

## Pakistan Information Commission

### Government of Pakistan

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## In the Pakistan Information Commission, Islamabad

### Appeal No 810-12/20

**Rana Abrar Khalid**

(Appellant)

Vs.

**Cabinet Division**

Through its Public Information Officer

(Respondent)

### Order

**Date:** January 21, 2021

**Zahid Abdullah:** Information Commissioner

### **A. The Appeal**

1. The Appellant filed an appeal, dated 17-12-2020, to the Commission, stating that he submitted an information request to the Cabinet Division dated 23-11-2020 under the Right of Access to Information Act 2017.
2. The information sought by the Appellants is as follows:
  - “1. How many gifts did the Prime Minister Imran Khan receive from foreign head of state, head of the government & other foreign dignitaries from 18 August 2018 to 31 October 2020?
  2. What is the full description/specification of the all gifts received by the Prime Minister Imran Khan from foreign head of state, head of the government & other foreign dignitaries during 18 August 2018 to 31 October 2020?
  3. How many of the gift/gifts received by foreign head of state, head of the government & other foreign dignitaries did the Prime Minister Imran Khan (recipient) retain for himself during 18 August 2018 to 31 October 2020? (under which law and rules of business of federal government of Pakistan).
  4. All gift/gifts received from foreign head of state, head of the government & other foreign dignitaries that the Prime Minister Imran Khan (recipient) has retained for himself during 18 August 2018 to 31 October 2020, please tell the description of (with complete specification & model of every gift with its market value) and how much money has the Prime Minister Imran Khan (recipient) deposited in the national exchequer in return?
  5. The Prime Minister Imran Khan (recipient) deposited the money in the national exchequer in return for the said retained gift/gifts for himself (received by foreign head of state, head of the government & other foreign dignitaries during 18 August 2018 to 31 October 2020), from which bank account was it transferred? (Please tell the account No. & head of account with bank name).”
3. The Appellant stated that the requested information was not provided within the stipulated period of time as required under the Right of Access to Information Act 2017.

### **B. Proceedings**

4. Through a notice dated 28-12-2020 sent to the Deputy Secretary (Coordination), Cabinet Division, the Commission called upon the Respondent to submit reasons for not providing the requested information.
5. The Respondent through a letter vide No. F.No. 9/4/2018-TK dated 28th December, 2020 is as under:

Requested Information	Reply
a) How many gifts did the Prime Minister Imran Khan receive from foreign head of state, head of the government & other foreign dignitaries from 18 August 2018 to 31 October 2020?	Classified matter vide section-7(f) & clause 16(ii) of Right of access to Information Act.
b) What is the full “description/specification of the all gifts received by the Prime Minister Imran Khan from foreign head of state, head of the government & other foreign dignitaries during 18 August 2018 to 31 October 2020?	As above.
c) How many of the gift/gifts received by foreign head of state, head of the government & other foreign dignitaries did the Prime Minister Imran Khan (recipient) retain for himself during 18 August 2018 to 31 October 2020? (under which law and rules of business of federal government of Pakistan).	As above.
d) All gift/gifts received from foreign head of state, head of the government & other foreign dignitaries that the Prime Minister Imran Khan (recipient) has retained for himself during 18 August 2018 to 31 October 2020, please tell the description of (with complete specification & model of every gift with its market value) and how much money has the Prime Minister Imran Khan (recipient) deposited in the national exchequer in return?	As above.
e) The Prime Minister Imran Khan (recipient) deposited the money in the national exchequer in return for the said retained gift/gifts for himself (received by foreign head of state, head of the government & other foreign dignitaries during 18 August 2018 to 31 October 2020), from which bank account was it transferred? (Please tell the account No. & head of account with bank name).	As above.

6. The response of the Respondent was shared with the Appellant on January 05, 2020.

7. The Appellant submitted his objection over the response of the public body and submitted rejoinder which is as under;

*“I have been submitted RTI request (under the Right of Access To Information Act 2017) to Secretary Cabinet Division/Public Information Officer on 23 November 2020 which was received to him on same date, but no any response got me during 10 working days from public body. By which I submitted an appeal before Pakistan Information Commission, after that I received the reply of Cabinet Division on 31 December 2020 and same reply was sent to the PIC in response of my appeal No . 810-12/20 which has been received to me with a covering letter.*

*Dear Sir,*

*Muhammad Ahad Deputy Secretary (Coord) Cabinet Division stated in his reply that the information pertaining to my questions declared classified matter vide Section-7(f) & Clause 16 (ii) of Right of Access To Information Act 2017.*

