

**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 1913-05/22

Nadeem Umer

(Appellant)

Vs.

Islamabad Healthcare Regulatory Authority

(Respondent)

ORDER

Date: October 04, 2022

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated January 18, 2022 to the Commission, stating that he submitted an information request to the Secretary, Ministry of Information Technology & Telecommunication on December 30, 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:

“Being a citizen of Pakistan, I want to avail the opportunity to request you for the following information in the best public interest. You are requested to provide information in soft form (pdf format) on email nadeeumer6@gmail.com List of the registered Healthcare Establishments

(HCE) in ICT, along with the complete address, contact number, ner name and qualification, administrator name and qualification and category of the Establishment

- i. List of the health facility in HCEs to whom license are issued in ICT, along with the name of faculty members, number of beds, number of operation theaters, address and contact number etc Please provide the list of the Govt. HCEs in ICT to whom the license is issued along with the name of faculty
- ii. Members, number of beds, number of operation theaters, address and contact number etc
- iii. Whether IHRA visits these HECs to check the standard of the facilities provided there, Teports of the visits conducted from January 01, 2020 to date. if yes, please provide the
- iv. Please provide the details that how many notices are issued to the HCEs till date, along with the list of the HCEs to whom the notices are issued.
- v. List of the HECs on which fine has been imposed from Jan 2020 to date, along with the copies of the order/notices issued to them. Also provide information whether they have deposited fine or not
- vi. Total number of complaints received against the HCEs & Quacks in ICT so far, how many of them are resolved along with the details of the action taken on them Provide copies of the complaints received against HCEs & Quacks from Jan 2021 to date, along with the details of the action taken on them.
- vii. Did IHRA has any data which show number of illegal HCE & quacks in ICT, If yes, please provide copy of the report/survey conducted in this regard
- viii. Did the IHRA takes action on news published on air in on newspaper or tv channels, if so, please provide the list of the news along with the summary of the action taken on them from Jan 2018 to date.
- ix. Total number of the complaints that are forwarded to the Pakistan Medical and Dental Council (PMDC)/Pakistan
- x. Medical Council (PMC) from Jan 2018 till to date
- xi. Did PMC/PMDC share findings of the complaints forwarded by your department to them, if so, please provide the reports sent by PMDC/PMC to IHRA from Jan 2018 till to date
- xii. Provide copy of the SOP for the follow-up of the complaints forwarded to PMDC/PPMC.”

B. Proceedings

3 The record on the file suggests that the Respondent submitted its response on the intervention of this commission on September 22, 2022 and its text is as under:

“Reference to the order of honorable Pakistan Information Commission (Commission) in appeal no. 1913-05/2022 dated 15-09-2022. regarding submission of comments on the request of appellant, it is humbly submitted that in compliance with the order of honorable Commission, designated officer of the Islamabad Healthcare Regulatory Authority (Authority) seek details from all relevant departments regarding information of record requested by the appellant in his request. Registration Department has shared details regarding information or record mentioned in the request relevant to the registration department, however, information and record from department of inspection, complaints and media is still awaited, which will be provided within 3 to 4 working days, therefore, in these circumstances it is humbly requested to grant the Authority reasonable time or opportunity to submit the comments on the request of the appellant. The Authority shall be thankful to you”

3. Hearing on the instant Appeal was fixed for September 29, 2022 *vide letter dated September 22, 2022. The represented by Hamza Akhtar, Consultant Legal, Islamabad healthcare Regulatory Authority.*

5 *The Appellant submitted his response on September 30, 2022 and its text is as under:*

“That appellant badly failed to follow the procedure prescribed in the Right of Access to Information Act, 2017 (Information Act) and rules made thereunder. Under section 11 (1), appellant was required to make a request to a public body through its 'designated official' but he failed to do so as no request was made to Chief Executive Officer of the IHRA being a "Principal Officer" of the Authority under section 9 of the Information Act

