

**Pakistan Information Commission**  
**Government of Pakistan**

1<sup>st</sup> Floor, National Arcade, 4-A Plaza  
F-8 Markaz, Islamabad  
Website: [www.rti.gov.pk](http://www.rti.gov.pk)  
Phone: 051-9261014  
Email: [appeals@rti.gov.pk](mailto:appeals@rti.gov.pk)  
@PkInfoComm



**In the Pakistan Information Commission, Islamabad**  
**Appeal No E182-11/21**

**Imdad Hussain**

**(Appellant)**

Vs.

**Federal Investigation Agency**  
**Ministry of Interior**  
**Cabinet Division**

**(Respondent-1)**  
**(Respondent-2)**  
**(Respondent-3)**

**ORDER**

Date: August 16, 2022

Zahid Abdullah: Information Commissioner

**A. The Appeal**

1. The Appellant filed an appeal, dated November 11, 2021, to the Commission, stating that he submitted an information request to the Director General, Federal Investigation Agency on October 06, 2021 under the Right of Access to Information Act 2017 but did not receive any response from the public body.
2. The information sought by the Appellant is as follows:

*“Through this application, the Applicant respectfully invokes his inalienable right of access to information is provided under Article 19-A of the Constitution of Islamic Republic of Pakistan, 1973, and Right of Access to Information Act, 2017. Bring a citizen of the Islamic Republic of Pakistan as defined under the Constitution of Islamic Republic of Pakistan, 1973, and Pakistan Citizenship Act, 1951, the Applicant requests this respectable office for the production of "Weighment Table" of Hamas Sugar Mills Limited, Rahim yar Khan for the Crushing Season 2017 18, which is mentioned under Para 457 of the Sugar Inquiry Commission Report, 2020.*

*To enable this respectable office to locate the information/document being requested through this application, following facts will be helpful*

1. *To probe into the issue of sugar crisis and hike in sugar prices in 2020, an inquiry commission under the Pakistan Commission of Inquiry Act, 2017 vides Notification No. F.5/14/2020-PIA dated 16 March, 2020 was constituted by the Federal Government based upon the recommendation of the Inquiry Committee constituted by the Honorable Prime Minister of Pakistan vide; SPM letter No. 755/A/M/SPM/2020. The Commission chaired by DG FIA. comprised of DG Anti-Corruption Punjab, DDG IB, Executive Director SECP, Joint Director SBP, DG I&I FBR, ISI as its members*
2. *The Inquiry Commission constituted on 16 March, 2020 for the purpose of probing into the matter of sugar crisis and hike in the sugar prices has found in Para 457 of its report that the Messrs. ' Hamza Sugar Mills Limited Rahim yar Khan has applied*

*undue illegal deduction in weight of the sugarcane. For the sake of refers se, relevant part of Para 457 of the report is reproduced as under:*

*"The farmers complained that the Hamza Sugar Mills has been making illegal deductions in weight during the sugarcane procurements especially in 2017-2018. In order to verify aforesaid complaints of the sugar growers, mind of the Company has been checked free Oracle back-end database It has been observed, am the data stare in "Weighment Table that gets weight is strongly "GROSS WEIGHT and ACTWEIGHT and weight of foresaid rationing fin Beth and empery is mending "Grz Weight in CPR. Further it has been that in 123,225 transactions weight of "GROSS WEIGHT is the "ACTWEIGHT by 182,366,045 Kgs. This confirms the claim made by the growers that the Company mad deductions from weight of a daring 2017-18 to which a loss Ra 220 47,180 was fond by the growers and illegal gin made by the Company... (Emphasis added)*

3. *The Inquiry Commission Report was made public following the decision of the Cabinet dated 21.05.2020, therefore, all the ancillary documents to the Report which were not included in the Report for the sake of brevity become public documents and accessible for a citizen of the Islamic Republic of Pakistan.*

*In light of the above, the Applicant requests this honorable office to provide him with a copy (either soft or hard) of the Weighment Table mentioned in Para 457 to the above-said Inquiry Commission Report”.*

## **B. Proceedings**

3. The record on the file suggests that the Appellant submitted before this commission on January 11, 2022 the following;

1. *“Please refer to the subject appeal filed before the Pakistan Information Commission.*
2. *The Appellant made an application to Federal Investigation Agency on 06.10.2021 under Section 11 of the Right of Access to Information Act, 2017 (The Act of 2017) FIA was under statutory obligation to respond to the information request within 10 working days or in certain circumstances within 20 days, which FLA failed to do so. Being aggrieved of FIA's omission, the Appellant filed the instant appeal on 02.11.2021 before the Pakistan Information Commission under Section 17 of the Act of 2017.*
3. *Responding the instant appeal, FIA has submitted its response on 23.12.2021 served to the Appellant on the evening of 04.01 2022, in which FIA has refused to provide the information requested on the following two grounds*
  - i. *Cabinet Division has the propriety rights to the information requested, therefore, Cabinet Division is the relevant authority to be requested for the information.*
  - ii. *Since the propriety rights are of the Cabinet Division, the decision making Powers regarding the information being public information also vests with the Cabinet Division:*
4. *The response of FIA is dissatisfactory and is a result of absolute disregard of the provisions of the Act of 2017.*
5. *The response of FIA is contrary to the provisions of the Act, and consequently, is infringing the Appellant's fundamental right of access to information guaranteed under Article 19-A of the Constitution of Islamic Republic of Pakistan, 1973, for the reason that as per Section 2(xi) of the Act of 2017 "right of access to information accessible under the Art which held by or under the control of any public body and includes the right of access to information documents or marking in digital or posted form, as the case maybe."*

*Since the information requested in the Application to FIA dated 06.10.2021 is held and under the control of FIA, which fact has itself been admitted by FIA in its response submitted to the Pakistan Information Commission on 22.12.2021, the FIAs under obligation to provide the requested information to the Appellant*

6. As far the status of the information requested being a public information is concerned, it is clarified that the information Washmen Table mentioned in Para 457 of the Sugar Inquiry Commission Report in ones is a public information for the following reasons
- i. The Weighment Table is an integral part of the Inquiry Commission Report, which Report made public through the Cabinet Decision dated 21.05.2020
  - ii. The Weighment Table' is an integral part of the Inquiry Commission Report because the content of the Weighment Table has been completely described in Para 457 of the Report, but has not been incorporated in the Report because of brevity, as the Weighment Table itself would have been of about more than 10,000 pages. This argument can further be substantiated by analyzing the other several tables in the Sugar Inquiry Commission Report which reflect the exact data (e is albert and does not compromise the brevity of the Report) obtained/extracted from the database of the Sugar Mills.

*In light of the above submissions, it is most respectfully requested that the Respondent (FIA, a public body) may kindly be ordered to refrain from infringing the Appellant's fundamental right of access information by delaying the matter on conjectural and spurious grounds, also to provide the information requested within 10 days in accordance of the Act of 2017”.*

4. The Respondent-1 submitted his response on February 14, 2022 and its text is as under:  
 “Please refer to subject dissatisfaction letter dated 11.01.2022 submitted by the appellant Mr. Imdad Hussain in response to information provided by this office vide HQ/DL/PIC-19/21/8210-11 dated 22.12.2021 in the subject appeal.
1. The FIA;s reply/Para-wise comments in this regard submitted as under:

Para No.	Paras of the Dissatisfaction letter dated 11. 01. 2022	FIA’s Reply/Para-Wise Comments
1.	Please refer to the subject appeal filed before the Pakistan Information Commission.	Needs no reply
2.	The Applicant made an application to Federal Investigation Agency on 06.10.2021 under Section 11 of the Right of Access to Information Act, 2017 ("The Act of 2017"). FIA was under statutory obligation to respond to the information request within 10 working days or in certain circumstances within 20 days, which FIA failed to do so. Being aggrieved of FIA's omission, the Appellant filed the instant appeal on 02.11.2021 before the Pakistan Information Commission under Section 17 of the Act 2017.	Matter of record
3.	Responding the instant appeal, FIA has submitted its response on 23.12.2021 served to the Appellant on the evening of 04.01.2022, in which FIA has refused to provide the following requested on the following two grounds: <ol style="list-style-type: none"> <li>i. Cabinet Division has the propriety rights to the information requested therefore,, Cabinet Division is the relevant authority to be requested for the information.</li> <li>ii. Since the propriety rights are of the Cabinet Division, the decision making powers regarding the information being public information also vests with the Cabinet Division.</li> </ol>	Matter of record

4.	The response of FIA is dissatisfactory and is a result of absolute disregard of the provisions of the Act 2017	Disagreed. FIA's response dated 22-12-2021 is in consonance with the provisions of the Right of Access to Information Act, 2017 r/w Pakistan Commissions of Inquiry Act, 2017
5.	<p>The response of FIA is contrary to the provisions of the Act, and consequently, is infringing the Appellant's fundamental right of access to information guaranteed under Article 19-A of the Constitution of Islamic Republic of Pakistan, 1973, for the reason that as per Section 2(xii) of the Act of 2017 "right of access to information means the right of access to information accessible under this Act which is held by or under the control of any public body and includes the right of access to information, documents or record in digital or printed form, as the case may be."</p> <p>Since the information requested in the Application to FIA dated 06.10.2021 is held and under the control of FIA, which fact has itself been admitted by FIA in its response submitted to the Pakistan Information Commission</p> <p>On 22-12-2021, the FIA is under statutory obligation to provide the requested information to the Appellant.</p>	<p>Disagreed.</p> <p>FIA has not infringed the Appellant's fundamental right of access to information as the accessibility of the information is subject to the provisions of Right of Access to Information Act, 2017 under said section 2(xii) of the Act of 2017. The said Act itself places certain embargoes/ exemptions on disclosure of information by a public body.</p> <p>It is reiterated once again that the Federal Government constituted a Commission of Inquiry in the matter under section 3 (1) of Pakistan Commissions of Inquiry Act, 2017.</p> <p>As per Section 3 (2) of said Act, the Federal Government appointed seven (07) members of the Commission including Mr. Wajid Zia, the then Director General of FIA who was designated as the Chairman of the Commission. FIA as department was never involved in these inquiry proceedings conducted by the Commission; however, Mr. Wajid Zia, the then Director General FIA, was appointed in his individual capacity to act as the Chairman of the Commission.</p> <p>Furthermore, Section 3(6) of Pakistan Commissions of Inquiry Act. 2017 explicitly states that the Commission shall cease to exist on the conclusion of the inquiry conducted by it and submission of Final Report in respect thereof to the Federal Government: hence, at present no Sugar Inquiry Commission exists.</p>

		<p>Moreover, merely possession of the record of the Sugar Inquiry Commission does not impart 'propriety rights' or 'privy' to disclosure such information until the same is disclosed by the Federal Govt./Cabinet as the FIA is exempted from disclosure of such information u/s 16 (h) &amp; 16 (g) (i) of the Right of Access to Information Act, 2017 which are reproduced as under:</p> <p>"16(h). Information maybe exempted if it is privileged from production in legal proceedings, unless the person entities to the privilege has waived it</p> <p>16(g). Information may be exempted if- i. The information was obtained from a third party and on its communication it would constitute an Actionable breach of Confidence."</p>
6.	<p>As far the status of the information requested being a public information is concerned. it clarified is that the information (Weighment Table" mentioned in para. 457 of the Sugar Inquiry Commission Report) in all manners is a public information for the following reasons:</p> <p>Inquiry Commission</p> <ol style="list-style-type: none"> <li>i. The 'Weighment Table is an integral part of the Report, which Report was made public through the Cabinet Decision 21.05.2020. dated</li> <li>ii. The 'Weighment Table' is an integral part of the Inquiry Commission Report because the content of the Weighment Table has been completely described in Para. 457 of the Report, but has not incorporated in the Report because of brevity, as the Weighment Table itself would have been of about more than 10.000 pages. This argument can further be several tables in the reflect the exact data (which is short and does not compromise the brevity of the Report) obtained/ extracted from the database of the Sugar Mills.</li> </ol>	<p>Agreed to the extent that the 'Weighment Table' is a part of the Inquiry Commission Report which has been made public through Cabinet decision dated 21.05.2020. However, as per provisions contained in proviso of Section 15 of Pakistan Commissions of Inquiry Act, 2017, the Commission may, in the public interest, recommend to the Federal Government that all or any part of the Final Report or an interim report may not be made public. Thus, the disclosure of the requisitioned information is not for FIA to decide rather this matter rests with the Govt./Cabinet Division. Federal</p> <p>Additionally, the Sugar Commission Inquiry proceedings in respect of Hamza Sugar Mills situated at Khanpur, District Rahim Yar Khan were headed by Anti-Corruption (ACE), Punjab. Establishment</p> <p>Furthermore, as explained earlier, FIA is exempted from</p>

		such disclosure u/s 16 (h) & 16 (g) (i) of the Right of Access to Information Act, 2017 until the Federal Govt./Cabinet Division discloses the same.
7.	In light of the above submissions, it is most respectfully requested that the Respondent (FIA, a Public body) may kindly be ordered to refrain from infringing the Appellant's fundamental right of access to information by delaying the matter on conjectural and spurious grounds, and also to provide the information requested within 10 days in accordance di the Act of 2017,	Disagreed. As explained earlier, FIA has fully acted in accordance with the provisions of Right of Access to Information Act, 2017 r/w Pakistan Commissions of Inquiry Act, 2017 and no infringement of the Appellant's fundamental right of access to information has taken place.  It is submitted that in the best interest of justice, the Federal Govt./Cabinet Division may be impleaded as party in the appeal being necessary party as the interpretation/ clarification of the point that whether any ancillary document of the said Inquiry Report i.e. 'Weighment Table' is a public document which could be shared with the Appellant or otherwise rests/ lies exclusively with Federal Division. the Govt./Cabinet Division

5. Hearing on the instant Appeal was fixed for June 02, 2022 vide letter dated May 11, 2022. The Respondent-1, FIA was represented by MS Sania Imtiaz while the Appellant also attended the hearing. Cabinet Division did not attend the hearing. *The Respondent-1, FIA submitted its response and its text is as under:*

“2. The Prime Minister of Pakistan vide SPM letter No. 755/A/M/SPM/2020 date 20.02.2020 constituted an inquiry Committee to probe into the sugar crisis in the country. Based upon the recommendations of the Committee. the Federal Government constituted Inquiry Commission under Pakistan Commission of Inquiry Act 2017 to probe the issue at length vido Notification No.F.5/14/2020 HA dated 16th March 2020. The Commission comprised of the following members:

- i. Mr. Ward Zia. Director General, FR Chairman
- ii. Mr. Goher Nafees. DG, Anti-Corruption Punjab Member
- iii. Mr. Ahmed Kamal DDG 18 Member
- iv. Mr. Bilal Rasul. Executive Director. SECP Member
- v. Mr. Majid Hussain Chaudhry, Joint Director, SBP Member
- vi. Dr. Bashirullah Khan Marwal, DG 1&1 FBR Member
- vii. Col. Muhammad Faisal Gul. ISI Member

3. The inquiry report was presented before the Prime Minister of Pakistan and upon approval; it was made public by the Federal Government. FIA as department was not involved in the inquiry proceedings rather an officer was selected from FIA along with all other officers of above mentioned departments to constitute a commission. The said commission was autonomous and independent and department including FIA were bound under the law to assist the Commission only as and when required.