*1. I am not satisfied to response & reply of public body, because intentional on intentional delay of reply creates doubt that government officials want to keep preserve the prescribed information; under the **Right of Access To Information Act 2017, Section No. 14(1)** “Subject to the provisions of this Act, a public body shall be required to respond to a request as soon as possible and in any case within ten working days of receipt of the request” and according to the Section No . 14 (2) “The period stipulated in sub-section (1 ) may be extended by maximum of further ten working days, where it is necessary when the request requires a search through a large number of records or records located in different offices or consultation is*

- required with third parties or other public bodies". But public body sent the record to me on 28" December 2020 (after 35 days) and approximately after 25 working days. This attitude shows that public body used delaying tactics intentionally.
2. I have strong reason for the allegation of use delaying tactics (by prescribed officer of public body) because I had been gone to office of Mr Muhammad Ahad Deputy Secretary (Coord) Cabinet Division in Cabinet Block Islamabad and met him before sending this request, actually purpose of my visit was relating to reply of my previous appeal No . 654 -10/20. Because I have felt need some explanation/demonstration about the terminology used in the reply of Cabinet Division/Tosha Khana, but prescribed officer refused to talk to me and passing adverse remarks "if you are pro Pakistan you should not demand the disclosure of information about classified matter and information about Tosha Khana has been declared Classified"
  3. Actually I hurt by the remarks of prescribed officer because his remarks are harmful and nobody has right to challenge my integrity & patriotism. This is most important question that if I request to a public body for a specific information (under the Right of Access To Information Act 2017) relating to the Prime Minister & President of Pakistan, how can a government officer questioned my patriotism, who gave him this right and what he was trying to prevent & preserve?
  4. Section-7 of the Right of Access To Information Act 2017 is relating to **"Exclusion of certain record"** and its sub section (f) clearly stated that "record 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".
    - i. Public body did not record any reason in his reply that how may harm disclosure of information (requested by me) outweighs public interest however this act make bound the public body to record reason of classified matter.
    - ii. Subsection (f) of Section-7 of this Act said more "and further that information pertaining to allegation of corruption and violation of human rights shall not be excluded".

National Accountability Buru (NAB) has been filed a Corruption Reference against two former Prime Ministers (Muhammad Nawaz Sharif & Syed Yousuf Raza Gillani) on 21 March 2020 about miss use of authority for retention of gifts received from foreign head of the government/dignitaries by Tosha Khana, this reference is under hearing before National Accountability Court. This proves information about the retention of gifts (received by PM from foreign head of the government/dignitaries) is a matter of allegation pertaining to corruption and sub-section (f) of Section-7 of the Right of Access To Information Act 2017 does not allow the public body to preserve any information relating to prescribed matter. (See annexure 1 please)

(iii) Clause 16 of the Right of Access To Information Act 2017 is relating to **"Information Exempt to Disclosure"** and its sub-clause (ii) said that "if its disclosure is likely to cause damage to the interests of the Islamic Republic of Pakistan in the conduct of international relations.

Explanation.- In this section "international relations" means relations between Islamic Republic of Pakistan and..

- (A) the government of any other foreign state, and
- (B) organization of which only States are members"

Firstly, I did not ask for any details of the head of the state, head of foreign government & foreign dignitaries who presented the gifts to the Prime Minister Imran Khan, so this clause (sub-clause ii of clause 16) should not apply on my RTI request.

Secondly, Prime Minister Imran Khan already disclosed the information relating to retention of gift (received by foreign head of government & foreign dignitaries) by

*Tosha Khana in his interview with renowned Anchor Person Nadeem Malik on 1st October 2020, honorable Commission (PIC) may check this interview of "SAMAA News (TV) and link of prescribe disclosure is given below...*

*( <https://www.youtube.com/watch?v=sKEWp6StE> ).*

*This is undeniable evidence that information requested by me to the Cabinet Division does not relates to the Clause 1 6 (ii) of the Right of Access To Information Act 2017, if the prescribed information was related to Clause 1 6 (ii) of the Act, then why would the Prime Minister of Pakistan disclose it to the national media?*

### **Prayers**

*Dear Sir,*

*I pray to you following as.....*

*1 .Public Body has tried to preserve and prevent information requested by me because prescribed officer keep in his mind that all journalists are not pro Pakistan who demand the information declared as classified matter, actually this is mind-set here which relates to protection of corruption in the Pakistan and this is also the case of miss use of authority. This is fact that more information more transparency, please reasoning for denial of disclosure of requested information by Public Body should be rejected and passing of order for disclosure of complete information which I requested under Right of Access Information Act 2017.*

