



**In the Pakistan Information Commission, Islamabad**  
**Appeal No 1895-05/22**

**Shah Mohiuddin**

**(Appellant)**

Vs.

**Federal Board of Revenue**

**(Respondent)**

**ORDER**

**Date:** August 16, 2022

Zahid Abdullah: Information Commissioner

**A. The Appeal**

1. The Appellant filed an appeal, dated May 04, 2022 to the Chairman/ Secretary Revenue Division, Federal Board of Revenue on May 09, 2022, Commission, stating that he submitted an information request to the 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. *"The reasons for asking of copies of Noting's on the files is the that the copy of the Minutes of the Meeting of Department Promotion Committee sent by the Chief Management IR FBR Islamabad which was held on 27-12-2011. (As annexure-D At Page -7-) to consider grant of ante-dated promotion from BS-14 to BS-16 W.e.f 01-11-2004 in pursuance of FST judgment dated 17-08-2011 does not serve the purpose.*

2. *It is surprisingly to note that no finding appeared in the Minute of Meeting about the appellant promotion i.e. neither accepted for promotion nor rejected nor mentioned reasons for not promoting and by pass him by giving promotion to juniors and the Minutes of the meeting in this regard become silent inspite of that the appellant who was senior most Senior Auditor and his name was at the top-2- at page 12- of the promotion list issued by the Board vide its letter C.No.1 (3) M-IV /2004/MR-(IR-III) dated 02-11-2011 (Annexure -E- at page-11).*

3. *Whereas, on perusal of para 5 of the Minutes of the Meeting (Annexure-D- at page-7-), it was noticed that, the DPC recommended fifty six (56) senior most "Serving Senior Auditor" for ante-dated promotion w.e.f. 01-11-2004 Whereas, such word Le. "Serving Senior Auditor has not been used either in the judgment of Hon'bles FST Islamabad dated 17-08-2011(Annexure-F-at page 14) nor in the judgment of Hon'ble Supreme Court of Pakistan dated 18-07 2011 (Annexure-G-al-page-17-). Thus the Committee participants deprived off the appellant from ante-dated promotion from BS-14 to BS-16 w.e.f. 01-11-2004.*

4. *It is therefore requested to ask him to send the copies of the Noting's on the files F.No.1 (35) M-IV/2004(IR-III) of the DPC meeting held on 27-12-2011 to the appellant, wherein the noting's of the following participants of the meeting of the committee contain i.e.*

- |      |                               |          |
|------|-------------------------------|----------|
| i.   | Chief (Management).           | Chairman |
| ii.  | Secretary (Mangement-Cus-II). | Member   |
| iii. | Secretary (Management -IR-I). | Member   |

2. *It is further requested to ask him to send the record (list) of fifty six (56) vacancies of Senior Auditors were available in October, 2005 as mentioned under para-S- in the*

*said Minutes of the Meeting held on 27-12-2011 (As annexure-D at page-7-) interims of Section 6 read with Section 7 of the Right of Access to Information Act, 2017.*

*3. It is once again reiterated that the case of the applicant is pending before the Hon'ble Supreme Court of Pakistan at Karachi and I have to produce the noting on the files along with records of fifty six (56) list of vacancies of Senior Auditors were available in October-2005 before the apex court in the next hearing.*

## **B. Proceedings**

3. The record on the file suggests that the Respondent submitted its response on the intervention of this commission on May 31, 2022 and its text is as under:

“I am directed to refer to Secretary (Compliance), PR. Wing FBR's UO.No.483)S(Compliance-PRy2022/124414-R dated 23.05.2022 on the subject cited above and to state that Right of Access to Information Act, 2007 defines public record as the following:

- a) Policies and guidelines
- b) transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties and functions
- c) information regarding grant of licenses, allotments and other benefits, privileges, contracts and agreements made by a public body.
- d) Final orders and decisions, including decisions regarding to members of public, and.
- e) Any other record which may be notified by the Minister-in-charge of the Federal Government at public record for the purposes of this Act.