Furthermore, appellant also failed to follow the procedure mentioned in section 11(2) of the Information Act, which provide that "a request shall be made in any manner in which the public body has the facilities to receive it, including in person, by mail, fax, online or e-mail", however, It is pertinent to mention here that appellant failed to submit the request on the available facility to receive it, appellant neither submit in person, or by mail or on a relevant section available on the website named as "Contact Us" and Instead of this appellant simply and strangely sent the request to the e-mail of the three ssion officials of the IHRA, there is no legal justification to the procedure adopted by the appellant and it is an issue to be addressed that why appellant ignored the relevant section of "Contact Available on the official website of the IHRA being facility to receive request under section 11(2) of the Information Act. That appellant sent the request on three email addresses, however, it is pertinent mention here that one of the officials was not officer of the public body in term of rule 6 of the right of Access to information nules 2019 (rules) as he felt the HRA prior to: the request of the appellant, therefore, he was not officer under rule 6 of the rules and for the same reason was not bound to inform the designated officer. Furthermore, on rest of the two emails, the request was found in 'spam folder, when an inquiry was confucted after receiving notice of appeal from Pakistan Information Commission. although it is not the mistake of the appellant, but it is also not the officials or the IHRA to be blamed. However, it is worth mentioning that the appellant received no acknowledgment of intimation from any official of the IHRA as mentioned in section 13 of the Information Act or under rule 6 of the rules respectively, because the request was never received or came into the knowledge of the IHRA or its officials, furthermore, the appellant was reluctant to counter check or inquire about the status of his request made to the IHRA, but at the same time he was overcharged that he filled instant appeal against the IHRA for complying with the request of the appellant. This shows bad intention of the appellant to keep the public bodies engage in unnecessary litigations and camouflage the procedure mentioned in the relevant law. This non observance or implementation of different provisions and procedure mentioned in the Information Act and rules has caused prejudiced to the rights of the IHRA, as it has left with no time to consider the request and information and record seek by the appellant, and to fulfill the pre-requests which are required to be met in case of some information having interest of any third party. Under these circumstances this appeal shall be dismissed and appellant shall be directed to make a fresh request in accordance with the provisions of the right of access to information Act, 2017 and its rules of 2019, and upon that request, information or record seek by the appellant will be provided to the appellant according to the provisions of the Right of Access to Information Act, 2017 and rules of 2019 made thereunder.

Para-wise comments Respectfully stated,

1. That 111 applications for registration have been received to IHRA for registration and as many as 678 Healthcare Establishments have been provisionally registered with the THRA. That basic details of these healthcare establishment consisted of more than 150. Pages Which shall be provided to the appellant according to the provisions of the Right of Access to Information Act, 2017 on prior submission of fee as prescribed. It is also Important to mention here that information regarding personal privacy and private documents shall not be provided as same has protection under the relevant law

2. That no license has been issued to any Healthcare Establishment (HCEs) in ICT. therefore. IHRA is unable to provide the information or list requested in serial no.2 of the request

That no license has been issued to any Government Healthcare Establishment (HCEs) in ICT, therefore, IHRA is unable to provide the information requested in serial No. 3

4. Yes. IHRA do visits HCEs in ICT, but on General safety checklist, however, it is worth mentioning that IHRA has recently formulated its standards and it will start inspection to make compliance to these standards. It is also pertinent to mention here that IHRA started its operation of inspection only in March 2021 therefore, IHRA only have reports from March 2021 to date, however, IHRA cannot provide copies of these reports because these reports also contain details relating to the personal privacy of individual. which has protection under the Right of access to Information Act, 2017. Moreover, IHRA believes that inspections report of the IHRA do not fall under the definition of "record as defined in the Right of access to Information Act, 2017 and its non-provision will have no effect or repercussions on the public at large, meaning thereby that it is not a matter of public Importance as enumerated in article 19A of the Constitution. Furthermore, provision of inspection reports also falls under exemption under section 16(b)(i) and (ii) and also under section 16 (b).

5. That 795 notices have been issued to different HCEs till date, around 700 HCEs were served with notices, and list shall be provided on submission of fee 6. Fine has been imposed on approximately 211 HCEs and as many as 165 HCEs have deposited fine. However, IHRA cannot provide copies of the orders notices, because these orders notices may also contain details relating to the personal privacy of individual, moreover, IHRA believes that notices/orders of the IHRA do not fall. under the definition of "record" as defined in the Right of access to Information Act, 2017, and its non-provision will have no effect or repercussions on the public at large. meaning thereby that it is not a matter of public Importance as enumerated in article 19A of the Constitution. Furthermore, provision of inspection reports also falls under exemption under section 16 (b) (i) and (ii) and also under section 16 (h).

