

**Pakistan Information Commission
Government of Pakistan**

1st Floor, National Arcade, 4-A Plaza
F-8 Markaz, Islamabad
Website: www.rti.gov.pk
Phone: 051-9261014
Email: appeals@rti.gov.pk
@PkInfoComm



In the Pakistan Information Commission, Islamabad

Appeal No. 964-03/21

Tariq Badar

(Appellant)

Vs.

National Bank of Pakistan

(Respondent)

Order

Date: December 07, 2021

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated March 24, 2021, to the Commission. The commission declared the Appeal to be inadmissible as the Appellant directly filed appeal with the commission without first filing request for information with the Respondent. On April 16, 2021, the Appellant filed request for information with the Respondent and on August 24, 2021 filed Appeal with the commission stating that he submitted an information request to President, National Bank of Pakistan under the Right of Access to Information Act 2017 but did not receive the requested information from the public body.
2. The information sought by the Appellant is as under:
 1. *“All copies of Agenda for Board of Direction meetings held between 01,01,1996 & 31, 12-2002, exclusively on Golden Hand Shake/ Volunteer Hand shake matters,*
 2. *Compile record of decisions taken by Board of Directors, Over Optional Retirement ie Gets/rats, launched in Oct 97 3 NOV 2001.*
 3. *Entire record of executive meetings held and their findings On Gilss/vitss for B3. O.D, wef 01.01.57 to 25/0/95 \$1.1.2001 Hill 31/12/2001.*
 4. *Copy of Office Note dated 12/01/98, pull-up for President is ratification, duly approve*
 5. *Photocopy of baller de 20/9/97, written by NPP to Ministry of Finance, seeking approval to amend Bye-Laws, Clause 18 (a) (ili) » Staff Service Rule is*
 6. *Razi Ahmed's (EK-AVP) PLS M/C 2697-7 with Mains Branch, Karachi / Pension File No R-REF) record so all papom pertaining to his option for sits in IT and re-joining after being relieved, after a gap of nearly 1/2 years.*
 1. *Option form*
 2. *Relieving Letter*
 3. *Attendance record from Nor 97 to Dee 97.*
 4. *Joining Report in 1925,*
 5. *Acceptance Letter for withdrawal of option*

Complete Record of all meetings of Bob s exceptive Committee meetings, held in connection with voluntary stand shake Scheme, approved in 2001”.

B. Proceedings

3. On November 10, 2021, the Respondent submitted its response which is as under:

“1. That the appellant availed NBP Voluntary Handshake Scheme (VHS) with his free will and severed from NBP in 2001. After his relieve, he dragged the respondent Bank in multiple litigations before the Hon'ble Islamabad High Court and the Pakistan Information Commission. Presently, Crl. Org. No. 150/2020 titled Tariq Badar vs. Arif Usmani etc and Crl. Org. No. 169/2020 titled Tariq Badar vs. Arif Usmani etc filed by the appellant (Syed Tariq Badar) were dismissed by the Hon'ble Islamabad High Court vide orders dated 15.02.2021 while CMA No. 2374/2021 in WP No. 2564/2020 titled Tariq Badar vs. FOP etc, WP No. 958/2021 titled Tariq Badar vs. Arif Usmani etc, WP No. 2088/2021 titled Tariq ved Badar vs. FOP etc, WP No. 3172/2021 titled Tariq Badar vs. FOP etc are still pending adjudication before the Hon'ble Islamabad High Court and Appeal No. 822-01/21 titled Tariq Badar vs. Arif Usmani etc as well as the appeal in hand are pending adjudication before this learned Commission. The appellant has no locus stand to file the titled appeal before this learned Commission for getting the certified copies of the record for the years 1996 to 2002 (mentioned in his appeal). He filed the said appeal before Pakistan Information Commission just to blackmail and pressurizes the respondent bank for fulfilling his nefarious designs, hence the same are liable to be dismissed