2. Section 7 specifically excludes certain record which includes, inter alia, (a) noting on the files, subject to a final decision by the public body, & (b) minutes of meetings, subject to a final decision by the public body. As such the sought information cannot be provided under the Right of Access to Information Act, 2017. Furthermore, as per contention of the appellant he has already moved the Apex Court and if desired by the Apex Court, all data shall then be provided to the Apex Court

3. Pakistan Information Commission may be requested to inform whether the above interpretation of FBR is contrary to the law, in which case; all information shall be provided as per advice of the Pakistan Information Commission”

4. The Appellant submitted his response on June 20, 2022 and its text is as under:  
“Kindly refer to the Registrar, PIC, Islamabad's letter dated June 09, 2022 received on 16-06-2022 by post on the above subject along with the copies of the following letters 1 Acknowledgement Letter dated 17-05-2022

2. Copy of the reply from the Secretary (compliance) CNO4 (3) S (FOL-PATE 2021/129813-R Islamabad, the 01 June, 2022 addressed to the Registrar, PIC Islamabad 3 Along with the copy of the Secretary (HRM-IR-III) letter UO No 2 (66)2009-MIR II/128713-R-dated 31-05-2022, whereby comments/information offered by him

As per advice of the Registrar, PIC, Islamabad's letter cited above, it is to state that I am not completely satisfied with the response of the Public Body viz. Secretary (compliance) CNOA (83) S(FOI-FATE 2021/129813-R Islamabad, the 01 June, 2022, who requested to turn down the request of the applicant in view of para 2 and 3 of the Secretary (HRM-IR-III) letter U.O.No.2 (66)2009 MIR-111/128713-R dated 31-05-2022 (copy enclosed for ready reference).

The parawise comments are offered one by one. Under para 2 of the above U.O.NO. 26 22 Commission Mb2. The respectable officer once again as usual (as I have already complaint lodged in my appeal) twisting the concept of Section 7(a) and (b) or deliberately wrongly interpreting the concept of the sole of Section 7(a) and 7(b) of Right of Access to information Act 2017 by saying that "Section 7 specially excluded record which includes inter alia: (a) "noting on the files, subject to a final decision by the public body and (b) minutes of meetings, subject to a final decision by the public body As such the sought information cannot be provided under the Right of Access to information Act 2017

Although the applicant on many times has clarified the concept of the above provision of the section to the above respectable officer in terms of Hon'ble Pakistan Information Commission verdict given in one of case viz Appeal No E233-02/21 Announced on April 28, 2022 that, Discussion and Commission's View on Relevant Issues 9 "Even plain

reading of Section 7 (a), (b) and (c) suggests that "noting on the files', 'minutes of the meeting' and intermediary opinions are given qualified and not absolute exclusion from disclosure. Exclusion of 'noting on the file and 'minutes of the meetings' is subject to a final decision. As such, noting on the file' and 'minutes of the meeting cannot be shared during the deliberative process. 10. The disclosure of minutes of meetings" and "noting on the file during the deliberative process is protected to ensure that outside influence does not create hindrances in the deliberative process. 11. However, once a public body has taken a final decision, as is the case in the instant appeal, noting on the files and minutes of the meetings cannot be treated as excluded records"

But he did not bother to honor to this explanation and ignored the sole of the provision of Section 7(a) & (b) of Right of Access to information Act 2017.

Regarding the Apex Court,

The contention of the respectable officer is not tenable and is rejectable on the following grounds. In this respect it is to state that it is the responsibility of the Appellant/Petitioner to arrange all the evidence and proof to place before the Hon'ble Supreme Court/Apex Court during the course of hearing to take correct decision while deciding the case of the appellant and it is not the responsibility of the Apex Court to arrange the evidence on behalf of the appellant

Under this para the respectable officer enquired whether the interpretation of FBR contrary to the law; Answer:

Yes, the interpretation of the FBR of respectable officer is contrary to the law i.e. Right of Access to Information Act, 2017(2) It shall apply to all public bodies of the Federal Government (3) It shall come into force at once.

WHEREAS Government believes in transparency and the right to have access to information to ensure that the people of the Islamic Republic of Pakistan have improved access to records held by public authorities and promote the purposes of making the Government more accountable to its people, of improving participation by the people in public affairs, of reducing corruption and inefficiency in Government, of promoting sound economic growth, of promoting good governance and respect for human rights,

Thus the Public bodies of the Federal Government is bound to responds to the request of the applicant in terms of Section 6 and Section 7 read with Section 14 Right of Access to Information Act, 2017

Lastly the applicant is requested from the Hon'ble Chief Information Commissioner, PIC, Islamabad to pass an order against FBR to provide all information's requested by the applicant under his Appeal NO.1895-05/22 i.e.

The copies of the Noting's on the files F.No.1 (35) M-IV/2004(IR-III) of the DPC meeting held on 27-12-2011 to the appellant, wherein the noting's of the following participants of the meeting of the committee i.e.