7 700 complaints have been received to IHRA through Pakistan Citizen Portal, as many as 690 has been resolved and 10 are pending. Moreover, 49 complaints have been filed under section 33 of the IHR Act, 2018 and out of 49, twenty (20) complaints are in process, twenty-two (22) have been resolved, 3 were closed with mutual consent of the parties and 19 were decided on merits and fine was imposed in cases where HCEs were found guilty of contravention of the provisions of the IHR Act, 2018 and seven (7) have been dropped due to lack of jurisdiction of IHRA

8. Copies of the complaints received cannot be provided as same do not fall under the definition of the 'record' as defined in the Right to Access of Information Act, 2017, furthermore, complaints also contain details falls under personal privacy under section 7(g) and basis on record of private documents under section 7 (h) of the Right to Access of Information Act, 2017. Provisions of these details and copies shall affects the feeling and rights of the complainants. Furthermore, its non-provision will have no effect or repercussions on the public at large, meaning thereby that it is not a matter of public Importance as enumerated in article 19A of the Constitution. Furthermore, provision of these complaints also falls under exemption under section 16 (b) (i) and (ii) and also under section 16 (h).

9. No. IHRA, so far, does not have any data which shows exact number of illegal HCES and quacks in ICT, however, IHRA is please to state that its census in ICT in being conducted and it will be shared on official website of the IHRA once it is completed. therefore, no copy of such report or survey can be provided at this time.

10. THRA pleased to submit that it takes action on the complaints or information received through any source, and different newspapers and tv channels write about actions taken by IHRA, however, there has been no case where IHRA initiated action purely on the basis of the news on newspaper or tv channels.

11. No complaint has been forwarded to the PMC or PMDC so far

12. Base on serial no.11 above, no findings have been shared by the PMC or PMDC, similarly no report can be provided.

13. IHRA do have SOPs in place for the follow up regarding complaints forwarded to PMDC/ PMC and same will be provided to the appellant.

Submitted for your information and necessary action according to prevailing law.

6 The Appellant shared his rejoinder to the response/information shared by the Respondent through E-mail dated October 06, 2022 and its text is as under:

“it is submitted that I have received the response of the Islamabad Healthcare Regulatory Authority.

I am not satisfied with the response of the public body on the following grounds,

The public body is asking to submit fee for the provision of the record, while in my information request I have clearly mentioned that I need this record in soft form. The public body can provide me the required information on email or in google drive. I am also ready to provide them with a USB / CD for this record.

I believe that the inspection reports are also public record, as on the basis of these inspection reports the citizen will be able to determine the quality of the health facilities provided in the hospitals or health units. It is pertinent to mention that inspection reports are declared public record by the Indian Information Commission, here are the links of some case studies,

"Will Benefit Students" : CIC Directs Bar Council Of India To Publish Inspection Reports Of Law Colleges On Website

Link: >> <https://www.livelaw.in/top-stories/cic-directs-bar-council-of-india-to-publish-inspection-reports-of-law-colleges-on-website-201011>

Link >> Read more at: <https://www.goodreturns.in/news/rbi-makes-public-inspection-report-of-city-union-bank-under-rti-act-1259894.html>

Moreover, the respondent has refused to share the copies of the order and final report regarding the health units which are fined. I believe that this is also public record and these orders and notifications should be available on the website of the Commission which will help the citizen to determine the standard and quality of the services provided there.

I believe that all the requested information is public record under the right of access to information act, 2017 however, the respondent can hide/blur the personal information of the hospital owner or patients only”.

C. Issues

7 The instant appeal has brought to the fore the following issues:

- (a) Can the instant Appeal be dismissed on the ground that the Appellant did not properly file the request for information as claimed by the Respondent?
- (b) **Can motives of the Appellant be a factor in deciding whether the requested information is to be provided or not?**
- (c) Has the Respondent provided all the information to the Appellant permissible under the Right of Access to Information Act, 2017, henceforth referred to as the “2017 Act”?

- (d) **Can finalised inspection reports be shared disclosed?**
- (e) **Can personal information of an identifiable individual be severed/separated from records and shared with the Appellant?**
- (f) **How is the cost of fee to be charged for providing the requested information?**

D Discussion and commission's views on relevant issues:

8 In the instant Appeal, the request for information was received by the Respondent public body, hence the appeal is maintainable.

9 This commission holds that the Respondent, instead of dwelling upon the motives of the Appellant for seeking the information, should have decided on his request for information under the provisions of the Act, 2017.

