021 under the Right of Access to Information Act 2017 to the Secretary, Ministry of Information Technology and Telecommunication. The Respondent public body has not responded to his information request as required under section 13 of the Right of Access to Information Act, 2017. Therefore, the appellant has filed his appeal to the Commission.
2. The information sought by the Appellant is as under:
 - i. *“Given that PECA 2016 has the requirements of issuing a warrant before removing any unlawful online content, why do the 2021 Rules not have these requirements?”*
 - ii. *What measures have been taken to ensure that provisions of the 2021 Rules do not have the potential for the law to be abused and for citizens to take the law into their own hands as a way of self-policing?*
 - iii. *What is the reasoning behind the requirement for Service Providers and Social Media Companies to provide information or data or content or sub-content of users to law enforcement agencies? How is this provision balanced with the right of privacy and the fundamental right to inviolability of dignity of man?”*

B. Proceedings

3. Through a notice dated December 09, 2021, sent to Secretary, Ministry of Information Technology and Telecommunication, the Commission stated that “Under Section 14 of the Right of Access to Information Act 2017, each federal public body is bound to respond to a request as soon as possible and in any case within ten working days of receipt of the request. You are directed to provide reasons in writing within 7 working days of the receipt of this notice as to why the requested information has not been provided to the applicant, (copy of the information request and appeal thereon enclosed)”.

4. The respondent through a letter vide No. 3-3/2018-Legal dated 24th December, 2021 submitted its response which is as under:

“This is reference to your letter no. Ref. Appeal No. 1512-12/2021 dated 09.12.2021 on the titled subject as per enclosed letters written by Pervez Said of PILAP dated 2nd December, 201 and 26th October, 2021 which raised certain questions/opinions relating to the amended Removal of Blocking of Unlawful Online Content (Procedures, Oversight and Safeguard) Rules, 2021, (“Social Media Rules”)

2. *The requested information has not been provided to the Applicant because it does not comply with section (2), sub-section (xii) of the Right of Access to Information Act, 2017, that defines “access to information” as information held by or under the control of public of body in the form of information documents, or specific record.*

3. *The Applicant, in the three questions of his request, is solely asking for the opinion reasoning of the answering public body, in lieu of ‘information’, as defined under the RTI Act, hence the answering public body under the RTI Act is not liable to share their opinion on the matter with the applicant.*

4. *This issues with the approval of the Competent Authority.”*

5. The response submitted by the public body was shared with the appellant on January 03, 2022.

6. The appellant on January 17, 2022 submitted rejoinder to the response of the public body which is as under:

“We have been in receipt of letter No. 3-3/2018-Legal dated 24th December, 201 addressed to your Office by Mr. Asif Mahmood, Head Legal Cell at the ‘Ministry of Information and Technology and Telecommunication (received by us from your office on 01.10.2022). The said leter I sin response to our Right of Information request dated 26th October, 2021 to the Ministry and is ostensibly garbed as “provision on requested information under the Right of Access to Information Act, 2017”. Notwithstanding the fact that we have not been provide with the requested information, we are dissatisfied with the Ministry’s response, for the following, inter alia, reasons:

1. *That the reason cited by the Ministry for its failure to provide the requested information is that “the requested information has not been provide to the Application because it does not comply with section 2, sub-section 2 (xii) of the Right of Access to Information Act, 2017f, that defines “access to information” as information held by the or under the control of a public body in the form of information, documents or specific record.” The letter goes on to say that “the Applicant, in the three questions of his request, is solely asking for the opinion reasoning of the answering public body, in lieu of “information”, as defined under the RTI Act, hence the answering public body under the RTI Act is no liable to share their opinion on the matter with the applicant.”*

2. *That respectfully we submit that the information requested by PLAP is not “opinion reasoning” and is information based on record, as per the Right of Access to Information Act, 2017. “Information”, under the 2017 Act, is defined as “information based on record”. Further, the 2017 Act, in section 5, contains expressly includes categories of information and record that are to be duly published by the principle officer of each public body in a manner which best ensures that these are publicly accessible.*

3. That the first question asked by us is as follows:

- i) Given that PEC 2016 has the requirement of issuing a warrant before removing any unlawful online content, why do the 2021 rules not have this requirement?

It is submitted that the information requested in the first question is based on a provision of the Prevention of Electronic Crimes Act, 2016 (PECA) which requires the issuance of a warrant before any online content is removed. The Removal and Blocking of Unlawful Online Content (Procedure, Oversight, and Safeguard) Rules, 2021 (the 2021 Rules) enacted under section 37 of PEC do not have this requirement. We only ask why the provisions of the parent statute have not been followed in the enactment of Rules, a question of act and policy, as opposed to one of opinion. Under Section 5 (1) (d) of the RTI Act, "relevant facts and background information relating to important policies and decisions which have been adopted..." fall within the category of information and record that are required to be duly published by every public body.

4. The second question is as follows:

- ii) What measures have been taken to ensure that provisions of the 2021 Rules do not have the potential for the law to be abused and for citizens to take the law into their own hands as a way of self-policing?

