

Pakistan Information Commission

Government of Pakistan

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In the Pakistan Information Commission, Islamabad

Appeal No 505-08/21, Appeal No 390-06/20

Tariq Mahmood Awan

(Appellant-1)

Murtaza Hashim

(Appellant-2)

Vs.

Establishment Division

(Respondent)

ORDER

Date: June 16, 2022

Zahid Abdullah: Information Commissioner

A. The Appeals

Note:

This commission received two identical appeals which have been clubbed together for the purpose of adjudication on the issues raised in these two Appeals.

1. The Appellant-1 filed Appeal on August 17, 2020 to the Commission, stating that he had submitted information requests to Secretary, Establishment Division on July 17, 2020 under the Right of Access to Information Act 2017 but did not receive the requested information.
2. The following information was requested by Appellant-1:

“In line with Right to Information Act, 2017 this formal request for the provision of the documents of Agreements as mentioned above is forwarded in response to the meeting of All Pakistan Provincial Civil Services Association with Dr. Istirat Husain (Advisor to PM on institutional Reforms). Mr. Albab Shahzad (Advisor to PM on Establishment Division) & your good honer held on 15-07-2020 at PIX Secretariat Islamabad in terms of important Civil Service Reforms engagement.

2. Reliance of the arguments of the Establishment Division to the existing scheme of Civil Service are documents known as CSP agreement of supposedly November 1949 between Federation & Provinces for reservation of certain provincial posts for the service of the federation PAS & its extended rule 7.1 of SRO 2014 describing another agreement between Federation & Provinces on the ratios of earmarking Provincial posts of different grades”.

3. The Appellant-2 filed Appeal on March 21, 2020 to the Commission, stating that he had submitted information requests to Secretary, Establishment Division on February 22, 2020, under the Right of Access to Information Act 2017 but did not receive any response from the public body.
4. The information sought by the Appellant is as follows:
 - *“Certified Copy of Induction of Provincial Management Service (PMS) into Pakistan Administrative Service (PAS) Rules 2019,*
 - *Certified Copy of Induction of Armed Forces Officer into Civil Service of Pakistan, Rules and SRO Copy (10% Quota) Amended Up to date. . Certified copy of Honorable Supreme Court's judgment dated 04-07 2017 and its order dated 30-04-2018, the policy regarding induction of Armed Forces officers against 10%.*

- *Certified Copy of IPC Formula of 1993 for distribution of Vacancies between Provincial Management Service (PMS) and Pakistan Administrative Service (PAS)*
- *Certified Copy of Cadre Strength and Working strength Pakistan Administrative Service (PAS), Police Service of Pakistan (PSP) in BPS 17, BPS-18, BPS-19, BPS-20, BPS-21, BPS-22 Amended Up-to date.”.*

B. Proceedings

5. In response to the notices of the commission and the hearings held on these identical Appeals, both the Respondent and the Appellants submitted their responses and the ensuing paragraphs contain relevant portions of these responses based on records available on the files.
6. The Respondent submitted to the commission its response in the case of information requested by the Appellant-1 which is as under:

"It is submitted that Section 7(f) of Right of access to Information Act, 2017, inter alia, envisages that nothing contained in Section 6 shall apply to the record of all public bodies if record is declared as classified by Minister-in-Charge of the Federal Government.

2. In view of above, requisite reply on behalf of Establishment Division is an under:-

Sr. No	Information Required	Reply of Establishment Division
1.	Copy of agreement reached between the Provinces and Federation in 1949 known as CSP agreement for reserving Provincial Posts of different grades for the service of the Federation CSP/DMG/PAS officers mentioned in the Civil Service of Pakistan (Composition and Cadre) Rules, 1954	The requisite Documents have been declared as classified by the Prime Minister as Minister Incharge of Establishment Division.
2.	Agreement mentioned in Rule 7.1 of SRO 88 of 2014 describing the ratios between APUG and PCS in various grades issued by the Public Body (Establishment Division)	

7. The Appellant-1 submitted his rejoinder on November 20, 2020 which is as under:

“The Applicant respectfully submits as under That vide instant Appeal the Applicant had asked for the "Agreements reached between the provinces for earmarking provincial Posts of different grades See the CSP/DM0/PAS officers, as mentioned in the CSP Rules of 1954 and BRO BR of 2014 issued by the public body. Therefore, submission of the copies of the CSP Rules of 1954 and SRO 88 of 2014 by the public body does not fulfilled the purpose Hence, reply of the respondent is not satisfactory and is liable to be dismissed.