10 The record on the file demonstrates that while the Respondent has provided some of the requested information to the Appellant, some of the items of the requested information have yet not been provided.

11 This commission holds that the Respondent, instead of dwelling upon the motives of the Appellant for seeking the information, should have decided on his request for information under the provisions of the Act, 2017.

12 The Respondent submitted that *“basic details of these healthcare establishment consisted of more than 150. Pages Which shall be provided to the appellant according to the provisions of the Right of Access to Information Act, 2017 on prior submission of fee as prescribed”*. The Respondent also submitted that *“That 795 notices have been issued to different HCEs till date, around 700 HCEs were served with notices, and list shall be provided on submission of fee”*.

13 The Act, 2017 takes precedence over all other laws with regard to what information is to be shared, how is it to be shared and what fee will be charge.

14 The assertion of the Respondent that the Appellant should pay in advance cost of the time of its employees for providing the requested information does not hold water.

15 In the instant Appeal, the Appellant has described his preferred mode of access to information by providing his E-mail address in his request for information and has sought soft copies of the requested information/records. In this connection, Rule 4 (1) (b) of the Right of Access to Information Rules, 2019 is relevant which is as under:

“The form in which the applicant needs access to information, for such as photocopy, CD, video or audio clip”.

16 So far as the cost of CD, diskette, floppy, cassette, video or any other electronic device containing information is concerned, the Schedule of Costs, notified by Pakistan Information Commission In exercise of the powers conferred by Section 27 (b)of the Act 2017 states that public bodies shall only charge the actual cost of such a device, as determined on the basis of official procurement record. However, no cost is to be charged if the applicant provides his or her own device and requires only an electronic copy of the information.

17 This commission holds that the requested information about “List of the health facility in HCEs to whom license are issued in ICT, along with the name of faculty members, number of beds, number of operation theaters, address and contact number etc. Please provide the list of the Govt. HCEs in ICT to whom the license is issued along with the name of faculty” is public information and should be provided to the Appellant. The soft copy of the requested list can be shared through E-mail provided by the Appellant; therefore, no fee is applicable.

18 This commission maintains that finalised inspection reports not only be disclosed to the Appellant but also be made available on the web site of the Respondent as required under Section 5 (1) (i) of “the 2017 Act”.

19 The Respondent has submitted that it “cannot provide copies of the orders notices” and “Copies of the complaints” because these may also contain details relating to the “personal privacy of individual, moreover, IHRA believes that notices/orders of the IHRA do not fall. under the definition of "record" as defined in the Right of access to Information Act, 2017”.

20 This commission holds that “the orders notices” and “the complaints are public documents and their copies certified in the manner described in Section 13 (3) of the “2017 Act” be shared with the Appellant after severing/separating personal information of identifiable individuals. The disclosure of complaints is not hit by any of the exemption clauses of the “2017 Act”.

21 *This commission has observed that public officials have limited understanding about right to privacy when juxtaposed with the right of access to information held by public bodies. Privacy/personal information is understood to be, broadly speaking, information/data pertaining to access control (username and/or password), financial information such as bank account, credit card, debit card, or other payment instruments, and, passports, biometric data, and physical, psychological, and mental health conditions, medical records, and any detail pertaining to an individual's ethnicity, religious beliefs etc.*

22 *The Act, 2017 envisages a situation wherein a document, which should be otherwise be made public but its parts may contain private information. In such an eventuality, the part containing private information can be severed from the document as mentioned in Section 16 (1) (i) of the Act, 2017.*

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 It is pertinent to mention here that this commission has maintained through its different Orders that the information, proactively published under Section 5 of the Right of Access to Information Act 2017, should be 'accessible' for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. Apart from the interpretation of 'accessible' in section 5 of the Act, section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 requires federal public bodies to ensure accessibility of web sites to the special needs of persons with disabilities and it is as under:

“The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.

E. Order

25 The Appeal is allowed. The Respondent is directed to provide the Appellant the remaining requested information at the earliest but not later than 7 working days of the receipt of this Order, with intimation to this office.

26 The Respondent 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. The compliance report be submitted to this commission within 10 working days of the receipt of this Order.

27 The Respondent 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. 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 Respondent and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on:

October 07, 2022

This order consists of 12 (twelve) pages, each page has been read and signed.