- |      |                                      |                 |
|------|--------------------------------------|-----------------|
| i.   | <i>Chief (Management).</i>           | <i>Chairman</i> |
| ii.  | <i>Secretary (Mangement-Cus-II).</i> | <i>Member</i>   |
| iii. | <i>Secretary (Management –IR-I).</i> | <i>Member</i>   |

The record (list) of fifty six (56) vacancies of Senior Auditors were available in October, 2005 as mentioned under para-5- in the said Minutes of the Meeting held on 27-12-2011 (As annexure-D at page-7-) in terms of Section 6 read with Section 7 of the Right of Access to information”.

5. Hearing on the instant Appeal was fixed for July 21, 2022 vide letter dated June 29, 2022. The Respondent was represented by Ashfaq Masood designation Secretary and department Federal Board of Revenue

*The Respondent submitted its response and its text is as under:*

<i>Appellant Point of View</i>	<i>Para wise Reply</i>
<p><i>The respectable officer once again as usual (as I have S already complaint lodged in my appeal) twisting the In concept of Section 7(a) and (b) or deliberately wrongly interpreting the concept of the sole of Section 7(a) and " 7(b) of right of Access to information Act 2017 by N saying that "Section 7 specially excluded record which ar include, inter alia: (a) "noting on the files, subject to a pe final decision by the public body: and (b) "minutes of meetings subject to a final decision by the public body. As such the sought information cannot be provided under the right of Access to information Act 2017"</i></p> <p><i>Although the applicant on many times has clarified the concept of the above provision of the section to the above respectable officer in terms of Hon'ble Pakistan (c Information Commission Verdict given in one of case viz Appeal No E233-02/21 Announced on: April 28,2022 that;</i></p> <p><i>Discussion and Commission's View on Relevant Issues (a 9. "Even plain reading of Section 7(a),(b) and (c) suggests that noting on the files' minutes of the meeting' and intermediary opinions are given qualified and not absolute exclusion from disclosure. Exclusion (e of noting on the file' and 'minutes of the meetings' is subject to a final decision. As such, 'noting on the file' and 'minutes of the meeting' cannot be shared during the deliberative process. 10. The disclosure of 'minutes of meetings' and 'noting on the file' during the deliberative process is protected to ensure that outside influence does not create hindrances in the deliberative (f process. 11. However, once a public body has taken a final decision, as is the case in the instant appeal, noting on the files and minutes of the meetings cannot be treated as excluded records".</i></p> <p><i>But he did not bother to honor to this explanation and ignored the sole of the provision of Section 7(a) &amp; (b) of rights of Access to information Act 2017.</i></p>	<p><i>Section 7 of the Right of Access to Information Act 2017 provides:</i></p> <p><i>"Exclusion of certain record Nothing contained in section 6 shall apply to the following record of all public bodies, namely:</i></p> <p><i>(a) Noting on the files, subject to a final decision by the public body. (b) Minutes of meetings, subject to a final decision by the public body.</i></p> <p><i>(c) Any intermediary opinion or recommendation, subject to a final decision by the public body.</i></p> <p><i>(d) Record of the banking companies and financial institutions relating to the accounts of their customers. (e) Record relating to defense forces, defence installations or connected therewith and ancillary to defence and national security excluding all commercial and activities. welfare</i></p> <p><i>(f) Record declared as classified by the Minister-in-charge of the Federal Government</i></p> <p><i>Provided that the Minister in-charge of the Federal Government shall have to record reasons as to why the harm from disclosure of information outweighs public interest and further that information pertaining 10 allegation of corruption and violation of human rights shall not be excluded.</i></p> <p><i>f) Record relating to the personal privacy of any individual, and h) Record of private documents furnished to a public body either Off an express or implied condition that information contained 17 any SHCH documents shall not be disclosed to a third party</i></p> <p><i>As it is evident from the above, this section specifically excludes certain record including noting on the files, subject to a final decision by the public body As such the sought information cannot be provided under this Act.</i></p> <p><i>Although copy of the decision dated 28.04.2022 in Appeal No E233 02/21 has not been provided by the appellant, however, each case has its own merits.</i></p> <p><i>Section 7 of the Right of Access to Information Act, 2017 is derived from Article 19-A of the</i></p>

