

In the Pakistan Information Commission, Islamabad

Appeal No. 001-04/19

Muhammad Muzammil Baloch (Appellant)

V/S

1. The Collector of Customs, Islamabad (Respondents)
2. The Chairman, FBR, Islamabad .

Date: 24.12.2019

Fawad Malik. Information commissioner

A. THE APPEAL

The appellant filed the instant appeal before the Pakistan Information Commission Under Article 19-A of the Constitution of Pakistan read with Section 17 of The Right of Access to Information Act 2017, alleging therein that he had submitted an application by hand on 14.02 2019 to the Respondent # 1 and through email to respondent No.2 on 13.02.2019 seeking certain information but despite the reminder on 18.02.2019 followed by email on 21.02.2019 his request was not acceded to within the stipulated frame of time, hence the appellant was constrained to file the appeal before this commission. The detail of the information sought is as under:-

1	2	3	4
No/date of the application for refund/by whom	No/date of the Sanction Order/by whom (name/designation)	Cheque No./date	Remarks if any, whether court case or otherwise
Amounts	Amounts		
Customs Duty	Customs Duty		
Sales Tax	Sales Tax		
Income Tax	Income Tax		
Others	Others		

The respondents vide letter # C. No. 04(06)/CUS/2018/2297 Dated 05.03.2019 replied to the appellant that the Right to information is subject to regulations and reasonable restrictions imposed by law, as provided in Article 19-A of the constitution of Pakistan. The information and data provided by the tax payers, importers and exporters cannot be shared with private persons as mentioned under section 155 H of the Customs Act 1969, therefore, the request of the appellant cannot be complied with.

In response to the reply submitted by the respondents the appellant filed his interim response stating therein that section 155 H of the Customs Act 1969 is irrelevant in the present case as the said, section relates to gathering of information during clearance of goods by custom authorities. He reiterated that neither the information nor the stage of clearance is involved rather he has asked for the documents pertaining to grant/release of the public funds to the people consequent to the refunds claimed by various persons.

B. PROCEEDINGS

The commission through a notice dated 03.04.2019 to the respondents asked to provide the requested information to the applicant within ten working days. It was further directed in the notice that the response of the respondents must be submitted and were also directed to appear for hearing before the commission on 30.04.2019.

The respondents through letter No. C.No. 02(23)/CUS/2019/4977 dated 29.04.2019 submitted their reply to the notice of hearing to the following effect:-

-----Section 155H of the custom Act 1969 states as follows:

155H. "Confidentiality of Information: All trade information gathered by customs during clearance of goods shall be confidential and shall not be except for.

- (a) Statistical purposes by the department and other government organizations; or
- (b) Purposes of comparison and evidence (by the appropriate officer of custom) as against other imports and exports; or
- (c) Production as evidence before a legal forum or an organization explicitly so authorized by the Federal Government; or
- (d) Sharing of data to the extent of agreed data contents under a memorandum of understanding, bilateral, regional, multilateral agreements or convention; (or
- (e) Public disclosure of valuation data through any medium containing description of items, origin, currency, declared and assessed unit value without disclosing name and address of the importer or export or their suppliers).

and any disclosure, publishing or dissemination of trade information of any person except as provided above without his explicit permission to any other person shall be an offence.

3. Similarly The Right of Access to Information Act 2017 under section 7 and 16 also restrict access to provision of certain record, reproduced hereunder respectively.

“7 Exclusion of Certain Record: Nothing contained in Section 6 shall apply to the following record of all public bodies namely

- (g) Record relating to the personal privacy of any individual and
- (h) Record of private documents furnished to a public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third party.

16 Information exempt from Disclosure: Section 16 inter alia says that (i) subject to the provisions of this Act:

- (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, or
- (ii) The information was obtained in confidence from a third party and it contains a trade secret or if communicated it may prejudice the commercial or financial interest of that third party.

4. The information requested by the applicant includes information about individual tax payers / traders along with cheque Nos etc. which cannot be provided under the laws mentioned above. However, Information in summarized form can be provided if so desired by the applicant.”

5. The appeal was fixed for hearing on 30.04.2019 vide notice dated 03.04.2019 and both the parties were informed accordingly. Mr. Farhat Nawaz Lodhi learned ASC appeared on behalf of the applicant while the public body was represented by Mr. Mohammad Ashfaq Additional Collector. The appeal was heard at length with the able assistance of both, but the commission for further appraisal of the controversial issues asked the public body vide letter dated 02.10.2019 following questions to reach at the just decision of the appeal.