2. That under Section 7(0) of the Right to Access of Information Act, 2017, ta document is declared classified by the Minister-in-charge of the Federal Government, he/she has to provide reasons as to why the harm from disclosure of the information outweighs public interest, which is not the case of this reply, hence the same is liable to be dismissed

3. That under Section 16(k) of the ibid Act after every twenty years the record of public bodies would be made public and no exemptions provided in Section 16 would bar any authority to disclose any such information or document. In wake of the above, the documents for which request have been made are more than 20 years old (claimed by respondent itself that one agreement have been made in 1949 and the other in 1993) and cannot be declared classified. Furthermore. how can the Agreements be declared classified when the Rules made thereunder are already public documents and sold

commercially in the market under different names? Hence, on this sole ground, the reply is not maintainable and liable to be dismissed”

8. In the case of information requested by the Appellant-2, the Respondent submitted response to the notice of the Commission which is as under:

Sr. No	Information Required	Reply of Establishment Division
1.	Certified copy of Induction of Provincial Management Service (PMS) into Pakistan Administrative Service (PAS) Rules, 2019.	It is submitted that Induction of Provincial Management Service (PMS) into Pakistan Administrative Service Rules, 2019 are under process and have not been finalized yet.
2.	Certified copy of induction of Armed Forces Officer into Civil Service of Pakistan, Rules and SRO Copy (10% quota) amended upto date.	The required information is available is Esta Code which is a public document.
3.	Certified copy of Honorable Supreme Court's judgement dated 14-7-2017 and its order dated 30-04-2018, the policy regarding induction of Armed Forces officers against 10%.	It does not relate to Establishment Division. May be obtained from the concerned organization.
4.	Certified copy of IPC Formula of 1993 for distribution of vacancies between Provincial Management Service (PMS) and Pakistan Administrative Service (PAS).	The officers of Provincial Civil Services/ Provincial Management Services of four provinces have inter alia, challenged IPC Formula of 1993 regarding distribution of posts in the Honourable Supreme Court of Pakistan by way of filing Constitution Petitions No. 53 to 56, 63, 75 and 76 of 2010 titled "Manzoor Hussain and others VS Federation of Pakistan and others" which are still pending adjudication and are. therefore, subjudice. Section 16 (i) (v) of the RAI Act, 2017, inter alia, states that the information may be exempted if its disclosure is likely to prejudice the proceedings in a court or a tribunal. Hence, the requested information may not be provided to the appellant being subjudice in the Honourable Supreme Court of Pakistan.
5.	Certified copy of Cadre strength and working strength of Pakistan Administrative Service (PAS), Police, Service of Pakistan (PAS) in BS-17-22 amended upto date.	Submissions made in para 4 above are reiterated to the extent of Pakistan Administrative Service. Likewise, identical Civil Petitions No. 1790-1791 of 2016 and CMAS No. 6399, 6400, 9280, 9281/2017 titled "Muhammad Zafar Ali, Sajid Ali and others versus Federation of Pakistan and others" are also pending adjudication in the Honourable Supreme Court of Pakistan in respect of Police Services of Pakistan.

9. In the hearing held on September 16, 2020, Mr. Khaleeq Ur Rehman, Deputy Secretary, Establishment Division, attended the hearing and submitted response which is as under:

Sr. No	Information Required	Reply of Establishment Division
4.	Certified copy of IPC Formula of 1993 for distribution of vacancies between Provincial Management Service (PMS) and Pakistan Administrative Service (PAS).	IPC Formula / minutes of meeting dated 19-09-1993 has been declared as classified by the Prime Minister as Minister Incharge of Establishment Division. The relevant portion of Right of Access to Information Act, 2017 is reproduced hereunder: “7 (f) Record declared as classified by Minister-in-charge of the Federal Government”.
5.	Certified copy of Cadre strength and working strength of Pakistan Administrative Service (PAS), Police Service of Pakistan (PSP) in BS-17-22 amended upto date.	Cadre strength of PAS has been declared as classified by the Prime Minister as Minister Incharge of Establishment Division. The relevant portion of Right of Access to Information Act, 2017 is reproduced hereunder: “7 (f) Record declared as classified by Minister-in-charge of the Federal Government”.

C. Issues

10. The instant appeals have brought to the fore following issues:
- Has the Respondent carried out its obligations under the Right of Access to Information Act 2017, henceforth referred to as Act?
 - Can the requested information not be disclosed on the grounds of *lis alibi pendens* as submitted by the Respondent that the matter is *sub judice* in the court?
 - Has the Minister-in-Charge recorded reasons for exempting from disclosure IPC Formula / minutes of meeting dated 19-09-1993 as required under Section 7 (f) of the Act, if not, does the harm from disclosure of this information outweigh public interest?
 - Has the Minister-in-Charge recorded reasons for exempting from disclosure Cadre strength of PAS as required under Section 7 (f) of the Act, if not, does the harm from disclosure of this information outweigh public interest?