Furthermore, since the decision to make the said report public was taken by the Cabinet, it therefore, owns the propriety rights to the said report. It is humbly requested to let Cabinet Division answer to the interpretation of the point whether any ancillary document of the said inquiry report ie, weighment table is a public document and which can be shared with the appellant or otherwise.

5. The subject appeal may kindly be dismissed to the extent of FIA with directions to the appellant to approach the appropriate forum, La. Cabinet Division in this matter”.

6. Another hearing on the instant Appeal was fixed for August 04, 2022 vide letter dated July 20, 2022. The Respondent-3, Cabinet Division was represented by Sana Ullah Khan, Deputy Secretary, MS Sania Imtiaz, represented Respondent-1 and Respondent-2, Ministry of Interior was represented by Asad Ishaq, S/O, (FIA). The Respondent-1, FIA reiterated its earlier response submitted before the commission.
7. After hearing arguments of the Respondents, the commission held that the requested enquiry report is a public document and intimated that detailed judgement will be issued by the commission.

**C. Issues**

8. The instant appeal has brought to the fore the following issues:
  - (a) Can a finalised enquiry report be disclosed under the Right of Access to Information Act, 2017, henceforth referred to as the Act, 2017?
  - (b) Which public body is the custodian of the requested enquiry report?

**D Discussion and commission’s views on relevant issues:**

9. The Respondent-1, FIA has maintained that though it is in possession of the requested sugar enquiry report, the proprietary rights are with Respondent-3, Cabinet Division.
10. The Respondent-1, FIA submitted that “inquiry report was presented before the Prime Minister of Pakistan and upon approval; it was made public by the Federal Government. The Respondent-1, FIA also submitted that “Furthermore, since the decision to make the said report public was taken by the Cabinet, it therefore, owns the propriety rights to the said report. It is humbly requested to let Cabinet Division answer to the interpretation of the point whether any ancillary document of the said inquiry report, weighment table is a public document and which can be shared with the appellant or otherwise”.
11. This commission maintains that though the sugar enquiry report is in possession of FIA, Cabinet Division is the custodian of this enquiry report for the purposes of the Act, 2017 as it has propriety rights of this report.
12. This commission holds that the Act, 2017 does not only treat finalised enquiry reports as public documents, it requires federal public bodies to proactively publish these finalised enquiry reports on their web sites through its Section 5 (1) (i).
13. This commission maintains that the Act, 2017 does not provide blanket exemption to any finalised enquiry report.
14. This commission holds that merely because certain portions of a finalised enquiry report and its ancillary documents may contain information/records which may be hit by exemption clauses of the Act, 2017, it does not mean that it can be exempted from disclosure in its entirety.

15. The Act, 2017 envisages a situation wherein a document, which should be otherwise be made public but its parts may contain exempted information. In such an eventuality, part(s) containing information to be exempted can be severed, or, blanked out from the document as mentioned in Section 16 (1) (i) of the Act, 2017.
16. This commission also holds that if Respondent-3, Cabinet Division determines that certain portions of the requested finalised enquiry report, or, certain portions of any of its ancillary documents are hit by any of the exemption clauses of the Act, 2017, the Respondent-3 is required to record specific reason(s) to justify exemption of the portion by invoking the particular exemption clause of the Act, 2017.

#### **E. Order**

17. The Appeal is allowed. Secretary, Cabinet Division is directed to provide the Appellant and proactively publish on its web site finalised enquiry report and its ancillary documents in light of para 16 of this Order within 20 working days of the receipt of this Order, with intimation to this office.
18. Copies of this order be sent to all the Respondents and Appellant for information and necessary action.

**Mohammad Azam**

Chief Information Commissioner

**Fawad Malik**

Information Commissioner

**Zahid Abdullah**

Information Commissioner

Announced on:

August 16, 2022

This order consists of 08 (eight) pages, each page has been read and signed.