

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 1796-03-2022

Sanallah

Versus

Survey of Pakistan

Fawad Malik: Information Commissioner

A. APPEAL

1. Mr. Sanallah, Deputy Director, OC, No. 4 Cartographic Office, Survey of Pakistan, Quetta filed an application No. 1644/I-D-I dated 17.12.2021, addressed to the Surveyor General of Pakistan, Survey of Pakistan, Rawalpindi for information under the Right of the Access to Information Act, 2017.

With reference to SGO's letter No. 236-C/1-D-/P.A dated 10th December, 2021 he has been communicated adverse remarks in his Performance Evaluation Report (PER) for the period with w.e.f 16.06.2020 by the counter signing authority i.e. Major Maher Ali, Deputy Surveyor General-1. The applicant in order to seek his remedy against the adverse remarks by way of Appeal/representation before the competent authority has sought the following information/record invoking his right of access to the information.

- (i) *“Copy of PERs/abstracts in respect of the undersigned from the year 2007 to 2019.*
- (ii) *Copy of the 28th MCMC Report in respect of the undersigned prepared by the National Institute of Management (NIM) Peshawar in 2019.”*

2. Feeling aggrieved of the non-provision of the requested information he has filed the appeal before the Pakistan Commission on access to information.

B. PROCEEDINGS

3. The Public Information Officer, Survey of Pakistan, Ministry of Defence vide letter no. 774/I-A-231 dated 4th April, 2020 submitted the reply before the Commission. The text of the reply is reproduced here under:

“According to Govt. instructions “No Govt. servant shall, except in accordance with any special or general order of the Govt., communicatedirectly or indirectly any official document or information to

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a Govt. servant unauthorized to received it, or to a non-official person, or to the press.(Annex-A).

However, the PER of the officer reported upon may be shown to him on his request. The PER's, categorized as "Confidential" has been recategorized as "Restricted", as conveyed vide Estt. Div, O.M. No. 3/18/2005-CP-II, dated 28.11.2007 under MoD u.o 3/1/D-18/2007, dated 11.12.2007 (Annex-B).

As regards MCMC, it is a confidential report, which has exempted from disclosure, under clause-16 (b) (iii) of information Act, 2017.(Annex-C)."

4. The appellant feeling dissatisfied with the response filed by the respondent public body has raised objections in his rejoinder. The same are reproduced as under:

<i>Sl. No.</i>	<i>Item Form Response of Public Body referred above</i>	<i>Observation of Appellant</i>
<i>1</i>	<i>"No Govt. Servant Shall, except in accordance with any special or general order of the Govt. communicate directly or indirectly any official document or information to a Govt. Servant unauthorized to receive it, or to a non-official person, or to the press.</i>	<ul style="list-style-type: none"> <i>i. "Exception in accordance with any special or general order of the Govt." is already given therein which stipulates that the promulgation of the Access to Information Act, 2017 itself is ample authorization for acquiring the desired public record by the appellant.</i> <i>ii. As per the settled principle of law maintained by PIC the PERs of the appellant is public record for the appellant himself and he is therefore authorized to receive the same. Such matters have already been decided by PIC in recent past.</i> <i>iii. In view of the above, the appellant is of the opinion that the Public Body is trying to reinvent the wheel which may be avoided being wastage of time and Gov. resources and is against the public interest.</i>
<i>2</i>	<i>The PERs categorized as "Confidential has been recategorized as "Restricted"</i>	<i>i. The OM referred by public body was</i>

	<p>as Conveyed vide Estab. Div, OM. No 3/18/2005-CP-II dated 28.11.2007</p>	<p>issued in 2007 has lost its significance after promulgation Act, 2017. Therefore, as per the settled principle of law, the said OM in any case cannot over ruled the Statuary Bill passed by the Parliament of Pakistan under the title Access to Information Act, 2017.</p> <p>ii. For the sake of argument, if the adverse PERs are communicated to the concerned officer in Hard Form than why can't he receive the Average, Good or Very Good PERs?</p>
<p>3</p>	<p>As regard, MCMC report it is confidential report, which has exempted from disclosure, under clause -16(b)(iii) of the information Act, 2017.</p>	<p>The relevant clause cited by public body is reproduced as under for kind perusal Clause-16 <u>“Information exempt from disclosure.</u></p> <p>(b) Information may be exempted if its disclosure is likely to-</p> <p>(iii) Reveal the identity of confidential source of information.</p> <p>It is an open secret that the appellant completed his MCMC course from National Institute of Management, Peshawar and the desired report must have been prepared and submitted by NIM Peshawar. Therefore, “to reveal the identity of a confidential source of information” as FEARED by Public Body is beyond comprehension.</p> <p>The Public body, by citing irrelevant provision, seems to have intentions to linger on the matter as did previously which may be discouraged by PIC.</p>

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2. In view of the above, it is therefore requested that the Public Body may be directed to supply the requested record without any further delay, please.

5. The Public Information Officer vide letter dated 18th May, 2022 filed the reply to the following effect:

“According to Information Act, 2017, “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”. Further, “record relating to personal privacy of any individual has been exempted from disclosure”.

In the present case, the PERs has been categorized “Restricted”. However, the appellant may request the competent authority to show his Performance Evaluation Report, as per Govt. instructions.

Mid-Career Management Course is mandatory for promotion to the post of BS-19, which is a confidential report, therefore, the same is sent to the concerned deptt instead of the individual. The same has been exempted from disclosure, under information Act, 2017.

Nexus to above, it is requested that the subject instant appeal may be disposed of, being avoid of merit, please.”

C. COMMISSION’S VIEW

6. The appellant has requested the abstracts in respect of his Performance Evaluation Report from the year 2007 to 2019 and the 28th MCMC Report prepared by the National Institute of Management (NIM) Peshawar in 2019. The appellant with reference to SGO’s letter No. 236-C/1-D-/P.A dated 10th December, 2021 has been communicated adverse remarks in his Performance Evaluation Report (PER) for the period with w.e.f 16.06.2020 by the counter signing authority. The applicant in order to avail his remedy against the adverse remarks by way of Appeal/representation before the competent authority has desired the provision of the said record.

7. According to Govt. instructions “No Govt. servant shall, except in accordance with any special or general order of the Govt., communicate directly or indirectly any official document or information to a Govt. servant unauthorized to received it, or to a non-official person, or to the press however, the PER of the officer reported upon may be shown to him on his request. It is further apprised in the reply that the PER’s, categorized as “Confidential” has been recategorized as “Restricted”,as conveyed vide Estt. Div, O.M. No. 3/18/2005-CP-II, dated 28.11.2007 under MoD u.o 3/1/D-18/2007, dated 11.12.2007.

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8. The fundamental right has the overriding effect on any other law that comes in the way of the provision of the fundamental right. The PER may be confidential or restricted for the others, non-officials or the press but it is public record for the appellant. The appellant has the fundamental right under the Constitution of Pakistan to have access to his PER for availing the legal remedies available to him under the law.

D. ORDER

9. The appeal is allowed. The Public Information Officer, Survey of Pakistan, Ministry of Defence is directed to provide the appellant the requested information forthwith, but in any case not later than seven days of the receipt of this order.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 01.06.2022

Certified that this order consists of 05 pages, each page has been read and signed