



In the Pakistan Information Commission, Islamabad
Appeal No E266-04/22

Aamir Baloch

(Appellant)

Vs.

Ministry of Human Rights

(Respondent)

ORDER

Date: July 27, 2022

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated April 13, 2022, to the Commission, stating that he submitted an information request to the Director General (IC)/ Public Information Officer, Ministry of Human Rights on March 20, 2022 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 follows:

“With reference to the above cited subject the undersign most respectfully draw your kind attention towards Article 19-A of the constitution of Islamic Republic of Pakistan 1073 and section 11 of The Right to Access Information Act 2017 and requested to provide the following information under the above mentioned provisions of Law.

1. *That is pursuance of section 3 of The Right To Access Information Act 2017 read with article 19-A of the Constitution of the Islamic Republic of Pakistan it is most respectfully requested that the copy of reply/ comments submitted/ filed by the Ministry of Human rights of Pakistan and also amended comments filed by the Ministry of Human Rights before the Honorable Federal Shariat Court of Pakistan in the following cases may kindly be provided to the undersign”.*

Case Number	Case Title	Law Challenged
1. S.PNO. 5/1/2020	Hammad Hussain Vs FOP	Section 2(n) & 3(1) of the transgender persons (protection of Rights) Act, 2018
2. S.P NO. 6/1/2020	Muhammad Irfan Khan Vs FOP	Section 2(n) & 3(1) of the transgender persons (protection of Rights) Act, 2018
3. 2.S.P NO. 5/1/2021	Muhammad Bin Sajid Vs FOP	Section 2(1) (n) (ii) (iii) of the transgender persons (protection of Rights) Act,

		2018
4. S.P.No.6/1/2021	<i>Hammad Hussain & others FOP</i>	<i>Section 2(1) (n) (ii) (iii) of the transgender persons (protection of Rights) Act, 2018</i>
5. S.P.No.7/1/2022	<i>RJS Life care (NGO) Vs FOP</i>	<i>Section 2(1) (n) (ii) (iii) 3 & 17 of the transgender persons (protection of Rights)Act 2018</i>

B. Proceedings:

3. The record on the file suggests that the Respondent submitted its response on the intervention of this commission on April 16, 2022 and its text is as under:

It is informed that in accordance with section 13(2)(b)(iii) of Right of Access to Information Act, 2017, information/ requested documents may be obtained from the Federal Shariat Court.

4. The Appellant submitted his response on June 15, 2022 and its text is as under:

“That appellant have submitted RTI request under section 11 (3) of the Right to Access Information Act 2017 to Director (IC) Ministry of Human Rights / Public Information on 21-03-2022 dispatch through leopards courier service Tracking Id K1642098192 which was received to him on next working day but no any response was given to the appellant during 10 working days from public body / respondent. After which appellant being dissatisfied and aggrieved by the behavior of public prefer to file above mentioned appeal under section 17 of the Right to Access Information Act 2017 before Pakistan Information Commission it is pertinent to mention here that appellant did not receive any reply from the public body / respondent and same reply was sent to the Pakistan Information Commission in response of above mentioned appeal which has been received to appellant with covering above named letter.

2. That Mr. Shahzad Ahmad Khan Director (IC) Ministry of Human Rights stated in his reply that in accordance with section 13(2)(b)(ii) of Right to Access To Information Act 2017, Information / requested documents may be obtained from the federal Shariat Court.

3. That appellant is not satisfied to response & reply of public body, because intentional delay of reply creates doubt that public body want to keep preserve the prescribed information. It is worth mentioning there that under section 14(1) the Right to Access Information Act 2017 stated (Subject to the provision of this Act, a public body shall be required to respondent to a request as soon as possible and in any case within ten working days of receipt of the request) and according to section 14(2) act ibid (The period stipulated in sub-section I may be extend by maximum of further ten working days where it is necessary when the request requires a through a large number of record or records located in different offices or consultation is required with third parties or other public bodies but public body enclosed reply sent the record to appellant on 19 April 2022 after 28 days and approximately 24 working days above mentioned attitude shows that public body / respondent used delaying tactics intentionally.”

5. That the ministry of human rights has misread the provision of the Section 13(2)(b)(i) Right of Access to Information Act 2017 which stated (on basis that it is incorrect because it relates to information which is substantially the same information that has already been provided to same applicant during last six months). It pertinent to mention here that the case of appellant does not come with the barred contain ibid provision of law because appellant has not requested the same information from the public body / respondent twice with above mentioned period stipulated in 13(2)(b)(i) ibid.
6. That the public body cannot refused information request of appellant because the same information has not been already available in a generally accessible form in which the reply indicate to the appellant and the public body through its director filed the requisite information before federal shariat court hence public body is holder of requisite information for which public body may kindly be directed to share it with the appellant.
7. That the appeal and information request of the appellant are do comply with the provision of right to access information act 2017 and the rules made there under hence appeal filed by the appellant under section 17 of ibid is liable to be allowed.
In view of the above submissions it is humbly prayed that response filed by the public body may kindly be declared against provisions of right to access information act 2017 and appropriate directions may be passed in order to prompt supply of requested information and deter delaying tactics on the of public body/respondent.
8. Hearing on the instant Appeal was fixed for June 23, 2022 vide letter dated May 26, 2022. The Respondent was represented by name, designation and department. The Appellant also attended the hearing.
The Respondent submitted its response and its text is as under:
The undersigned is directed to refer to Pakistan Information. Commission's Hearing Summon in (Appeal No. E 266-04/22) dated 26th May, 2022. Regarding above mentioned subject.

2 Ministry of Human Rights has already submitted its response to the applicant Mr. Aamir Baloch vide letter dated 16-04-2022 (copy enclosed). It is requested that in accordance with the Section 13 (2) (b)(ii) of Right of Access to Information Act, 2017, the applicant may be directed to obtain information/requested documents from the Federal Shariat Court.

C. Issues:

9. The instant appeal has brought to the fore the following issues:
 - (a) Is the Respondent custodian of the requested information under the Right of Access to Information Act, 2017, henceforth referred to as the Act, 2017?
 - (b) Can access to the requested information be denied under Section 13 (2) (b)(ii) of the Act, 2017?

D Discussion and commission's views on relevant issues:

10. This commission holds that the Respondent, Ministry of Human Rights is custodian of the requested information.
11. This commission maintains that 13 (2) (b)(ii) of the Act, 2017 for denying access to the requested information is not relevant in the instant appeal, which is as under:

- i. “On the basis that the information is already available in a generally accessible form in which case the notice shall indicate to the applicant the place from where the information may be found”
12. This commission holds that the stance of the Respondent that “in accordance with the Section 13 (2) (b)(ii) of Right of Access to Information Act, 2017, the applicant may be directed to obtain information/requested documents from the Federal Shariat Court, does not hold water. It is the Respondent, Ministry of Human Rights which has generated comments on the cases and has forwarded to the Federal Shariat Court.
13. This commission also maintains that the comments that have been forwarded to the Federal Shariat Court have attained finality at the level of the Respondent, the Ministry of Human Rights. It is right of citizens to know the stance of the Ministry of Human Rights in the forms of comments conveyed to the Federal Shariat Court on sensitive issues.

E. Order

14. The Appeal is allowed. The Respondent is directed to provide the Appellant requested information in para 2 of this Order at the earliest but not later than 7 working days of the receipt of this Order, with intimation to this office.
15. 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: July 27, 2022

This order consists of 4 (four) pages, each page has been read and signed.