



**In the Pakistan Information Commission, Islamabad**

**Appeal No 1839-04/22**

**Nadeem Umer**

**(Appellant)**

Vs.

**Senate Secretariat**

**(Respondent)**

**ORDER**

**Date:** August 16, 2022

Zahid Abdullah: Information Commissioner

**A. The Appeal**

1. The Appellant filed an appeal, dated March 31, 2022 to the Commission, stating that he submitted an information request under the Right of Access to Information Act 2017, to Senate Secretariat, on October 07, 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 the officials hired in the Senate Secretariat from Jan 2018 to date, along with details of their basic pay scale, designation, domicile, highest qualification, experience, nature of job (Contract/permanent) and date of appointment*
  2. *Provide complete results including test marks, qualification marks, interview marks, test date, interview date, of all short-listed candidates for each post.*
  3. *Provide copies of the advertisement published in newspapers for each post from Jan 2018 to date.*
  4. *Provide a complete record of minutes of the meeting / notes of the committee(s) for these hiring.*
  5. *Provide copies of the approval from the concerned authority for these recruitments.*
  6. *Provide copies of the laws/rules/regulations under which these recruitments are.*
  7. *Why is all this information not available on the website of the Senate of Pakistan?*
  8. *How much time is required to upload this information on the website as required made. Under Section 5 of the Right of Access to Information Act, 2017?”*

**B. Proceedings**

3. The record on the file suggests that the Respondent submitted its response on the intervention of this commission on August 11, 2022 and its text 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 *stricto sensu* falls within the ambit of term "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.

4. That under Rule 8 of the Right of Access to Information Rules, 2019 an 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 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 Chairman Senate is authorized to declare any record of the Senate Secretariat as classified. By invoking said provisions of law, the Chairman Senate has already in another appeal no.1072-05/21 titled as Murtaza Hashim vs Senate Secretariat declared that record of Senate Secretariat employees, their sanctioned strength and related numbers, their perks and privileges, incumbency/vacancy position and all other related and ancillary matters as classified. It is important to provide here that said authority of the Chairman Senate is absolute, unqualified and final to which no exception could be taken. Further, the Honorable Pakistan Commission lacks jurisdiction to sit in appeal over the decision of an important constitutional office bearer or to interpret provisions of Section 7 (f) in a different way which otherwise is sole prerogative of superior judiciary.

4. This commission held hearing on this Appeal in which Muhammad Irfan Chaudhry, Assistant Director, Muhammad Javed Iqbal, Deputy Director represented the Respondent. The last hearing on the instant Appeal was fixed for August 04, 2022 *vide letter dated July 21, 2022*.

**C. Issues**

5. The instant appeal has brought to the fore the following issues:

(a) Can the request for access to information which should already have been made available on the web site of the Respondent, Senate Secretariat be denied on the technicality that the Appellant has not provided certificate to the effect that "he has not already or concurrently filed any application, complaint or suit before any other forum or court"?

(b) Does Senate Secretariat come within the jurisdiction of the Right of Access to Information Act 2017, henceforth referred to as the Act, 2017?

**D Discussion and commission's views on relevant issues:**

6. This commission takes strong exception to the fact that the Respondent, Senate Secretariat, instead of responding to the information request under the provisions of the Act, 2017 and keeping into consideration earlier Orders of the commission involving Senate Secretariat, it has again submitted arguments on which this commission has given its detailed verdicts.
7. This commission finds it extremely unfortunate that such an august office as the Senate Secretariat, instead of approaching the next legal forum to set aside verdicts of this commission, keeps on relitigating its case pertaining to the jurisdiction of this commission

and the authority of the Chairman, Senate of Pakistan again and again with legal arguments settled by this commission through its earlier judgements.

8. 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.
9. The Senate Secretariat has yet again 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 again holds, in the absence of any specific court verdict to the contrary, 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 again reiterates that as far as the procedure provided in Section 7(f) of the Act regarding the exclusion of record is concerned, 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 again 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. This commission again maintains that 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. This commission holds that the access to the requested information in the instant Appeal about the recruitments in the Senate Secretariat is a matter of public importance and its disclosure is warranted under the provisions of the Act, 2017.
18. This commission also holds that requested minutes of meetings and committee notes pertaining to the recruitments in the Senate Secretariat are also public documents.
19. It is important to highlight that the minutes of official meetings are exempted from disclosure under Section 7 (b) only if final decision has not been taken on the issue being deliberated upon in official meetings. Once final decision has been taken, minutes of meetings become public documents, unless hit by any of the exemption clause of the Right of Access to Information Act, 2017 which is not the case in the instant Appeal.
20. The disclosure of 'minutes of meetings' during the deliberative process is protected to ensure that outside influence does not create hindrances in the deliberative process. However, once a public body has taken a final decision, minutes of the meetings cannot be treated as excluded records.
21. This commission issued a detailed Order in Appeal No. **942-03/21**, Abdullah Rashed Waraich Vs. Pakistan Housing Authority Foundation which was upheld by the Honourable Islamabad High Court. In this Order, the commission held that information such as regional quota roster maintained by a public body, consolidated result of written test of the posts, attendance sheet of written tests, online applications submitted by candidates who were shortlisted for interview, educational certificates/degrees of the candidates who were shortlisted for interview, answer sheets of all candidates who were called for interview, attendance sheet of interviews, evaluation Proforma containing detail of academic records, marks obtained in written as well as in interviews by the candidates shortlisted for interview, duly signed by Departmental Selection Committee, recommendations of the Departmental Selection Committee regarding selection of candidates is a matter of public importance.
22. This commission holds that the disclosure of the requested information would shed light on the level of transparency adopted in the entire recruitment process and hence 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.
23. 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 of 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.

24. This commission again notes with concern that the Secretary, Senate Secretariat has neither implemented nor approach 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**

25. 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.
26. Secretary, Senate Secretariat is directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017 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](http://www.rti.gov.pk). The compliance report be submitted to this commission within 10 working days of the receipt of this Order.
27. Secretary, Senate Secretariat 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](http://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.
28. 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: August 16, 2022

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