The 2021 rules open up the possibility for the law to be abused by allowing citizens to report case that may not be based on fact and thereby allowing witch-hunts against journalists and otherwise lawful content etc. We only ask about the monitoring mechanism put in place that prevents such abuse from taking place. This is hardly a question of opinion and is purely one of fact and policy that should be part of public record.

5. That the third question is as follows:

- iii) What is the reasoning behind the requirement for Service Providers and Social Media Companies to provide information or data or content or sub-content of users to law enforcement agencies? How is this provision balanced with the right to privacy and the Fundamental Right to inviolability of dignity of man?

Rule 7 (4) of the 2021 Rules requires service providers and social media companies to provide the Investigation Agency with any "information or data or content or sub-content contained in any Online Information System owned or manage or run by the respective Service Provider, Social Media Company, or Significant Social Media Company, in decrypted, readable and comprehensible format or plain version in accordance with the provisions of that" parent act. This provision opens the doors for Government to seek private information on any citizens as against Article 14 (1) of the Constitution which states that "the dignity of man and subject to law, the privacy of home, shall be inviolable." Rule 7 (4) also has the potential to hamper access to the right to freedom of speech and expression safeguarded by Article 19 of the Constitution as it will defer citizens from keeping the Government in check. Free speech, along with the right to information, is cornerstones of democratic government as they seek to ensure that the workings of Government remain transparent and that state authorities remain accountable to those whom they represent. If the law makes information sharing on users easily accessible to public bodies and law enforcement agencies, they may be not as willing to share their legitimate views openly given that this can lead to punitive action, and especially given the climate of controlling dissent that is currently rampant in the country. According to Human Rights Watch's World Report 2022 "Pakistani authorities strictly regulated civil society groups critical of government actions or policies." Our question seeks information to understand how these fundamental rights to information, privacy and freedom of expression are to be balanced if they appear to be abrogated by the Rules. This is again, a

question of policy as opposed to one of opinion. It constitutes "relevant facts and background information relating to important policies and decisions which have been adopted..." under section 5 (1)(d) of the 2017 act.

6. *That neither has the Ministry of Information Technology and Telecommunication cited any exceptions to the disclosure of information under the law and nor are any such exceptions attracted in the RTI request.*

7. *That more importantly, even otherwise, notwithstanding the fact that the information requested falls within the mandate of the 2017 Act, the requested information most certainly falls within the scope of Article 19A of the Constitution. The said Article states that "every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law." The matters of curtailment of freedom of expression, right to information and privacy, as well as stifling of public dissent are ones of grave public importance.*

That in view of the above, we are not satisfied with the response received from the Ministry of Information Technology and Telecommunication is failing to respond to our request for information. It is submitted that the Ministry is seeking to evade responsibility by not providing us with the requested information as required by the law and the Constitution."

7. The appeal was fixed for hearing on September 20, 2022 and both parties were informed through notices sent on September 01, 2022.

8. Mr. Asif Mahmood, HLC, Ministry of Information Technology and Telecommunication attended the hearing held on September 20, 2022 and submitted response which is as under: " This is with reference to hearing summon received by the Ministry of Information Technology and Telecom (MOITT) dated May 24th, 2022 regarding the subject appeal (Appeal No: 1669-1/2022) which was received without any attachment or petition as to what the applicant had prayed for in the subject appeal.

2. *The hearing summon states that failure to attend the hearing shall result in Ex Parte decision. The same is inconsistent and lacks conformity with the established legal practices in that without sharing of any information on the matter, a final notice is being issued, threatening Ex Parte decision which is also in violation of the fundamental rights enshrined in the Constitution of Pakistan.*

3. *That in light of lack of information provided by the applicant, the MOITT is unable to provide any substantive reply against the application filed by the applicant.*

4. *It is requested that the complete record of the application filed by the applicant may be shared with MOITT to enable it to file a reply/based on facts of the case and in accordance with law.*

5. *This issues with the approval of the competent authority."*

C. Discussion and Commission's View on Relevant Issues

9. The commission has to decide:

The question for the consideration of the commission is that whether the information requested by the citizen is public information/ record? And whether the public body has fulfilled its duties as defined in the Right of Access to Information Act, 2017 hereafter referred as Act?

10. This Commission maintains that the information requested by the does not fall within the definition of the "Information" as defined in Section 2 (v) and (xii) of the Act, which is as under:

"Information" means information based on record;

11. Section 2 (xii) of the Act, is as under:

“right of access to information” means the right of access to information accessible under this Act which is held by or under the control of any public body and includes the right of access to information, documents, or record in digital or printed form, as the case may be,

12. The information sought by the appellant is the opinion of the public body, which he has also admitted in this rejoinder dated January 17, 2022.

D. Order

13. The appeal is dismissed with no further directions to the public body.

14. Copies of this order be sent to the Secretary, Ministry of Information Technology and Telecommunication, and the Appellant for information.

Mohammad Azam

Chief Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on:

October 04, 2022

This order consists of 5 (five) pages, each page has been read and signed.