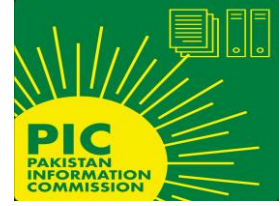


**Pakistan Information Commission
Information Service Academy
Zero Point, Islamabad**



Appeal No 159/11/19

Nadeem Umer (Appellant)

Vs.

Human Organ Transplant Authority (Respondent)

Date: December 26, 2019

ORDER

Zahid Abdullah: Information commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 07/11/2019, stating that he had requested information from Human Organ Transplant Authority under the Right of Access to Information Act 2017 on 14/10/2019.

2. The information sought by the Appellant is as follows:

“Please provide certified copy of Human Organ Transplant Authority’ annual financial audit reports for the following years:

1. Financial Year 2016-17
2. Financial Year 2017-18
3. Financial Year 2018-19

B. Proceedings

3. Through a notice dated 11/11/19, the Commission called upon the Respondent to submit reasons for not providing the requested information.

4. The Respondent did not respond to the notice and the hearing date was fixed for 24/12/19 through the hearing notice sent on 28/11/19 and both parties were informed accordingly.

5. The Respondent did not appear before the commission at the time of hearing. However, a letter in response to the hearing notice of the commission was sent by Dr. Imran ur Rehman, Monitoring Officer, HOPA on 05/12/19 which enlisted following reasons for not providing the requested information:

“It is worth mentioning that interpretation of Section 14 of the Right of Access to Information Act 2017 may be required as the information desired by the complainant are confidential and required without mentioning any reason thereto”.

C. Discussion and Commission’s View on Relevant Issues

6. The questions before the commission are the confidentiality of the requested information and the reasons not provided by the Appellant for seeking this information as claimed by the Respondent.

7. The commission is of the view that had the Respondent juxtaposed requested information with provisions of the Right of Access to Information Act 2017, the question of clarity of Section 14 and confidentiality of the requested information would not have been raised. For example, had the Respondent gone through Section 5 of the Act, the Respondent would have found out that Audit reports that have been finalised should be on the web site of the public body as required under Section 5 (i) of the right of Access to Information Act 2017.

8. For the benefit of the Respondent, the commission reproduces what it observed in the case of Nadeem Umer VS National Energy and Conservation Authority: “Any of the citizen of Pakistan living anywhere in the country can not only seek information from any federal public body, but , more importantly, the Act makes it binding on federal public bodies to proactively publish categories of information enlisted in Section 5 of the Act on their web sites so that citizens can have access to information without resorting to filing requests to public bodies”.

9. The commission notes with grave concern the emerging trend which demonstrates that public officials try to delay or deny access to requested information by declaring it confidential without exercising sound judgement. Furthermore, as in the case of instant appeal, public officials failed to interpret the Right of Access to Information 2017 as “to advance its purposes as set out in the preamble”, required under Section 3 (2) and “promote the right of access to information”, “, Section 3 (2) (a) and facilitate and encourage promptly the disclosure of the information”, Section 3 (2) (b).

10. The genesis of the power imbalance between a citizen and a state functionary can be attributed to the master-slave relationship of the colonial era which has not been replaced with citizen-public servant relationship even after independence in 1947. The manifestations of this colonial-hangover can be seen, as in the instant appeal, in the way public officials indulge in obfuscation, selective and misleading interpretation of the Act to thwart efforts of the citizens to make them accountable through the exercise of their constitutional right of access to information in matters of public importance.

11. The elected representatives of the people of Pakistan have tried to address this power imbalance, firstly, by inserting Article 19-A into the constitution of the Islamic Republic of Pakistan, and, secondly, by enacting the Right of Access to Information Act 2017.

12. The commission takes strong exception to the fact that the public official has extended himself the privilege of mentioning that the Applicant has not provided reason for seeking information. With the enactment of the Right of Access to Information Act 2017, the power of asking questions and making public officials answerable has been vested with the people of Pakistan and not vice versa.

13. The power rests with the persons who has the right and the ability to ask questions. A public official cannot wrest this power from a citizen by asking reasons for providing the requested information. That is why, the elected representatives of the People of Pakistan, in their collective wisdom, have taken pre-emptive measure by including Section 11 (5) which states: “In no case shall an applicant be required to provide reasons for his request”.

D. Order

14. The appeal is allowed. The Respondent is directed to provide the audit reports of the public body that have been finalised to the Appellant at the earliest, but in any case, not later than 10 working days of the receipt of this order. Furthermore, the Respondent is directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017, including audit reports that have already been finalised to this date and submit the compliance report to the commission by 26/01/2020.

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:
December 26, 2019

This order consists of 3 (three) pages, each page has been read and signed.