*2. That the Right of Access to Information Act 2017 (RTIA 2017) * promulgated on 13 October 2017. It is neither of retrospective nature nor is applicable to the past and closed transactions Section 1(3) of RTIA 2017 depicts the intention of the legislatures that it shall come into force at once i.e. w.e.f. 27.10.2017 (the date of its promulgation), being prospective and not retrospective. A bare reading of the provisions of the RTIA 2017, clearly suggests that it does not specifically prescribe that it would operate retrospectively. The provisions of the RTIA 2017 are not applicable to the past and closed information/ record pertaining to the year 1996 to 2002 sought by the appellant, so the appeal in hand is not maintainable. It is well established that all Courts/tribunals of Law constituted under the Constitution and the Law have only such jurisdiction that has been conferred upon them by the Constitution and the Law.1*

3. That in order to file an appeal before this learned Commission; the appellant must follow the mandatory procedure prescribed under section 11, 14 and 17 of the RTIA 2017. Section 11 provides that subject to the provisions of this Act and the rules made thereunder, a citizen of the Islamic Republic of Pakistan may make a request to a public body through the Designated Official to seek required information under the RTIA 2017. The request shall be in writing and made in any manner in which the public body has the facilities to receive it, including in person, by mail, fax, online or e-mail." Section 17 envisages that an applicant who is not satisfied b decision of the Designated Official or where no decision has been communicated to him within the time fixed for such decision. may, within a period not exceeding thirty days after either receivi a decision or after the time-limit for such a decision has pass prefer an appeal to the Information Commission."

Admittedly the appellant filed the titled appeal in March 2021 before this learned Commission. It is unequivocally clear from the record that the appellant never approached the NBP designated official through written request or otherwise according to the modes mandated under sections 11, 14 & 17 of the RTIA 2017 prior to filing of the titled appeal before this learned Commission. He subsequently placed a photocopy of

application dated 16.04.2021 on the file of the titled appeal relating to the information sought before this learned Commission just to cover this legal defect which is not permissible under the law, hence the appeal in hand is not maintainable being not filed in conformity of the mandatory requirements of the provisions of sections 11, 14 and 17 of the RTIA 2017, hence the same is liable to be dismissed.

4. Under section 18 of the RTIA 2017, it is the primary responsibility of the Information Commission to receive and decide the appeals under section 17 of the RTIA 2017. It is well established principle that when law prescribes anything to be done in a particular manner, the same is to be done as mandated by law and not otherwise. The titled appeal has not been filed by the appellant in consonance of the mandatory provisions of sections 11, 14 and 17 of the RTIA 2017, so the appeal cannot be entertained under the law.

5. That Freedom of Information Ordinance 2002 (FIO 2002) was promulgated on 27.10.2002 prospectively by President of Pakistan to deal with the subject of the provision of Information which was subsequently repealed through section 29 of the RTIA 2017. Section 7 of the FIO 2002 declared the certain record as public record while section 8 Excludes the following record of all public body from its disclosure, namely;

Noting on the files, Minutes of meetings, Any intermediary opinion recommendation, Record of the banking companies and financial institutions relating to the accounts of their customers, Record relating [10:52 PM, 11/23/2021] ..i: to defence forces, defence institutions of concerned therewith and secondary to defence and national security. Record declared as classified by this federal Government, Record relating to the personal life of an individual, Record of private documents furnished to public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third person, and any other record which the federal government may, in public interest, exclude from the purview of this Ordinance.

Section 14 placed embargo upon the disclosure of the aforementioned exempted information while Section 17 excludes the information relating to the privacy of the identifiable individual from its disclosure. Thus the provisions of the FIO 2002 also did not permit disclosure of the information/ record sought by the appellant in his appeal.”

4. That the appellant has sought information/ certified copies of seven categories i.e. (1) “All copies Agenda for Board of directors meetings held between 01.01.1996 & 31.12.2002, exclusively on Golden Hand Shake/Volunteer Hand Shake matters; (2) Complete record of decisions taken by Board of Directors, over optional retirement i.e. GHSS/VHSS, launched in October 1997 & November 2001; (3) Entire record of executive meetings held and their findings on GHSS/VHSS for BOD w.e.f. 01.01.1997 to 28.02.1998 & 01.01.2001 till 31.12.2001; (4) Copy of office note dated 12.01.1998 put up for President's ratification duly approved; (5) Photocopy of letter dated 20.09.1997 written by NBP to Ministry of Finance seeking approval to amend Bye-Laws, Clause 18(a)(iii) & Staff Service Rules; (6) Razi Ahmed's (Ex-AVP) PLS A/C 2677-7 with main branch, Karachi/pension file No.R-264 record & all papers pertaining to his option for GHSS in and rejoining after being relieved, after a gap of nearly 1 & ½ years i.e. Option form, Relieving Letter, Attendance record from November 1997 to December 1999, Joining report in 1999, Acceptance letter for withdrawal of option; (7) Complete record of all meetings of BODs & Executive Committee meetings, held in connection with Voluntary hand Shake Scheme approved in 2001. [10:53 PM, 11/23/2021] ..i: The aforementioned records/document pertain to the period for the years 1996 to 2002 which neither fall under the ambit of RTIA 2017 nor the FIO 2002, No cannot be given to the appellant in any manner. The appellant has no

vested right to seek the information about the said record. As stated ibid, from the previous multiple litigations launched by the appellant against the respondent bank, his intention for seeking the record is no more than to inflict harm and drag the NBP into unnecessary litigation.”

5. That keeping in view the nature of information/ documents sought by the appellant and the period to which the same relates (1996 to 2002), this learned Commission has no jurisdiction to entertain and adjudicate upon the appeal in hand; hence the same is liable to be dismissed.

Reply on facts:

6. The appeal has not been filed by the appellant in accordance with the mandatory requirements of the provisions of sections 11, 14 and 17 of the RTIA 2017, so the same is not entertainable. Parawise reply of the respondent bank with regard to the information sought by the appellant in the titled appeal is as under:
7. That in reply to para No.1 of the information/papers sought by the appellant relating to the copies of Agenda for Board of Directors meetings held between 01.01.1996 till 31.12.2002 exclusively on Golden Handshake Scheme & Voluntary Handshake, it is submitted that the appellant is not entitled to get the information/papers of Agenda for BODs meetings held between 01.01.1996 till 31.12.2002. As stated earlier, the RTIA 2017 was promulgated on 27.10.2017 and came into force at once meaning thereby that the RTIA 2017 is applicable prospectively and has no retrospective effect. The provisions of the RTIA 2017 are not applicable to the information/record [10:54 PM, 11/23/2021] ..i: pertaining to the year 1996 to 2002 (the past and closed transactions).
8. As stated in the preliminary objections, Section of the FIG 2002 specifically excludes the provision of record of public bodies namely, noting on the files, minutes of meetings, any intermediary opinion or recommendations etc. There was no law in the field prior to the promulgation of the FIO 2002, requiring the public bodies to provide the information/ record to the citizens of Pakistan on their request, hence the request of the appellant for the provision of record mentioned in para 1 of the appeal is not entertainable.
9. That in reply to para No.2 of the appeal it is submitted that the appellant sought the record pertaining the decisions taken by Board of Directors about the Golden Handshake Scheme/ Voluntary Handshake Scheme for the years 1997 & 2001 under the provisions of RTIA 2017. The RTIA 2017 was promulgated on 27.10.2017 and came into force at once having no retrospective effect, is not applicable to the past and closed transactions/record of public bodies pertaining to the year 1997 & 2001. Section 8 of the FIO 2002 specifically excludes the provision of the record mentioned in this para. There was no law in the field prior to the promulgation of the FIO 2002, requiring the public bodies to provide the information/ record to the citizens of Pakistan on their request, hence the record sought in para 2 of the appeal cannot be given to the appellant in any manner.
10. That in reply to para No.3 of the appeal, it is submitted that the record of executive meetings held between the period from 01.01.1997 to 28.02.1998 and findings on GHSS/VHSS for BOD does not fall under the scope of the provisions of the RTIA 2017 while the provisions of FIO 2002 specifically exempts the disclosure of the said record. As stated earlier, there was no law in the field on the subjects prior to the to 2002, hence the information/ record sought in para No3 the appeal cannot be provided to the appellant
11. That in reply to para No.4 of the appeal, it is submitted that copy of Office Note dated 12.01.1998 put up for President's Notification sought by the appellant for the year 1995 (a

past and closed transaction) does not fall under the ambit of RTIA 2017 while the provisions of the FIO 2002 specifically exempts the disclosure of the said record. There was no law in the field on the subject prior to the FIO 2002, hence the information/ record sought in para No.4 of the appeal cannot be provided to the appellant.

12. That in reply to para No.5 the appeal, it is submitted that the alleged record i.e. Photocopy of letter dated 20.09.1997 written by NBP to the Ministry of Finance, seeking approval to amend by-laws, clause 18 of Staff Service Rules cannot be questioned under the provisions of RTIA 2017 while the provisions of FIO 2002 specifically exempts the disclosure of such kind of record. There was not law in the field on the subject prior to the FIO 2002, hence the appellant debarred. from asking the information/ record mentioned in para No.5 of the appeal and the public body could not provide such kind of record to any requester
13. That in reply to para No.6 of the appeal, it is submitted that the record/ papers pertaining to Mr. Riaz Ahmad (ex-AVP) i.c. his PLS account No. 9697-7 with NBP main branch Karachi, his pension file No. R-264 with reference to his opinion regarding Golden Handshake in 1997, Option Form, Attendance Record from November 1997 to December 1999, Relieving Letter issued in 1998, Joining Report 1999, Acceptance Letter for withdrawal of option of said Razi Ahmad (ex-AVP) do not fall under the ambit of RTIA 2017 and also exempts thereunder. The provisions of the FIO 2002 [10:57 PM, 11/23/2021] ..i: specifically exempt the disclosure of the said record. As stated earlier, there was not law in the field on the subject prior to 2002. Moreover, the said information relates to the personal details of an individual i.e. Razi Ahmad (ex-AVPI hence has no correlation with public information, so the said information squarely fall under the ambit of "personal information and "personal privacy of identifiable individual (Razi Ahmad). Suis information has no nexus with any public activity or interest Furthermore, the provision of the information/ record sought by the appellant from the NBP relating to one Razi Ahmad tentamounts to an invasion on the personal privacy of the identifiable individual which is protected under the law. Such informations are exempt from disclosure under the provisions of section 7 and 16 of the RTIA 2017 and the provisions of the FIO 2002 too. As stated supra, there was no law in the field on the subject prior to the promulgation of the FIO on 27.10.2002. In view of the said reasons, the information/ record sought in para No.6 of the appeal cannot be provided to the appellant in any manner.
14. That in reply to para No.7 of the appeal, it is submitted that record of the meetings of BOD and Executive Committee held in connection with Voluntary Handshake Scheme 2001 and the papers annexed therewith i.e. Photocopy of press clipping of daily Business Recorded Karachi dated 18.09.1997, Office Note dated 12.01.1998, Office Note dated 12.01.1998, Rules. amended in 2002/ NBP Instructions, Circular No. 3/2002 dated 04/01/2002 and Statement of PLS Account of Mr. Razi Ahmad as well as Printed Details do not fall under the ambit of RTIA 2017 while the provisions of the FIO 2002 specifically exempts the disclosure of the said record. There was not law in the field on the subject prior to the FIO 2002, hence the information/ record sought in Para No.7 of the appeal cannot be provided to the appellant in any manner.
15. In nutshell, the appellant filed the titled appeal before this learned Commission in March 2021 in violation of the mandatory provisions of section 11. 14 and 17 of the RTIA 2017 and sought the information/ records of BOD meetings. agendas, noting of files etc for the years 1996 to 2002 pertaining to Golden Handshake Scheme/ Voluntary Handshake Scheme and personal information/ record of Mr. Razi Ahmad (Ex-AVP) which are past and closed transactions. The RTIA 2017 came into force on 27.10.2017 prospectively and it is not applicable to past and closed transactions and section 1(3) of the RTIA 2017

confirms that it shall be enforceable at once i.e. from the date of its promulgation being prospective and not retrospective. The FIO 2002 also excludes the said record from its disclosure. There was no law on the subject in the field prior to the FIO 2002, so the request for the provision of record mentioned in the titled appeal to the appellant cannot be permissible or even entertain able under the law. The Hon'ble Supreme Court of Pakistan in the cases titled Chief Post Master Faisalabad and another vs. Muhammad Afzal and Divisional Superintendent Postal Services Faisalabad and others vs. Muhammad Zafarullah, emphasized that "all Courts/Tribunals seized of matters before them were required to pass orders strictly in accordance with the parameters of the Constitution, the law and the rules and regulations framed under the law. No Court had any jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the Law."

That affidavit of Mr. Muhammad Riaz Senior Vice President, Wing Head HR Legal Compliance North (authorized attorney o the petitioner bank) in support herewith”.

16. The hearings were held on November 19 and November 11, 2021. On November 19, 2021, the Appellant submitted his response.