	<p><i>Constitution of Pakistan, 1973 which is reproduced herein:</i></p> <p><i>"19-A Right to information: Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imparted by Law"</i></p> <p><i>It appears that the applicant failed to appreciate the fact the request for information required was in the ambit of reasonable restriction as provided by the Article 19-A of the Constitution of Islamic Republic of Pakistan.</i></p>
<p><i>Regarding the Apex Court</i></p> <p><i>The contention of the respectable officer is not tenable and is rejectable on the following grounds; In this respect it is to state that it is the responsibility of the Appellant/Petitioner to arrange all the evidence and proof to place before the Hon'ble Supreme Court/Apex during the course of hearing to take correct decision while deciding the case of the appellant and it is not the responsibility of the Apex Court to arrange the evidence on behalf of the appellant.</i></p>	<p><i>The appellant is not supposed to reject the contention of FBR until it is done so by a competent court of law.</i></p> <p><i>On an express nor implied condition that information contained in any such documents shall not be disclosed to a third party."</i></p> <p><i>As it is evident from the above, this section specifically excludes certain record including noting on the files, subject to a final decision by the public body. As such the sought information cannot be provided under this Act.</i></p> <p><i>Although copy of the decision dated 28.04.2022 in Appeal No E233 02/21 has not been provided by the appellant, however, each case has its own merits.</i></p> <p><i>Section 7 of the Right of Access to Information Act, 2017 is derived</i></p> <p><i>from Article 19-A of the Constitution of Pakistan, 1973 which is reproduced herein:</i></p> <p><i>"19-A Right to information: Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imparted by Law"</i></p> <p><i>It appears that the applicant failed to appreciate the fact the request for information required was in the ambit of reasonable restriction as provided by the Article 19-A of the Constitution of Islamic Republic of Pakistan.</i></p>

<p><i>Regarding the Apex Court</i></p> <p><i>The contention of the respectable officer is not tenable and is rejectable on the following grounds; In this respect it is to state that it is the responsibility of the Appellant/Petitioner to arrange all the evidence and proof to place before the Hon'ble Supreme Court/Apex during the course of hearing to take correct decision while deciding the case of the appellant and it is not the responsibility of the Apex Court to arrange the evidence on behalf of the appellant.</i></p>	<p><i>The appellant is not supposed to reject the contention of FBR until it is done so by a competent court of law.</i></p>
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**C. Issues**

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

- (a) Has the Respondent followed the procedure enunciated in the Act, 2017 for responding to the information request?
- (b) At what stage notings on the file, minutes of the meeting and intermediary opinions become public documents under the Act, 2017? and
- (c) Can access to information/records be denied on the ground of lis alibi pendens?

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

7. The Respondent has maintained that “Section 7 specifically excludes certain record which includes, inter alia, (a) noting on the files, subject to a final decision by the public body, & (b) minutes of meetings, subject to a final decision by the public body. As such the sought information cannot be provided under the Right of Access to Information Act, 2017”.

8 This commission has held through its earlier Orders that minutes of official meetings, notings on the files and intermediary opinions are exempted from disclosure under Section 7 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, intermediary opinions and notings on files 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.

9 The disclosure of ‘minutes of meetings’, ‘intermediary opinions and ‘notings on the files’ 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, as is the case in the instant appeal, minutes of the meetings cannot be treated as excluded records.

8. The Respondent has also stated that “as per contention of the appellant he has already moved the Apex Court and if desired by the Apex Court, all data shall then be provided to the Apex Court”.

9. This commission maintains that access to the requested information cannot be denied on the grounds of lis alibi pendens. This commission has maintained through its different Orders that pendency of the writ petition between the parties does not bar the provision of information under the Act unless specifically barred by the court itself, or, under the provisions of the Act. Therefore, the contention of the Respondent does not hold water.

10. The right of access to information in matters of public importance is guaranteed protection under the Constitution of the Islamic Republic of Pakistan through Article 19-A which states:

“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”

11. Our ability to exercise our fundamental right of access to information enables us to attain our other fundamental rights such as gainful employment, right to life, right to clean drinking water, right to breathe in clean air and right to healthcare services etc. In fact,

the constitutional right of access to information helps citizens in the exercise of right of access to justice as well by having access to records/information to effectively present their cases in the court of law.

**E. Order**

12. The Appeal is allowed. The Respondent is directed to provide the Appellant information requested in para 2 of this Order at the earliest but not later than 7 working days of the receipt of this Order, with intimation to this office.
13. Copies of this order be sent to the Respondent 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 7 (seven) pages, each page has been read and