*2. Please issue the call up no tice to prescribed officer (in person) for explanation for denying and preserve & prevent the information.*

*3. Prescribed Officer questioned my integrity & patriotism and he should explain before the commission why he p assed adverse remarks about me when I demand the information which relates to miss use of authority & corruption (allegedly) by Prime Minister of Pakistan.*

*4 .Last, I want answer of my question that if a citizen in the state of Madina asks a question about the corruption (allegedly) of the Prime Minister, should this question be stopped by raising the question of his patriotism.”*

### **C. Discussion and Commission’s View on Relevant Issues**

8. The questions for the consideration of the commission are as under:
  - (a) Should a citizen have access to requested information in accordance with the provisions of the Right of Access to Information Act 2017, hereafter referred as Act?
  - (b) Did the Respondent follow procedure laid down in the Act in responding to the request of the citizen?
9. The questions for the consideration of the commission are as under:
  - a. Did the Respondent follow procedure for exempting requested information as laid down in the Right of Access to Information Act 2017, henceforth referred to as Act?
  - b. Do the recorded reasons submitted by the Respondent meet the threshold of the burden of proof for denying access to the requested information?;
  - c. Does the Act allow for the blanket exemption of records?; and
  - d. Can records be classified forever or is there a time-limit in the Act to declassify records?
10. To the question as to “How many gifts did the Prime Minister Imran Khan receive from foreign head of state, head of the government & other foreign dignitaries from 18 August 2018 to 31 October 2020”, the Respondent maintained that the requested information was “Classified matter vides section-7(f) & clause 16(ii) of Right of access to Information Act”. In fact, the Respondent has denied access to each item of the requested information by citing “section-7(f) & clause 16(ii) of Right of access to Information Act”. Even the

requested item of information about the rules under which gifts received from the foreign dignities are retained by the Prime Minister has been exempted under these sections. As such, the powers vested in the Officer have not been exercised “reasonably, fairly, justly, and for the advancement of the purposes of the enactment” as required under Section 24A (1) of the General Clauses Act 1897.

11. One of the provisions of this Act requires a public body to meet the threshold of burden of proof under Section 17 (4) of the Act which is as under:  
“The public body shall, in an appeal under sub-section (1), bear the burden of proof of showing that is acted in accordance with the provisions of this Act”.
12. In the instant appeal, the issue before the commission is to determine whether the public body, through the recorded reasons of the minister-in-charge has been able to demonstrate that “the harm from disclosure of information outweighs public interest” as required under Section 7 of the Act.
13. The Respondent has not provided any reasons to exempt the requested information from disclosure. However, in Appeal No. 305-02-20, Waseem Elahi VS Cabinet Division, on the identical issue, the Respondent submitted following reasons for not providing the requested information:  
“requested information is sensitive as gifts are exchanged between the Heads of States and Heads of Governments to give personal touch to inter-state relations; and Disclosure of such information could create media hype and resulted in unwarranted stories, thus potentially damaging the interest of Pakistan in the conduct of international relations and jeopardizing inter-state relations”.
14. As no fresh grounds for the exemption of information have been submitted before the commission, it is left with no option but to decide on the sections relied upon in the instant appeal as well as the earlier reasons submitted before this commission. Therefore, relevant paragraphs from Appeal No. 305-02-20, Waseem Elahi VS Cabinet Division are reproduced below in the instant appeal as well.
15. While giving ‘personal touch’ to inter-state relations through the exchange of gifts between the Heads of States and Heads of Governments is a normal practice in the conduct of international relations, relations between any two states are dictated by common interests. At best, the ‘personal touch’ supplements but in no way can supplant the role of common interests in determining the outcome of inter-state relations. In short, it is change in the shared common interests between two states, and not the exchange of gifts for personal touch between Heads of States and Heads of Governments which has any qualitative impact on inter-state relations.
16. The Respondent has also contended that disclosure of the requested information could create media hype and resulted in unwarranted stories, thus potentially damaging the interest of Pakistan in the conduct of international relations. What possible facts disclosure of certified information could bring in the public domain other than the following:
  - i. The description, type and value of the gift;
  - ii. Whether or not the Protocol Officer or the Ambassador concerned reported to the Toshah Khana that the gift was received by a such and such dignitary from such and such head of the state or head of the government;
  - iii. Whether the recipient of the gift chose to keep the gift after paying the retention price or deposited it in Toshah Khana? and
  - iv. What was the price of the retained gift and how was it determined?
17. The opacity and secretive ways of running the affairs of the government breed corruption and damage interests of the people of Pakistan and not the media stories based on

certified information. In CONSTITUTION PETITIONS NO.77 TO 85 & 89 OF 2011 & CMA NO.5505/2011 IN CONST.P.79 OF 2011, Jawwad S. Khawaja made pertinent observation about Role of rumours, conjectures and half truths in distorting our history and significance of access to information held by public bodies:

“It is an unfortunate facet of our history that during the 64 years since Pakistan's independence in 1947, the people of Pakistan have been, at times, disserved by a non-inclusive governance paradigm where information critical to them has been withheld from them...The people in quest of the truth have mostly been left with conjectures, rumors and half truths. Concealment of information has, in turn led to a distorted history of the country and to a destabilizing division in the polity...This paradigm has shifted through the recent incorporation of Article 19A in the Constitution. Article 184 (3) read in conjunction with Article 19A has empowered the citizens of Pakistan by making access to information a justice able right of the People rather than being largesse bestowed by the State at its whim. Article 19A has thus, enabled every citizen to become independent of power centres which, heretofore, have been in control of information on matters of public importance..What, it may be asked, is the intrinsic worth of information as a stand-alone fundamental right? The answer to this is simple. The very essence of a democratic dispensation is informed choice. It is through such choice that the political sovereign, the People of Pakistan acquire the ability to reward or punish their elected representatives or aspirants to elected office, when it is time for the People to exercise their choice. If information on matters of public importance is not made available to citizens, it is obvious they will not have the ability to evaluate available choices. Information on matters of public importance thus, is foundational bedrock of representative democracy and the accountability of chosen representatives of the people. It is in this context, both historical and conceptual, that the fundamental to information has to be seen. Through Article 19A in the Constitution, the citizens of Pakistan have also been freed from the caprice of a sorry fate and have become independent of whistle-blowers in foreign lands or the magnanimity of the likes of WikiLeaks or biographies of political actors, to get to the information they are now entitled to as of right under the Constitution”.

18. This commission fails to understand how could certified information based on records could adversely impact the conduct of inter-state relations? This assertion that disclosure of the requested information ‘could create ‘media hype’ and resulted in ‘unwarranted stories’, thus ‘potentially’ damaging the interest of Pakistan in the conduct of international relations is tantamount to not only shooting the messenger but also problematic on many other counts.
19. It is not certified information but absence of certified information that contributes to ‘media hype’ and resulted in ‘unwarranted stories’, creating trust-deficit between citizens and public institutions. Certified requested information will dispel rumours about the reporting of the gifts to ‘Tosha ‘Khana’ by the public officials and their retention price and which elected representative or public official retained which gift at what price.
20. When certified information about these gifts will be made available in the public domain for everyone to see, citizen of Pakistan will know that the gifts received on their behalf are being properly managed. Availability of the certified information about the gifts deposited in ‘Tosha Khana’ in public domain will not only make the entire process about the management of these gifts open and transparent, it will contribute to reducing trust-deficit between citizens and public institutions contributed by opacity and secretive ways of functioning of public institutions. Even citizens of the states on whose behalf gifts are received by our elected representatives and public officials will come to know that their gifts are properly managed, resultantly strengthening people-to-people and inter-state relations.

21. Certified requested information will dispel rumours about the reporting of the gifts to 'Tosha 'Khana' by the public officials and their retention price and which elected representative or public official retained which gift at what price.
22. This commission is of the view that public interest in terms of promoting transparency and accountability through the disclosure of requested information far outweighs any likely harm, if at all, to inter-state relations. In fact, such a disclosure is likely to strengthen inter-state relations.

#### **D. Order**

23. Appeal is allowed. The Public Information Officer is directed to provide the requested information about gifts received by the Prime Minister Imran Khan from foreign head of state, head of the government & other foreign dignitaries from 18 August 2018 to 31 October 2020, description/specification of each gift, information about the gifts retained by the Prime Minister and the Rules under which gifts thus received are retained by the recipients. The Respondent is directed to share the information with the Appellant with intimation to the commission within 10 working days of the receipt of this Order.
24. The Respondent is directed to put on its web site Rules under which gifts are retained by the recipients along with 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 within 10 working days of the receipt of this Order.
25. Copies of this order be sent to Public Information Officer, Cabinet Division and the Appellant for information and necessary action.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner

**Announced on:**

January 26, 2021

This order consists of 07 (seven) pages, each page has been read and signed