



In the Pakistan Information Commission, Islamabad
Appeal No E250-03/22

Saeed Ahmed

(Appellant)

Vs.

Trust for Democratic Education and Accountability

(Respondent)

ORDER

Date: September 13, 2022

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated March 24, 2022 to the Commission, stating that he submitted an information request to the Trust for Democratic Education and Accountability's on November 26, 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:
 1. "Complete record of 2013 election observation including PVT forms.
 2. EC FAFEN Meeting minutes from 2020 till to date.
 3. Complete Membership Fee record from 2018 till now.
 4. Board of Trustees meeting minutes from 2020 till to date.
 5. General body FAFEN meeting minutes from 2018 till to date.
 6. Record of all consultants & short-term employees from 2012 till to date."

B. Proceedings

3. The record on the file suggests that the Respondent submitted its response on the intervention of this commission on May 27, 2022 and its text is as under:

1. "The Respondent Trust for Democratic Education and Accountability (TDEA) has Isen required by the learned Pakistan Information Commission, Government of Pakistan (Commission"), through its letter dated 18.05.2022, to respond to a request for information made by the Appellant, Mr. Saeed Khan (Appellant"). The Appellant sought information from the TDEA, a trust established through a Trust Deed executed in Islamabad on 11.10.2008. The original Trust Deed was amended through Amendest Trust Deed executed on 21.05.2014 It has its current principal office at Building No. 1. Street 5 (off Jasmine Road), Sector G-7/2, Islamabad The instant Reply is being filed on behalf of the Trust through its Director (Operations). Mr. Amjad Ali Shah, who has been duly authorized in this behalf through a resolution of the Board of Trustees dated 26.05.2022

[A copy of the resolution of the Board of Trustees of TDEA dated 26.05.2022 is placed herewith and marked as Annexure-A]

2. TDEA is not a governmental body, nor does it receive any funding from the Government of Pakistan. The Appellant, Mr. Saeed Khan, made the request for the following documents from the TDEA

- i. Complete Record of 2013 election observation including PVT forms
- ii. EC FAFEN Meeting minutes from 2020 till to date.
- iii. Complete Membership Fee record from 2018 till now,
- iv. Board of Trustees meeting minutes from 2020 till to date
- v. General body FAFEN meeting minutes from 2018 till to date
- vi. Record of all consultants & short-term employees from 2012 till to date

3. Under the provisions of the Right of Access to Information Act, 2017 ("2017 Act") the TDEA is not required to provide information with regards to any of documents sought by Mr. Saeed Khan A PRELIMINARY OBJECTIONS

4. Mr. Saeed Khan filed his request for information on 26.11 2021. Under section 14 of the 2017 Act, where a reply is warranted, the person from whom the information is sought is "required to respond to a request as soon as possible and in any case within ten working days of receipt of the request". For the purposes of section 17 of the 2017 Act, however, it has been specified that "lamin applicant" even when "no decision has been communicated to him within the time fixed for such decision", is required to "prefer an appeal to the Information Commission". "within a period not exceeding thirty days... after the time-limit for such a decision has passed" (emphasis added). Because the request was made by the Appellant on 26.11 2021 and the time-limit for a response, if any such response was even warranted, was ten (10) days, which would be the first week of December. The 30-day time period imposed under section 17 begins from 07.12.2021 and ended on 06.01.2022 Consequently, the Appellant had to file his Appeal at the very latest by 06.01 2022. However, the Appellant filed his Appeal before the learned Commission on 24 03.2022, which is time barred by almost three (3) months and cannot be entertained by the learned Commission and ought to be dismissed on this score alone.

5. Without prejudice to the above, it is submitted that even otherwise the TDEA is not required to provide the information sought Each of the items sought has been addressed below

6. Complete Record of 2013 election observation including PVT forms

7. First, under section 6 of the 2017 Act, the information sought is not "public record. that has to be made available by TDEA. This record of "observations of the 2013 election cannot be characterized as "policies and guidelines" (s. 6(a)); nor "transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties and functions" (s. 6(b)); nor are they "information regarding grant of licenses, allotments and other benefits, privileges, contracts and agreements made by a public body (s. 6(c)); nor are the observations "final orders and decisions, including decisions relating to members of public" (s. 6(d)), and finally, TDEA's observations are not information that has been notified by any Minister-in-charge of the Federal Government as public record. As a result, none of the conditions of section 6 are fulfilled that would make the observations and Parallel Vote Tabulation (PVT) forms of TDEA to be characterized as public record EC FAFEN Meeting minutes from 2020 till to date