- "If the requested information is made public, what trade secrets will be revealed?"
- How will the disclosure of the requested information prejudice the commercial or financial interest of third party?

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- How records detailing who got what from public funds and public exchequer can pertain to personal privacy of an individual?
 - What is PRAL and what are its functions?
6. In response to the question are the public body vide their reply dated 5.11.2019 responded as follows:-
- i. "Maintaining confidentiality of information as per Section 155H of the Customs Act, 1969 is mandatory and the relevant section has been reproduced in the previous letters addressed by the Collectorate. The exporters, importers and business community engaged in international commerce can become vulnerable for competition and exploitation by third party that is why the aforementioned section of Custom Act prohibits of sharing such information.
 - ii. It can be leveraged inappropriately by having information regarding the quantity, volume and value of transactions as well as names of trade partners which can be detrimental to trade practices.
 - iii. The information requisitioned by Mr. Farhat Nawaz Lodhi does not pertain to public funds paid by the public exchequer. The funds are claimed by the traders against the claims filed for refund on already paid local taxes by the traders under various Export Facilitation regimes.
 - iv. Pakistan revenue Automation (PRAL) is the IT Wing of the FBR for performing IT related functions and maintenance of electronic data at the FBR level."
7. The appeal was fixed for rehearing on 21.11.2019.
8. The Appellant neither submitted written response to the questions raised by the commission nor attended the hearing. Mr. Hassan Fareed Dy. Collector appeared on behalf of the public body who opposed the appeal vehemently. Apart from the written reply submitted by the representative of the public body shared with the commission during the course of hearing that the commercially sensitive information of third party is not disclosed all over the world. He also informed that the reply have their own I.D. on PRAL where they can access their own Information. Furthermore grievance redressed mechanism provides an opportunity to the aggrieved party to see the trade data after blanking out the names of the individuals/companies.

DISCUSSION AND COMMISSION'S VIEW ON RELEVANT ISSUES

9. Every importer has a user ID and can access his own information/data at Pakistan Revenue Automation (PRAL) , the IT Wing of the Federal Board of Revenue and further that information regarding quantity, volume and value of transactions as well as names of trade parties if disclosed would be detrimental to trade practice.

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10. The appellant has sought through the instant appeal record relating to the personal privacy of the individuals/third party, provided by them to the public body.
11. The Article 19-A of the constitution of Pakistan is regulated by the Right of Access to information Act 2017. The Act is subject to regulations and reasonable restrictions imposed by law.
12. The Legislations have excluded in Section 7 (g) (h) of the Act the record relating to the personal privacy of an individual and the record of the private documents furnished to the public body either on express or implied condition that information contained in any such documents shall not be disclosed to the third party.
13. The Section 16 deals with the exception provided in the Act. The subsection (g) of Section 16 of the Act rescues the public body from sharing the requested information as it is bound to constitute an actionable breach of confidence for the reason that it contains the trade secrets of individuals and if communicated it would prejudice the commercial or financial interests of the third party which is not placed as party in the instant appeal.
14. Article 18 of the constitutional of Pakistan provides freedom of trade and business to the citizen of Pakistan. If the requested information/data is provided it would tantamount to infringing their fundamentals rights guaranteed by the constitution of Pakistan.
15. Since the record sought is pertaining to the third party, not a party before the commission in this appeal therefore, disclosure of the record cannot be made at their back.
16. The Information requested by the appellant includes information of the individuals regarding NHO./date of application for refund of Customs Duty, Sales Tax, Income Tax and others, the names of the applicants, sanction orders with the name and designation of the concerned officer, the cheque No. with date along with the remarks thereon. Like refund of the Custom duty, the requested details of Sales Tax, Income Tax of individuals cannot be shared with the applicant.

17. The Right of Access to Information Act 2017 has empowered the citizens a justifiable right of access to information rather than being effected and suffering at the hands of state and its functionaries at their whims but at the same time on the other hand watching the interest of the their party is prime duty of the public bodies and the commission.

Commented [ZA1]: Third?

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C. ORDER

18. For the reasons stated above

19. , the instant appeal is not allowed. The appellant is not allowed to avail the requested information regarding individual tax payers/traders; however, the respondents are directed to share the permissible information as per law in summarized form to the appellant.

Muhammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner