

Pakistan Information Commission

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In Pakistan Information Commission

Appeal No 437-07/20

Rana Asadullah Khan

(Appellant)

Vs.

Zafar Iqbal Khan – Director / Public Information Officer

National Accountability Bureau

(Respondent)

Order

Date: October 29, 2020

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 29-06-2020, to the Commission, stating that he Submitted an information request to the Chairman, National Accountability Bureau dated 14-05-2020 under the Right of Access to Information Act 2017.
2. The information sought by the Appellant is as follows:
 1. “Details of personal assets of the currently serving officer in your organization / statutory body namely, Chairman, Deputy Director, Director and regional Director General that they owned before joining National Accountability Bureau along with the details of assets owned at present as you are custodian of all necessary information required under 10.10 of NAB Employees Terms and Conditions of Service (TCS), 2002.
 2. Details of assets owned by the immediate family members (Wives, Children, siblings, parents etc.) defined in 10.01 of NAB Employees Terms and Conditions of Service (TCS), 2002 of currently serving officers in your organization/statutory body namely, Chairman, Deputy Director, Director and regional Directors General that they owned before the aforementioned officers joined National Accountability Bureau along with details of assets owned at present.”

B. Proceedings

3. Through a notice dated 22-07-2020 sent to the Mr. Zafar Iqbal Khan, Director / Public Information Officer NAB, the Commission called upon the Respondent to submit reasons for not providing the requested information.
4. In response to the notice of the commission, the Respondent through a letter vide No. 1(001)/DM-1/NAB HQ/2019 dated 30th July 2020 stated that the matter was discussed at appropriate leave and competent authority has decided that the requisite information cannot be shared as the information sought is protected u/s 7(g) of the Right of Access to Information Act 2017.
5. Through the Interim Order issued on September 22, 2020; the commission observed that “this commission has already maintained that mere reference to an exemption clause does not mean that a public body has acted in accordance with the provisions of the Right of Access to Information Act 2017. This commission is of the view that right to privacy is a sacred right and any information which infringes personal privacy of an individual should be protected. The PIO is directed to assist the commission by submitting answer to the following question in writing on or before the date of hearing:

How does harm from disclosure outweighs public interest if the requested information is disclosed ensuring that any information like health condition, personal communication, bank account numbers, CNIC details, phone numbers and residential addresses is not made public? The PIO, National Accountability is directed to appear before the commission in the hearing to be held on October 08, 2020”.
6. The PIO did not attend the hearing. The Appellant was represented by Tariq Bashir Advocate.
7. Tariq Bashir Advocate made following submissions to assist the commission:

“ Proposition - How does harm from disclosure outweighs public interest if the requested information is disclosed ensuring that any information like health condition, personal communication, bank account numbers, CNIC details, phone numbers and residential addresses is not made public?”

Law:

The Right of Access to Information Act 2017

Preamble: 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;

AND WHEREAS it is expedient to provide for a law which gives effect to the fundamental right of access to information, as guaranteed under Article 19A of the Constitution of the Islamic Republic of Pakistan and international law, whereby everyone shall have the right to have access to all information held by public bodies subject only to reasonable restrictions imposed by law, and for matters connected therewith or incidental thereto;

Relevant sections:

Section 5(i) pertaining to Publication and availability of record, Section 11(5), no condition to provide reason for the request to get information along with the rest of the relevant and enabling provisions of the Act of 2017.

National Accountability Ordinance 1999

Preamble: WHEREAS it is expedient and necessary to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, 1[misuse or abuse] of power 2[or authority], misappropriation of property, taking of kickbacks, commissions and for matters connected and ancillary or incidental thereto;

AND WHEREAS there is an emergent need for the recovery of outstanding amounts from those persons who have committed default in the repayment of amounts to Banks, Financial Institutions, 3[Governmental agencies] and other agencies;

AND WHEREAS there is a grave and urgent need for the recovery of state money and other assets from those persons who have misappropriated or removed such 2[money or] assets through corruption, corrupt practices and misuse of power*4 or authority;

5 [AND WHEREAS there is an urgent need to educate the society about the causes and effects of corruption and corrupt practices and to implement policies and procedures for the prevention of corruption in the society;]

6 [AND WHEREAS there is an increased international awareness that nations should co-operate in combating corruption and seek, obtain or give mutual legal assistance in matters concerning corruption and for matters connected, ancillary or incidental thereto;]

AND WHEREAS it is necessary that a National Accountability Bureau be set up so as to achieve the above aims;

AND WHEREAS the National Assembly and the Senate stand suspended in pursuance of the Proclamation of the fourteenth day of October, 1999, and the Provisional Constitution Order No.1 of 1999, as amended;

AND WHEREAS the President is satisfied that circumstances exist which 1[render] it necessary to take immediate action;

NOW THEREFORE, in pursuance of the aforesaid Proclamation and Provisional Constitutional Order as well as Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance: -

NAB Employees Terms and Conditions of Services 2002:

10.10 Declaration of Property:

(1) Every employee shall, at the time of entering service of the NAB, make a declaration, through usual channels, in the case of the basic pay scale 20 and above to the Chairman and in the case of employees in basic pay scale 19 and below to the Director General (Administration), of all immovable and movable properties including shares, certificates, securities, insurance policies and jewelry having a total value of Rs 500,000/- (Rupees five lac only) or more belonging to or held by him or member of his family and such declaration shall:

(emphasis added)

- a) state the District within which the property is situated;
- b) show separately individual items of jewelry exceeding Rs 500,000/- (Rupees five lacs only) and
- c) give such further information as the NAB may, by general or special order, require.

(2) Every Employee shall submit to the Chairman, as the case may be, to the Director General (Administration) through normal channels, an annual return of assets in the month of December showing any increase or decrease of property as shown in the declaration under sub-para (1) or, as the case may be, the last annual return.

10.11 Assets to be disclosed:

An employee shall as and when he is so required by the NAB, by general or special order, furnish information as to his assets disclosing liquid assets and all other properties, movable and immovable, including shares, certificates, insurance policies and jewelry.

Pakistani Case Laws

Province of Punjab v Qaisar Iqbal, PLD 2018 Lahore 198

Before Abid Aziz Sheikh, Shahbaz Ali Rizvi and Qazi Muhammad Amin Ahmed, JJ

77. In regard to the functioning of Government, disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest. Where the State is protecting information relating to the matter of public importance, the Court has to perform a balance exercise between two competing dimensions of public interest namely the right of the citizen to obtain disclosure of information which competes with the right of the State to protect the information on the basis of exceptions which in this case are provided under section 13 (1)

(a) and (f) of the Act of 2013. Court has to perform balancing exercise and after weighing the one competing aspect of the public interest against other, decide where balance lies. If Court comes to the conclusion on the balance and under the principle of proportionality that disclosure of information would cause greater injury to the public interest, than its non-disclosure, the Court would hold the objection to the disclosure and not allow the document to be disclosed but if on the other hand, the Court found that balance between two competing interests lies other way, the Court would order for disclosure of document.

78. Aharon Barak (renowned Jurist and visiting Professor at "Yale Law School" USA), in his book "Proportionality" defined Test of Proportionality as under:-

—The **test of proportionality** is the proportional result or proportionality strictosensu. This is the most important of proportionality's test. What does the test require? According to proportionality strictosensu, in order to justify a limitation on a constitutional right, a proper relation (proportional) in the narrow sense of the term) should exist between the benefits gained by fulfilling the purpose and the harm caused to the constitutional right from obtaining that purpose. This test requires a balancing of the benefits gained by the public and the harm caused to the constitutional right through the use of the means selected by law to obtain the proper purpose. Accordingly, this is a test balancing benefits and harm. It requires an adequate congruence between the benefits gained by the law's policy and the harm it may cause to the constitutional right".

In same book, Barak also discuss centrality role of balancing as under:--

"**Balancing** is central to life and law. It is central to the relationship between human rights and the public interest, or amongst human rights. Balancing reflects the multi-faceted nature of the human being, of society generally, and of democracy in particular. It is an expression of the understanding that the law is not all or nothing. Law is a complex framework of values and principles, which in certain cases are all congruent and lead to one conclusion, while in other situations are in direct conflict and require resolution. The balancing technique reflects this complexity. At the constitutional level, balancing enables the continued existence, within a democracy, of conflicting principles or values, while recognizing their inherent constitutional conflict. At the sub-constitutional level, balancing provides a solutions level, balancing provides a solution that reflects the values of democracy and the limitations that democracy imposes on the majority's power to restrict individuals and minorities in it. "

...