D. Discussion and Commission’s View on Relevant Issues

- This commission maintains that access to IPC Formula / minutes of meeting dated 19-09-1993 and requested information about the ‘Cadre strength of PAS’ as requested by the Appellant 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 that “Section 16 (i) (v) of the RAI Act, 2017, *inter alia*, states that the information may be exempted if its disclosure is likely to prejudice the proceedings in a court or a tribunal” does not hold water.
- 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”

13. 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.
14. The Respondent has maintained that the IPC Formula / minutes of meeting dated 19-09-1993 and information about Cadre strength of PAS has been declared as classified by the Prime Minister as Minister Incharge of Establishment Division. To support its case, the Respondent has reproduced portion of Section 7 (f) which is as under:

“7 (f) Record declared as classified by Minister-in-charge of the Federal Government”.
15. This commission maintains that the Respondent has not referred to the entire Section 7 (f) of the Act which is as under:
 - a) *“Records declared as classified by the Minister-in-charge of the Federal Government*

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 to allegation of corruption and violation of human rights shall not be excluded”
16. Even plain reading of the Section 7 (f) of the Act suggests that the Minister-in-Charge of Establishment Division does not enjoy absolute powers to classify the IPC Formula / minutes of meeting dated 19-09-1993 and information about Cadre strength of PAS. The Minister-in-Charge of Establishment Division was required to establish through recorded reasons that harm from disclosure of the IPC Formula / minutes of meeting dated 19-09-1993 and information about Cadre strength of PAS outweighs public interest.
17. As the Minister-in-Charge of Establishment Division has not submitted before this commission reasons for classifying the IPC Formula / minutes of meeting dated 19-09-1993 and information about Cadre strength of PAS, this commission is obligated to determine whether the disclosure of this information, on the balance, can cause harm, or, serve public interest.
18. This commission holds that the disclosure of the IPC Formula / minutes of meeting dated 19-09-1993 and information about Cadre strength of PAS is warranted both by the letter and spirit of the Act.
19. This commission maintains that the disclosure of IPC Formula / minutes of meeting dated 19-09-1993 is warranted under Section 16 (i) (k) of the Act which states that “exemptions set out in section 16 shall cease to apply after every twenty years and that record of public bodies shall be made public”.
20. This commission holds that the Respondent Establishment Division is required to proactively publish the requested information about Cadre strength of PAS through its web site as required under Section 5 (1) (a) of the Act.
21. This commission maintains that the disclosure of the IPC Formula / minutes of meeting dated 19-09-1993 and information about Cadre strength of PAS does not hit any of the exemption clauses mentioned in Section 7 or Section 16 of the Act. In fact, the disclosure

- of the IPC Formula / minutes of meeting dated 19-09-1993 and information about Cadre strength of PAS, on the balance, will serve public interest rather than causing any harm.
22. This commission fails to understand how the disclosure of information about the distribution of vacancies between Provincial Management Service (PMS) and Pakistan Administrative Service (PAS) will cause any harm.
 23. The disclosure of information about the distribution of vacancies between Provincial Management Service (PMS) and Pakistan Administrative Service (PAS is not likely to, by any stretch of imagination, cause any harm to national security nor can cause any harm to any interest of the state of Pakistan. While, the disclosure of this information will cause no harm, its disclosure will serve public interest.
 24. This commission holds that the disclosure of IPC Formula / minutes of meeting dated 19-09-1993 would shed light on how the distribution of vacancies between Provincial Management Service (PMS) and Pakistan Administrative Service (PAS is carried out. Furthermore, disclosure of IPC Formula / minutes of meeting dated 19-09-1993 would reveal as to what extent IPC Formula is implemented.
 25. The instant appeal has again highlighted how opacity in the functioning of public bodies has contributed to the trust-deficit between citizens and state institutions. The disclosure of IPC Formula / minutes of meeting dated 19-09-1993 and information about Cadre strength of PAS will promote transparent functioning of the Respondent Establishment Division and citizens of Pakistan would come to know that the distribution of vacancies between Provincial Management Service (PMS) and Pakistan Administrative Service (PAS) is carried out in accordance with the IPC Formula. Naturally, such a disclosure would contribute to bridging the trust-gap between citizens and the state institutions.

E. Order

26. The Appeals are allowed. Secretary, Establishment Division is directed to share with the Appellants information requested in paras 2 and 4 of this Order, within seven working days of this Order, with intimation to this office.
28. Copies of this order be sent to the Respondent and the Appellants for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on: June 16, 2022

This order consists of 6 (Six) pages, each page has been read and signed.