8. The Meeting Minutes have not been deemed "public record" under the 2017 Act Under section 6(d) of the Act, only "final orders and decisions,

including decisions relating to members of public. The EC FAFEN meeting minutes are not "final orders and decisions". In fact, under section 7(b) of the Act, the minutes of the meetings have been exempted from section 6, and the minutes of the meeting are not required to be disclosed unless a final decision is taken. This is because "minutes of the meetings subject to a final decision by the public body are exempted from section 6, which lists down items considered to be "public record" Moreover, under section 16(1)(ii) of the 2017 Act, information has been deemed to be exempt where the said disclosure "undermine[s] the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views The disclosure of EC FAFEN meeting minutes runs this risk of inhibiting the free exchange of views, and frank provision of advice. Complete Membership Fee record from 2018 till note

9. *None of the provisions of section 6 of the 2017 Act require a disclosure of the complete membership fee record. The fee record is not a policy or guideline (s. 6(a)); it is not a transaction for acquiring or disposing of property, or incurring expenditure in the performance of duties (s. 6(b)); it is not information regarding the "grant of licenses, allotments and other benefits, privileges, contracts and agreements made by a public body (s 6(c)); it is not final orders and decisions, including decisions relating to members of the public body (s. 6(d)); and it has not been characterized as "public record" by any Minister-in-charge of the Federal Government (s. 6(e)).Board of Trustees meeting minutes from 2020 till to date*

10. *As stated in paragraph 8 above, under section 6(d) of the 2017 Act, only "final orders and decisions, including decisions relating to members of public are deemed as "public record". In fact, under section 7(b) of the 2017 Act, there is exclusion provided to "minutes of the meetings, subject to a final decision by the body. As a result, minutes of the meeting, in any way, are not required to be disclosed unless a final decision is taken upon those minutes. Further, under section 16(1)(ii) of the 2017 Act, information may be deemed exempt where the said disclosure "undermine[s] the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views. The disclosure of the minutes of the meetings would have a detrimental impact on TDEA's deliberative Board of Trustees meeting minutes from 2020 till to date*

11. *As mentioned in paragraphs 8 and 10 above, it is reiterated that under section 6(d) of the Act, only "final orders and decisions, including decisions relating to members of public" are deemed as "public record". In fact, under section 7(b) of the 2017 Act, there is exclusion provided to "minutes of the meetings, subject to a final decision by the public body" from the "public record. As a result, minutes of the meeting, in any way, are not required to be disclosed unless a final decision has been taken. Moreover, under section 16(1)(ii) of the 2017 Act, information may be deemed exempt where the said disclosure "undermine[s] the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views. The disclosure of the minutes of the meetings would have a detrimental impact on the deliberative process.*

Record of all consultants & short-term employees from 2012 till to date

12. *First, the information sought does not fall within section 6 of the 2017 Act. Even otherwise, under section 7(g) of the 2017 Act, there is an exception in the "public record" with regards to "record relating to the personal privacy of any individual. These contracts with consultants and short-term employees consist of private and confidential information of individuals not employed in any of the governmental projects, but in performance of the objectives of the trust.*

13. *In view of the above, it is respectfully submitted that the Appellant's request for information ought to be dismissed by the learned Commission for both*

on account of being time barred and also because the information sought by the Appellant does not fall within the ambit of the 2017 Act and, therefore, does not need to be provided by the TDEA.”

4 The Appellant submitted his response on June 17, 2022 and its text is as under:

“With reference to the subject, it is submitted that the respondent instead of sharing the information has denied sharing the required information. The TDEA stated in Paragraph 3 that they were not required to share information under Right to Information Act, 2017. However, under Right of access to Information Act, 2017 section 2 sub-section IX(h)

"a non-governmental organization which directly or indirectly receives or has received public funds, subsidy, tax exemption, piece of land or any other benefit involving public funds and any other non-governmental organization or body registered under any law for the time being in force,"

And the TDEA has received the tax exemption certificate from the FBR (Annex-A). Therefore, under section 3 of the under Right to Information Act, 2017 TDEA cannot deny our access to its information regarding its working because it has claimed to serve the public.

Thus, the respondent may be directed to comply according to the said law.

In the light of the submission made above, it is again reiterated that the information required as per requisite of the complainant has not been shared, therefore, the respondent be directed to reply in accordance with the request extended in shape of our notice dated 26.11.2021”

I look forward to have the information as priority.”

5. Hearing on the instant Appeal was fixed for August 25, 2022 vide letter dated August 18, 2022. The Respondent was represented by Advocate Rimsha Banori and Sahibzada Saud.

6. In follow-up of the hearing held on August 25, 2022, the Respondent submitted its response which is as under:

“The Appellant, Mr. Saeed Khan ("Appellant") has sought information from the Trust for Democratic Education and Accountability (TDEA) ("Respondent") through a Request for Information made by the Appellant in his letter dated 18.05.2022

On the 25.08.2022 (and on earlier hearings), the Respondent appeared before the learned Pakistan Information Commission ("learned Commission") and contended that the information sought by the Appellant is not required to be disclosed by the Respondent to the Appellant primarily because it does not fall within either section 5 or 6 of the Right of Access to Information Act, 2017 ("2017 Act")

Each of the items sought by the Appellant have been briefly addressed below to explain why it is not required to be disclosed by the Respondent

Complete record of 2013 election observation including PVT forms

A Parallel Vote Tabulation Form ("PVT Form") is an election-specific monitoring methodology that allows observers to analyze and assess the veracity of the voting and counting process by collecting samples from a number of polling stations and compiling the data accordingly. In doing so, a statistical projection is made for every voter and every constituency in which the observer is present to determine a pattern as per the result of the vote. The PVT Forms are generated using the Respondent's own resources and expertise and belong solely to the Respondent as a proprietary right. The observations contained in the PVT Forms are private/raw data belonging to the Respondent. If the election observations and PVT Forms were made public, this could

very well result in victimization and intimidation of the observers and such personally identifiable information would not only reveal the techniques adopted by the observers but also risk tampering with the pattern of the process and the conclusive observations made by them.

The Respondent's record of the 2013 election observation, including PVT forms, does not fall within the categories of information/record that is required to be mandatorily published under section 5 of the 2017 Act neither does it constitute "public record" as defined in section 6 of the 2017 Act.

(b) EC FAFEN meeting minutes from 2020 till to date, Board of Trustees meeting minutes from 2020 till date, and General body FAFEN meeting minutes from 2018 till to date

For the sake of brevity, items number 2, 4 and 5 of the Appellant's request have been combined.

7. The primary contention of the Respondent is that minutes of meetings sought in items no. 2, 3 and 4 do not fall within the categories of information/record that is required to be mandatorily published under section 5 of the 2017 Act neither does it constitute "public record" as defined in section 6 of the 2017 Act.

Moreover, minutes of meeting have definitively been exempted from being declared as public record by section 7(b) of the 2017 Act. They are not required to be disclosed under the said provision, unless a final decision has been taken upon those minutes.

Further, section 16(i)(iii) of the 2017 Act excludes information from disclosure if it is likely to "undermine the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views". The disclosure of the minutes of meetings of the Respondent would only work as a hindrance to the deliberative process of the Respondent.

(c) Complete membership fee record from 2018 till now

The Appellant has sought the record of the membership fee of the TDEA. The TDEA does not have any membership fees, nor does it have any members. TDEA is a registered trust which receives funding both, from within and outside of Pakistan. Therefore, no record of membership fee exists that can be disclosed to the Appellant.

Record of all consultants and short-term employees from 2012 till date

The last item on the list of information requested by the Appellant cannot be considered to form part of the definition of 'public record' under section 6 of the 2017 Act. In addition, the record of all consultants and short-term employees is specifically exempted from having to be disclosed pursuant to section 7(g) of the 2017 Act which exempts from disclosure the "record relating to the personal privacy of Act neither does it fall within the list of items enumerated in section 5 of the 2017 any individual".

Employee records would include a compilation of all the data pertaining to a consultant and/or an employee from the time they are hired till their contract has been terminated. This information solely includes private and confidential information of each individual who is or has been engaged with the Respondent and publicizing the personal details of each consultant or employee, would constitute a grave violation of the right to privacy as enshrined in the Constitution of Pakistan. The impact of personally identifiable information, if released to the general public, would be severely detrimental to the privacy and dignity of the organization's workforce. These details of the individuals not employed in any governmental entity or projects, remain an intellectual property solely belonging to the Respondent.

PRAYER

In view of the above, it is respectfully submitted that the Appellant's request for information ought to be dismissed by the learned Commission as the information sought by the Appellant does not require disclosure under the 2017 Act and, therefore, does not need to be provided by the Respondent.

Any other order deemed to be just and appropriate by the learned Commission may also kindly be passed".

C. Issues

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

- (a) Does the Respondent, TDEA come within the definition of public body under the Right of Access to Information Act, 2017, henceforth referred to as the Act, 2017?
- (b) Can minutes of meetings be treated as public documents under the Act, 2017?
- (c) Can contracts signed by a public body with its employees be made public under the Act, 2017?

D Discussion and commission's views on relevant issues:

8. This commission holds that the Respondent, TDEA is a public body under Section 2 (ix) (h) of the Act, 2017 which is as under:

“A non- government organization which directly or indirectly receives or has received public funds, subsidy tax exemptions, piece of land or any other benefit involving public funds and any other non- governmental organization or body registered under any law for the time being in force”.

9. This commission also holds that the stance of the Respondent, TDEA that the minutes of the meeting are exempted from disclosure does not hold water.

10. It is important to highlight that the minutes of official meetings are exempted from disclosure under Section 7 (b) only if final decision has not been taken on the issue being deliberated upon in official meetings. Once final decision has been taken, minutes of meetings become public documents with exception to the portion(s) which may be hit by any of the exemption clause of the Right of Access to Information Act, 2017 such as privacy of identifiable individuals and legitimate commercial interests of an entity.

11. The disclosure of ‘minutes of meetings’ 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, minutes of the meetings cannot be treated as excluded records.

12. This commission holds that contracts offered by a public body to individuals/legal entities are also public bodies and such contracts have not been accorded blanket exemptions under the Act, 2017.

13. This commission does not concur with the response submitted by the Respondent that “If the election observations and PVT Forms were made public, this could very well result in victimization and intimidation of the observers and such personally identifiable information would not only reveal the techniques adopted by the observers but also risk tampering with the pattern of the process and the conclusive observations made by them”.

14. The private information about identifiable individuals can be severed/blanked out while sharing the remaining part(s) of public records. Furthermore, records pertaining to elections observations such as checklists devised for elections observations are based on internationally accepted standards of election observation. The Respondent, TDEA, conducts observation of elections through FAFEN and citizens have the right to know the content of the checklists i.e., observations recorded by observers thereof, especially once the Respondent has issued the final election report as is the case in the instant Appeal.

15. The commission does not concur with the stance of the Respondent that “The PVT Forms are generated using the Respondent's own resources and expertise and belong solely to

the Respondent as a proprietary right. The observations contained in the PVT Forms are private/raw data belonging to the Respondent”.

16. This commission maintains that any record available with any public body does not ‘belong’ to it; the public body is not the owner but the custodian of such a record, owners are the citizens of Pakistan.
17. PVT forms contain observations of certain number of polling stations based on actual data/facts which are used to project results for the entire constituency. As such, citizens have the right to know the content of PVT forms to determine level of qualitative input provided by the observers and contained thereof, especially once the Respondent, TDEA-FAFEN has cleaned the data to remove errors and launched the election observation report.
18. It is important to note that privacy/personal information is understood to be, broadly speaking, information/data pertaining to access control (username and/or password), financial information such as bank account, credit card, debit card, or other payment instruments, and, passports, biometric data, and physical, psychological, and mental health conditions, medical records, and any detail pertaining to an individual's ethnicity, religious beliefs etc.
19. The Act, 2017 envisages a situation wherein a document, which should be otherwise be made public but its parts may contain private information. In such an eventuality, the part containing private information can be severed from the document as mentioned in Section 16 (1) (i) of the Act, 2017 and the rest should be made public.

E. Order

20. The Appeal is allowed. The Respondent is directed to provide the Appellant information requested in items 1, 2, 4, 5 and 6 of Para 2 of this Order at the earliest but not later than 10 working days of the receipt of this Order, with intimation to this office.
21. Copies of this order be sent to the Respondent and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on: September 13, 2022

This order consists of 7 (seven) pages, each page has been read and signed.