80. The same balancing test will apply where the right to disseminate information conflicts with private interest of an individual and Court will have to determine whether public interest will prevail over private interest. Right of access to information is a justiciable right of the people under Articles 19 and 19-A of the Constitution. Even scheme of Act of 2013 and language employed thereof depicts that right of excess to information is to be provided unless its disclosure on balance would be contrary to the

public interest. This Court in *Waheed Shahzad Butt v. Federation of Pakistan and others* (PLD 2016 Lah. 872) held that duty of public body to disclose and provide information/record is thus displaced by exclusions only if public interest in disclosing information/record sought is outweighed by public interest in maintaining exclusions.

81. **Now first applying the test of "proportionality" and "balancing" to actual or likely harm to "public order" on disclosure of report, we have noted that the word "public order" is not defined in Act of 2013.** However, the "Public Order" is what the French call 'ordrepublique' and is something more than ordinary maintenance of law and order situation. The test to be adopted in determining whether a particular act affects merely law and order leaving the tranquility of the society undisturbed. Every breach of the peace does not lead to public disorder. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society.

82. During course of the Court proceedings, we were presented the report of the Tribunal for our perusal in Chamber. In said report, it was nowhere stated or apprehended by the Tribunal that this report should not be disclosed or its disclosure will cause or likely to cause harm to public order. We have also found substance in argument of the respondents that when after incident of Model Town, which resulted to loss of many lives and according to Government own stance (in request letter dated 17.06.2014) also created unrest in general public and attracted attention of local and international media, the situation after incident not went beyond ordinary maintenance of law and order, then there is no reason to apprehend that disclosing of real facts regarding the incident, will cause or likely to cause harm to public order.

83. The exceptions and restrictions under section 13 of the Act of 2013 being serious encroachment of the freedom of speech and right of information under Articles 19 and 19-A of the Constitution, the harm or likely harm to "public order" must be proved. It is not permissible to restrain right to information or freedom of expression merely on the basis of speculative possibility of harm or prejudice to public order but the information must be of such as would create real and substantial risk of prejudice and harm to public order.

84. The appellants have not shown the real or substantial risk of harm to public order from disclosure of report, which will be beyond more than ordinary maintenance of law and order situation. In any case, looking at the reasons for constitution of Tribunal by Government itself, by applying the test of "proportionality and balancing", the public interest to disclose report to public will easily predominate and outweigh the pleaded exception of public order apprehension.

85. Now we apply the same test of balancing to the exception of "administration of

justice". In present case, the task assigned to the Tribunal was to find out the real facts, causes of the incident, fix responsibility if any, measures taken and pre and post handling of the incident. The subject matter of the report was regarding the duties of the administration or their negligence to perform such duties but it had no nexus with the determination of cognizable offences which indeed is the job of the investigating agencies.

86. In criminal trial, finding of guilt against accused person has to be surely and affirmly rest on the evidence produced in the case. Mere conjectures, probability and media discussions cannot take the place of proof. If a case is to be decided on the probabilities, or extraneous consideration, the golden rule of "benefit of doubt" to an accused person which has a dominant features of the administration of criminal justice in this country will be reduced into naught. The august Supreme Court in Azeem Khan and another v. Mujahid Khan and others (2016 SCMR 274) held as under:-

"It is also a well embedded principle of law and justice that no one should be construed into a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible one. Similarly, mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. In getting influence from the nature of the crime and other extraneous consideration might lead the Judges to a patently wrong conclusion. In that even the justice would be casualty."

87. Even otherwise as already discussed above, the report is only a fact finding probe which is neither binding on the Government or investigating agency nor has any evidential value in the eye of law. We have also noted that the decision of the learned Full Bench of this Court dated 05.12.2016 in W.P. N o.33522/2016 has already dispelled the fear or apprehension of the appellants, if any, regarding fair trial by holding that "the right to fair trial has always been considered a fundamental right of an accused and after insertion of Article 10-A in the Constitution of Islamic Republic of Pakistan 1973, right to fair trial has now been placed at a higher pedestal. However, in this case no direction can be given for bringing on record the report delivered by Mr. Justice Ali BaqarNajafi in Minhaj-ul-Quran Academy and Secretariat, Model Town Lahore's unfortunate incident as the petitioner in his capacity as complainant is to succeed if at all on the strength of the averments contained in the Private Complaint and cursory statement of witnesses."

