

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 660-10-2020

Azaz Syed

Vs

Inspector General of Police, Islamabad

Date: January 08, 2021

Fawad Malik: Information Commissioner

A. APPEAL:

1. The brief facts of the appeal are that Mr. Ayaz Syed has filed appeal before the Pakistan Information Commission under the Right of Access to Information Act, 2017 complaining therein that the Inspector General of Police, Islamabad has not provided the requested information to the satisfaction of the appellant. The information sought by the appellant in his application dated 3 July 2019 is as under;

- 1. Total number of cars stolen from Jan 2008 to 31 Dec 2013 in Federal Capital. Also provide total number of people convicted and total number of cars recovered.*
- 2. Total number of motorcycles stolen from Jan 2008 to Dec 2013 in Federal Capital. Also provide total number of people convicted and total number of motorcycles recovered.*

B. PROCEEDINGS:

2. The Inspector General of Police, Islamabad vide letter dated 26.10.2020, was directed to provide reasons in writing within seven working days as to why the requested information has not been provided to the applicant as under section 14 of the Right of Access to Information Act 2017, each public body is bound to respond to a request as early as possible and in any case not later than ten working days of the receipt of the request.
3. The reply as directed was not submitted nor the information shared therefore keeping in view the SOPs issued by the Government of Pakistan in the wake of Covid-19 and to ensure the public safety, the personal appearance before the Commission was

condoned and the respondent was directed to file the written reply and arguments in the office of the Commission, vide notice dated 19.11.2020.

4. The reply was filed by the public body vide letter dated 7.12.2020. The relevant portion of the reply filed by the AIG/Operations is reproduced as under;

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4. *The Right of Access to Information Act, 2017 came into existence in the year 2017 and on perusal of the same; no specific provision is inserted by the legislature regarding retrospective effect of ibid. It has been held by the Peshawar High Court, Peshawar in reported case as [PLD 1990 Pesh, 21] that “When no definite provision having been incorporated in the act for its retrospective operation, Act has to operate prospectively.*

5. *Keeping in view of above, it is therefore, requested that subject cited appeal may be disposed off in the light of above cited judgement, if approved, please.*

C. COMMISSION’S VIEW:

5. The respondent public body in its reply has denied the requested information solely for the reason that no specific provision is inserted in the Act for its retrospective effect. Suffice to quote here the self-explanatory proviso to the section 5 of the Act, which reads as under;

Provided that if the information or record pertains to a period earlier than the year 2008, the same shall be published within reasonable time.

Bare reading of the proviso transpires the intent of the legislature. The proviso is exhaustive in its interpretation and covers all the previous record held by a public body. Furthermore section 5 mandates all federal public bodies to publish within six months all records irrespective of the fact that as to when these records were created. The reason pleaded by the public body is not well founded therefore turned down by the Commission.

6. Article 12 of the Constitution provides protection against the retrospective punishment, which reads as under;

12(1) No law shall authorize the punishment of a person-

(a) For an act or omission that was not punishable by law at the time of the act or omission;

(b) For an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

The reading of Article 12 reveals that it provides protection against the retrospective punishment therefore deals only with the criminal matters. Right of Access to Information Act 2017 deals with the record held by the federal public bodies. Principal of retrospective implementation is not applicable in the case in hand in the light of RTI laws.

7. The citation “*PLD 1990 Pesh 21 titled Kundal Khan vs Agha Jan*” referred by the public body in aid of its plea is regarding pre-emption matter and is not applicable in the matters pertaining to right of access to information and record, therefore is irrelevant in this case. The right of access to information is a fundamental right guaranteed under article 19A of the Constitution of Pakistan. The fundamental right will prevail and override in case of any conflict under article 8 of the Constitution.
8. The appellant in his request has sought the details of the total number of cars and motorcycles stolen, the total number of cars and motorcycles recovered by the police, and the total number of accused so convicted, in the federal capital territory. This sort of information and record is encompassed in the category mentioned in section 5 of the Act that ought to have been published including uploading over the internet by the principal officer of each public body, within six months of the commencement of the Act. It is worth to mention here that the respondent in its reply has not borrowed any exemption clause mentioned in the Act meaning thereby the requested information is shareable record.
9. Moreover the procedure pertaining to the statistics of stolen vehicles, their recoveries, handing over to the owners and of the convicts is provided in the police rules 1934. These rules are to be adhered by the each police stations of Islamabad capital territory. The rules do not bar the publication or disclosure of the requested information rather this practice can be supportive to the police and the public at large.
10. Transparency in the working of the government departments is the essence for the enactment of the Act 2017. Its spirit is to ensure that the people of the Islamic Republic of Pakistan have access to the records held by the federal public bodies for making the government accountable to the people. This practise would improve the participation of the people in the public affairs aimed at reducing corruption and inefficiency in the governance.

11. The respondent has so far not notified the designated officer as mandated in section 9 of the Act.

D. ORDER:

12. The appeal is allowed. The Inspector General of Police, Islamabad is directed to provide the appellant the requested information forthwith but not later than seven days of the receipt of this order.

He is further directed to make arrangements for the implementation of sections 5 & 9 of the Act without further delay, under intimation to the Commission till 1.2.2021.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on 08-01-2021

Certified this order consists of three (3) pages, each page has been read and signed.