C. Issues

17. The instant appeal has brought to the fore following issues:

- (a) Does the application filed by the Appellant to the Respondent constitute ‘request for information’ under Section 11 (3) of the Act 2017?
- (b) Does the Right of Access to Information Act 2017, henceforth referred to as the “Act” apply retrospectively?
- (c) 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?
- (d) Can the requested information be provided to the Appellant under the provisions of the Act 2017?

D. Commission’s View on Relevant Issues

18. The Respondent has raised the point that the Appellant could not file appeal to this commission as the request for information was not directly filed to the designated officer. As to what has to be done if a request for information is received by an officer other than the designated officer under the Act, Rule 6 of the Right of Access to Information Act 2019 comes into play which is as under:

“6. **Transfer of application.** — (1) Any officer of a public body other than the designated officer who receives an application for access to information shall transfer the application to the designated officer under intimation to the applicant.

(2) The designated officer shall acknowledge receipt of a transferred application immediately after its receipt and process the same under the Act”.

19. This commission also maintains that according to the record available on the file, application filed by the Appellant constitutes ‘requests for information’ under the Act 2017. The Appellant filed an appeal, dated March 24, 2021, to the Commission. The commission declared the Appeal to be inadmissible as the Appellant directly filed appeal with the commission without first filing request for information with the Respondent. On

April 16, 2021, the Appellant filed request for information with the Respondent and on August 24, 2021 filed Appeal with the commission stating that he submitted an information request to President, National Bank of Pakistan under the Right of Access to Information Act 2017 but did not receive the requested information from the public body. In the instant appeal, the request for information reached the Respondent public body and as such, the designated official under the Act should have processed it as a request for information and should have either provided the requested information to the applicant or provided reasons to the applicant as to why the requested information could not be provided to the applicant under the specific provisions of the Act.

20. This commission holds that it is evident from the scheme and structure of the Act that it applies retrospectively, especially from Sections 5, 6 and Section 16 (1) (k) of the Act. The *proviso* to Section 5 stipulates that if the information or record requested pertains to a period earlier than the year 2008, the same shall be published within a “reasonable time”.
21. The Respondent has submitted that minutes of the meetings are exempted from disclosure. This commission has maintained in its different detailed judgements that even plain reading of Section 7 (a) and (b) suggests that ‘noting on the files’ and ‘minutes of the meeting’ are given qualified and not absolute exclusion from disclosure. Exclusion of ‘noting on the file’ and ‘minutes of the meetings’ is subject to a final decision. As such, ‘noting on the file’ and ‘minutes of the meeting’ cannot be shared during the deliberative process. The disclosure of ‘minutes of meetings’ and ‘noting on the file’ during the deliberative process is protected to ensure that outside influence does not create hindrances in the deliberative process. However, once a public body has taken a final decision, as is the case in the instant appeal, noting on the files and minutes of the meetings cannot be treated as excluded records. ‘Noting on the file’ and ‘minutes of the meeting’, once final decision has been taken, reflect the quality of input by different officers which become basis for the final decision and citizens of this country have the right to know about the quality of input in the decision-making.
22. This commission maintains that both the letter and spirit of the Act 2017 dictate the disclosure of certified copies of records/information requested by the Appellant in para 2 of this Order, including its item 6.
23. Public interest dictates that the certified copies of the records on the file of an employee of the public body cannot be withheld on the grounds of privacy as it this information is critical to determine the level of transparency and fairness adopted in the recruitment process. Therefore, none of the provisions of this Act, including Section 7 (g) can be attracted to withhold the disclosure of the requested information.
24. The personal/private information means CNIC details, residential addresses, telephone numbers, bank accounts/financial details and health conditions. This commission maintains that if the public interest warrants the disclosure of a report, though some of its part may contain information which should be exempted from disclosure on reasonable grounds, those parts can be severed and the rest should be made public as required under Section 16 (1) (i) of the Act.

E. Order

25. The appeal is allowed. The Respondent is directed to share with the Appellant the requested information in para 2 of this Order after blanking out personal information such as CNIC details, residential addresses, telephone numbers, bank accounts/financial details and health conditions.
26. Copies of this order be sent to the Respondent and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:

December 07, 2021

This order consists of 8 (Eight) pages, each page has been read and signed.