88. The learned counsel for the appellants vehemently argued that after aforesaid order of learned Full Bench dated 05.12.2016 in W.P. No.33522/2016, the Tribunal's report cannot be published for information of the public or the respondents. We are afraid that this argument is misconceived. The perusal of order passed by learned Full Bench dated 15.12.2016, shows that the same was passed in writ petition where

petitioner challenged the order of the Trial Court for not summoning the report of the Tribunal. The learned Full Bench to ensure fair trial under Article 10-A of Constitution rightly upheld the order for not bringing the report on the record of trial Court. Further the observation of the learned Full Bench for the "possibility of trial being influenced by the report", was in the context of making report part of judicial record. In the present case, respondents are neither seeking direction for making the report part of Trial Court's proceedings nor such relief can be granted under the law. They are only seeking disclosure of the report to know the real facts which prayer by no mean is in conflict with the judgment passed by learned Full Bench on 25.12.2016 or effect in any manner appellants' right of fair trial guaranteed under Article 10-A of the Constitution.

89. One of the arguments of the appellants against the disclosure of the Tribunals report is that its publication will result into media publicity which will influence the mind of the Judge conducting the trial. We are afraid that mere apprehension of media publicity and its consequential influence on the mind of the Court is not only farfetched and extremely anticipatory argument but same is also against the well-established norms of criminal administration of justice. In criminal trial the conviction is only based on admissible incriminating evidence and not extraneous consideration or media publicity. The judges are expected to be impervious to influence by media publicity. The lord Denning MR in Court of appeal *Att Gen v. BBC* [1981 AC 303 (315) CA] stated that Judges will not be influenced by the media publicity. "Cardozo, one of the greatest Judges of the American Supreme Court (in his lecture IV in Yale University on "The Sub-conscious Element in the Judicial Process") by referring to the forces which enter into the conclusions of Judges observed that "the great tides and currents which engulf the rest of men, do not turn aside in their cause, and pass the Judges by".

90. Though view of lord Denning was not accepted in the House of Lords in *Att. Gen v. BBC* [1981 AC 303 (H.L)] but we feel that the above words of wisdom by lord Denning are to be applied even more emphatically in the current times. In past only print media or couple of government controlled television channels were source of public information, however, in current time with an advance technology in the field of communication, the media and information is reaching all segment of society through multiple means. This access of information and media publicity is likely to increase manifold in future with further improvement in field of communication technology. In this scenario and media oriented era, the role of Judges not to be effected by any media publicity is more demanding. They are not only expected to be impervious to media publicity but must train and equip themselves consciously not to be influenced by media publicity even sub consciously, to ensure fair trial and administration of justice. We are not impressed by the argument and apprehensions of the appellants and have no manner of doubt in our mind that learned trial Court will decide the matter, without being influenced by any extraneous considerations or media publicity, if at all same take place.

91. Under Article 19-A of the Constitution, every citizen has the right to have access

to information in all matters of public importance subject to reasonable restriction. The similar anticipated consequences arguments against right to information were raised before the Hon'ble Supreme Court in the case of Watan Party supra. The said arguments were repelled by the Apex Court and it was held that "as an objective enforcer of fundamental rights we cannot do that. Whether the petitioners or the respondents stand to benefit from our order or which institution or functionary of the State ends up being indicated by the Truth, we are not called upon to say. In fact, that is the very point of the inquiry; the only calculus this Court is entitled to engage in is the calculus of true information and its availability to the citizens of Pakistan." The Hon'ble Supreme Court in said judgment further observed that "the truth will indeed be critical if the nation is to achieve the goal the Constitution, in its Preamble, sets for all organs of the state: viz. "the preservation of democracy achieved by the unremitting struggle of the people against oppression and tyranny." It, therefore, will not do for this Court to deny to the citizens their guaranteed fundamental right under Article 19A." (underlining by us to add emphasis).

...

93. **From above discussion, it is obvious that apprehension of the appellants is misplaced and with disclosure of report, there is no fear of harm or likely harm to administration of justice including fair trial. The right to know under Articles 19 and 19-A of the Constitution, though not absolute, is a factor which should make one wary, when secrecy is claimed for a report which has no repercussion on public security.** To cover with veil of secrecy, the real facts of the incident of public importance is not in the interest of the public. Such secrecy can seldom be legitimately allowed if desire is for the purpose of politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts to the public is the chief safeguard against oppression.

UK Case Laws

1. Kennedy v. the Charity Commission, [2014] UKSC 20, The UK Supreme Court

Summary:

The applicant is a journalist who works for The Times. He made a request under the FOI Act 2000 to the Charity Commission for disclosure of information the latter had acquired within the scope of an inquiry conducted in connection with George Galloway's "Mariam Appeal", which was directed at aiding Iraq during the time of sanctions.

The request was refused by the Charity Commission on the ground that the information was subject to an absolute exemption from disclosure contained in section 32(2) of the FOIA, which states that information held by a public authority is exempt information if it is contained in any document placed in the custody of, or created by, "a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration". The applicant raised several issues in front of the Supreme Court including: whether section 32(2) of the FOIA

contains, as a matter of ordinary statutory construction, an absolute exemption which continues after the end of an inquiry; and (b) if it does contain such an absolute exemption, whether that is compatible with Mr Kennedy's rights under article 10 of the European Convention on Human Rights.

The Court decided that although under the FOIA, information created for the purposes of an inquiry may be treated as absolutely exempt, the common law may nonetheless require such information to be disclosed.

Relevant Paragraphs:

On either basis, the real issue will be whether the public interests in disclosure are outweighed by public or private interests mirroring those identified in article 10.2. This is reinforced by the *835 importance attaching to openness of proceedings and reasoning under general common law principles in the present area, which constitutes background to the correct interpretation and application of the Charities Act.

...

Here, Mr Kennedy has shown that important questions arise from the inquiries and reports relating not only to the subject matter and outcome of the inquiries, but also to the Charity Commission's conduct of the inquiries. The proper functioning and regulation of charities is a matter of great public importance and legitimate interest. The public interest in openness in relation to these questions is demonstrated positively by the objectives, the functions and, importantly, the duties given to and imposed on the Charity Commission under the Charities Act . The present request for further disclosure is made by a journalist in the light of the powerful public interest in the subject matter to enable there to be appropriate public scrutiny and awareness of the adequacy of the functioning and regulation of a particular charity. It is in these circumstances a request to which the Charity Commission should in my opinion accede in the public interest, except so far as the public interest in disclosure is demonstrably outweighed by any countervailing arguments that may be advanced. I do not read Lord Carnwath JSC's and my judgments as differing in any essential respect on these points. Although (for reasons given in the next section of this judgment: paras 57–96 below) I cannot share his conclusion that the “direction of travel” of Strasbourg case law has now reached its destination, *837 I do however note his view that “no reason has been put forward for regarding that approach as involving any fundamental departure from domestic law principles”: para 219.

...

The Charity Commission's response to a request for disclosure of information is in the light of the above circumscribed by its statutory objectives, functions and duties. If, as here, the information is of genuine public interest and is requested for important journalistic purposes, the Charity Commission must show some persuasive countervailing considerations to outweigh the strong prima facie case that the information should be disclosed. In any proceedings for judicial review of a refusal by the Charity Commission to give effect to such a request, it would be necessary for the court to place itself so far as

possible in the same position as the Charity Commission, including perhaps by inspecting the material sought. Only in that way could it undertake any review to ascertain whether the relevant interests had been properly balanced. The interests involved and the balancing exercise would be of a nature with which the court is familiar and accustomed to evaluate and undertake. The Charity Commission's own evaluation would have weight, as it would under article 10. But the Charity Commission's objectives, functions and duties under the Charities Act and the nature and importance of the interests involved limit the scope of the response open to the Charity Commission in respect of any particular request. I therefore doubt whether there could or would be any real difference in the outcome of any judicial review of a Charity Commission refusal to disclose information, whether this was conducted under article 10, as Mr Coppel submits that it should be, or not.

1. *South Lanarkshire Council v. Scottish Information Commissioner*, [2013] UKSC 55, Supreme Court of the United Kingdom

Summary:

In May 2010, Mr. Mark Irvine made requests under the Freedom of Information Act 2002 to South Lanarkshire Council regarding disclosure of information about the pay scales of their employees. Purpose of the request was to identify compliance of the Council with Single Status (Equal Pay) Agreement. The Council refused applicant's request on the ground that it would contravene the Data Protection Act 1998(DPA). The Scottish Information Commissioner who investigated the matter decided that the information should be disclosed. The council appealed unsuccessfully to the Inner House of the Court of Secession and later brought appeal in front of the Supreme Court. The UK Supreme Court decided that the decision of the Scottish Information Commissioner to request disclosure of information regarding pay scales of Council employees is in conformity with Data Protection Act. It is necessary and proportional for the legitimate aim of the applicant.

Relevant Paragraphs:

26. In this particular case, however, as the processing requested would not enable Mr Irvine or anyone else to discover the identity of the data subjects, it is quite difficult to see why there is any interference with their right to respect for their private lives. It is enough to apply article 7(f) and condition 6 in their own terms.

27. I disagree with Mrs Wolffe, however, about the meaning of "necessary". It might be thought that, if there is no interference with article 8 rights involved, then all that has to be asked is whether the requester is pursuing a legitimate interest in seeking the information (which is not at issue in this case) and whether he needs that information in order to pursue it. It is well established in community law that, at least in the context of justification rather than derogation, "necessary" means "reasonably" rather than absolutely or strictly necessary (see, for example, *R v Secretary of State for Employment, Ex p Seymour-Smith* (No 2) [2000] 1 WLR 435; *Chief Constable of West Yorkshire Police v Homer* [2012] UKSC 15, [2012] ICR 704). The proposition advanced by Advocate General Poiares Maduro in *Huber* is uncontroversial: necessity is well established in community law as part of the proportionality test. A measure which

interferes with a right protected by community law must be the least restrictive for the achievement of a legitimate aim. Indeed, in ordinary language we would understand that a measure would not be necessary if the legitimate aim could be achieved by something less. Thus, for example, if Mr Irvine had asked for the names and addresses of the employees concerned, not only would article 8 have clearly been engaged, but the Commissioner would have had to ask himself whether his legitimate interests could have been served by a lesser degree of disclosure.

2. *UK All Party Parliamentary Group on Extraordinary Rendition v. Ministry of Defense*, [2011] UKUT 153 (AAC), Upper Tribunal, Administrative Appeals Chamber (UTAAC), Superior court of record with status equivalent to the High Court (Appellate)

Summary:

Information concerning detention and interrogation policies is of high public interest and should be disclosed; the public interest in access to diplomatic assurances that detainees would not be tortured outweighs any harm that might flow from disclosure; information concerning the Special Forces and legally privileged communications are exempt; and the personal data exemption is not implicated in a request for non-identifying statistical details.

Relevant Paragraphs:

127. We cannot accept the Commissioner's argument in full. As we understand the reasoning of Lord Hope, it is important to remember in this context that the definition of 'processing' does not only cover disclosure. Information or data are also processed when they are merely held, or indeed when they are destroyed (so that no one can any longer be identified). Anonymisation by redaction is itself a form of processing. If the data controller carries out such anonymisation, but also retains the unredacted data, or retains the key by which the living individuals can be identified, the anonymised data remains "personal data" within the meaning of paragraph (b) of the definition and the data controller remains under a duty to process it only in compliance with the data protection principles. On this basis, therefore, and contrary to the submissions of the Commissioner, we consider that the analysis of the essence of Lord Hope's reasoning by the Information Tribunal in *Department of Health v Information Commissioner and ProLife Alliance EA/2008/0074* (15 October 2009) at paragraphs 30-43 was probably correct.

128. However, we remain concerned at the use of this analysis in such a way as would have the effect of treating truly anonymised information as if it required the protection of the DPA, in circumstances where that is plainly not the case and indeed would be absurd. Lord Hope's reasoning appears to lead to the result that, in a case where the data controller retains the ability to identify the individuals, the processing of the data by disseminating it in a fully anonymised form, from which no recipient can identify individuals, can only be justified by showing that it is effected in compliance with the data protection principles. Certainly the whole of the information still needs the protection of the DPA in the hands of the data controller, for as long as the data controller retains

the other information which makes individuals identifiable by him. But outside the hands of the data controller the information is no longer personal data, because no individual can be identified. We therefore think, with diffidence given the difficulties of interpretation which led to such divergent reasoning among their Lordships, the best analysis is that disclosure of fully anonymised information is not a breach of the protection of the Act because at the moment of disclosure the information loses its character as personal data. It remains personal data in the hands of the data controller, because the controller holds the key, but it is not personal data in the hands of the recipients, because the public cannot identify any individual from it. That which escapes from the data controller to the outside world is only plain vanilla data. We think this was the reasoning that Baroness Hale had in mind, when she said at [92]: “For the purpose of this particular act of processing, therefore, which is disclosure of these data in this form to these people, no living individual to whom they relate is identifiable”.

129. The MOD’s second argument raises a question of fact, which we have addressed in the closed annex. On the evidence that we have received, our conclusion on the balance of probabilities is that publication of the information the subject of the MOD’s appeal will not render individuals identifiable. We have also had regard to the evidence before us of a Parliamentary answer dated 6 July 2009 Column 549 where the Secretary of State for defence referring to the Departmental practice of not revealing personal data gave information about two detentions. We conclude that we are entitled to take this information into account without impugning any proceedings in Parliament.

130. We consider that the publication of fully anonymised data or other plain vanilla data, from which individuals cannot be identified, does not involve a processing of personal data.

131. If, contrary to our view, we are bound by the full import of Lord Hope’s reasoning as interpreted by the MOD, we have to consider whether the publication of information, which does not enable individuals to be identified by persons outside the MOD, can be effected consistently with the data protection principles. On the basis that individuals cannot be identified, we can see no objection in regard to fairness or lawfulness. The material question would be whether a Schedule 2 condition is met.

132. It seems to us that condition 6(1) is met. Because individuals cannot be identified by the public, there is no prejudice to the rights and freedoms or legitimate interests of the data subjects. The legitimate interests pursued by third parties, namely APG, are the public interests in transparency and accountability in relation to treatment of detainees in accordance with national and international obligations which we have referred to above. The processing is necessary (in the relevant sense) for those purposes, since without such disclosure those purposes cannot be advanced. We therefore conclude that this element of information is not protected by FOIA s40(2) and we dismiss the MOD’s appeal so far as it relates to information not protected by s23.

C. Discussion and Commission's View on Relevant Issues

8. The questions for the consideration of the commission are as under:
 - a. What steps have been taken by the Respondent to implement the Right of Access to Information Act 2017, henceforth referred to as Act?
 - b. Can information submitted by public officials to a public body, under their terms of employment, to help determine the public body the suitability of the employee to discharge his or her duties infringe right to privacy of the public official if made public?
 - c. Do arguments submitted by the Respondent meet the threshold of the burden of proof for denying access to the requested information?
9. Each federal public body was obligated to designate Public Information Officer, (PIO) within thirty days of the commencement of the Act. The Respondent designated and notified PIO as required under the Act but has not proactively disclosed through its web site name, designation and contact details of the PIO as required under Section 5 (1) (h) of the Act.
10. The Respondent has submitted before the commission that requested information is exempted from disclosure under Section 7 (g) of the Act.
11. This commission is of the view that right to privacy is a sacred right and any information which infringes personal privacy of an individual should be protected.
12. As the Respondent has merely referred to the Section 7 (g) of the Act and has not submitted as to how harm from the disclosure outweighs public interest, the commission is left with no option but enlist possible reasons in favour and against the disclosure.
13. Public interest, if requested information is disclosed, may serve in the following manner:

Such a disclosure may serve as a deterrence against corrupt practises and misuse of public office for personal gains; and

Public participation may lead to the reduction in the trust deficit between citizens and public institutions as citizens could themselves see changes in the assets of public officials on yearly basis.
14. On the other hand, if the details of assets of the identifiable individuals is disclosed, it may have following implications:

Disclosure of types and value of each asset along with the name of an identifiable individual leading to family feuds; and

Public scrutiny and speculations about the net worth of spouses and children of public officials.

15. As the requested information pertains to the details of assets submitted by the employees is private information, it needs to be determined on what grounds this information can be declared public. Under the Act, it can be made public only on the following grounds:
- Third party has consented to the disclosure of the information;
- The person making the request is the guardian of the third party or the next of kin or the executor of the will of the deceased; and
- The third party is or was an official of a public body and the information relates to his functions as a public official.
16. In the instant appeal, this commission is of the view that, none of the above-mentioned conditions has been satisfied to release private information of identifiable individuals.
17. This commission is of the view that bringing out in the public domain details of assets of public officials, their spouses and off-spring is against the principle of natural justice. In this regard, the commission is confronted with following question:
- Should privacy concerns of public officials, their spouses and children be set aside so that media and citizens could judge that their assets correspond to their known means of income?
- Should legitimate privacy interests of public officials, their spouses and children be sacrificed on the altar of supposed likelihood of such disclosure of assets in public domain acting as a deterrence against corrupt practises?
18. If answer to first question is affirmative, it would be tantamount to considering all public officials to be guilty till proven otherwise, in violation of cardinal principle of natural justice that all are innocent before law till proven guilty.
19. To the second question, this commission Is of the view that while privacy interests of public officials, their spouses and children will surely be compromised whereas disclosure of assets acting as a deterrence against corrupt practises, at best, is in the realm of possibilities. Legitimate privacy interests of citizens cannot be sacrificed on the altar of mere possible deterrence value of such disclosure against corruption, especially when laws are already available to investigate allegations of owning assets beyond known means of income.
20. The Respondent NAB is entrusted with the sensitive task of prosecuting crimes pertaining to corruption, corrupt practises, misuse and abuse of authority and owning assets beyond known sources of income as defined under National Accountability Ordinance, 1999. That is why clauses 10.10 (Declaration of Property) and 10.11 (Assets to be Disclosed) have been incorporated in NAB Employees Terms and Conditions of Service, (TCS), 2002 to ensure that the

conduct of NAB officials involved in investigations of the corruption allegations remains above board.

21. It should also be noted that not only NAB employees, but also all federal government employees are required to submit details of assets on yearly basis.
22. This commission is of the view that the collection of the details of assets of the employees is a futile exercise in itself if the collected data/information is not used to identify any peculiar trends whereby sharp increase in the assets cannot be explained through the known means of income.
23. This commission is of the view that as a premier accountability institution of the country, the Respondent must have used information collected under NAB Employees Terms and Conditions of Service, (TCS), 2002 and compiled reports to assess the performance and conduct of its officials. All such reports should not only be made available to citizens on-demand but should be proactively disclosed under Section 5 (1) (i) of the Act which is as under:

“Reports including performance reports, audit reports, evaluation reports, inquiry or investigative reports and other reports that have been finalized”.
24. Opacity in the functioning of public bodies has contributed to the trust-deficit between citizens and state institutions. The Respondent is legally bound to proactively publish finalised enquiry reports involving investigation of its own employees on charges of owning assets beyond known means of income as bringing out such enquiry reports in public domain will strengthen and enhance prestige of NAB as a national accountability institution. It will also contribute to reducing trust-deficit between citizens and public institutions.
25. This commission has noted that federal public bodies have not realised the significance of proactive disclosure of information in accordance with the requirements of section 5 of the Act.
26. The significance of proactive disclosure of information as required under Section 5 of the Act by federal public bodies can hardly be exaggerated.
27. If public body publishes directory of its employees, as required under section 5 (1) (a) of the Act, with posts/ designation, filled/vacant, gender, disability status, pay scales, benefits, perks and privileges, it could lead to following advantages:

whether the public body is properly staffed to carry out its functions?
Whether quota reserved for people with disabilities is being followed?
Level of female participation in the workforce? and
Whether the benefits, perks and privileges of the employees are commensurate with their posts as well as justifiable.
28. Similarly, citizens should be informed by a body through its web site terms and conditions under which public can acquire any license, permit, consent, approval, grant, allotment or other benefits from a given federal public body.

Citizens should be proactively informed how agreements and contracts, including, contracts of employment which can be entered into with a public body. At the same time, public bodies should display on their web sites lists of the recipients who are granted concessions, permits, licenses or authorizations.

29. This being the significance of the information made available proactively through the web sites of the federal public bodies as required under the Act, it would be obvious to state that public bodies need to prioritise publishing this information and fulfil their legal obligation.
30. The implementation of Section 5 of the Act can only be ensured if federal public bodies continuously juxtapose categories of information enlisted in section 5 with the information provided on the web sites. In this regard, all federal public bodies are required to use Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017 to ensure proactive disclosure of information. This template can be retrieved from the web site of the commission www.rti.gov.pk In this template, the Pakistan Information Commission has explained as to how each category of information is to be proactively disclosed through web sites.
31. 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”.
32. This commission is of the view that it is about time federal public bodies start taking seriously the accessibility of the web sites as well. The web sites of public bodies should be accessible to level AA of Web Content Accessibility Guidelines (WCAG) 2.1 (of W3C).
33. The public bodies should ensure incorporation of web accessibility standards in the design of their web sites. ‘Web accessibility checklist’ can be retrieved from the web site of the commission www.rti.gov.pk

A quick reference guide for WCAG2.1 is available at this link: <http://www.w3.org/WAI/WCAG21/quickref/>

D. Order

34. The appeal is dismissed as harm to the legitimate privacy interests of NAB employees, their spouses and children far outweigh any public interest that the disclosure of the details of their assets may entail.

35. The Respondent is directed to proactively disclose performance reports, audit reports, evaluation reports, inquiry or investigative reports and other reports pertaining to its employees that have been finalized through its web site along with all categories of information through its web site as required under Section 5 of the Act 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 by 28/11/2020.
36. 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 by 29/11/2020.
37. The respondent is directed to put contact details of its designated Public Information Officer on its web site as required under Section 5 (1) (h) of the Act and submit notification to this effect to this commission within 10 working days of the receipt of this Order.
38. Copies of this order be sent to designated Public Information Officer of the Respondent, National Accountability Bureau, (NAB) and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
October 29, 2020

This order consists of 19 (nineteen) pages, each page has been read and signed

