



Appeal No 122-10/19

Faiza Hassan (Appellant)

Vs.

Pakistan Electronic Media Regulatory Authority (Respondent)

ORDER

Date: December 09, 2019

Zahid Abdullah: Information commissioner

A. The Appeal

1. The Appellant filed an appeal with the commission on October 08, 2019 in which she stated that he had requested information from PEMRA under the Right of Access to Information Act 2017.

2. The information sought by the Complainant, through application dated 29/04/19, is as under:

1. Copy of the application for request of license by First Media Services – FMS Private Limited (which operates FM 100 In Karachi)
2. State of qualification submitted by First Media Services – FMS Private Limited for purpose of issuance of license.
3. FMS company's registration certificate of incorporation submitted as part of the application of FMS.
4. Name and contact of person authorized on behalf of FMS to apply for license.
5. State of Annual Revenue (Audit Report) submitted by FMS during past 3 years (FY 2015), (FY 2016), (FY 2017) and (FY 2018)

B. Proceedings

3. Through a letter dated October 08, 2019 the Appellant said,

“the PEMRA refused to provide access to requested information claiming that the requested information falls under section 7 (g) and (h) of the Right to Information Act 2017. Nevertheless, I would submit that requested information does not fall under the above-mentioned section”.

4. Through a notice dated October 09, 2019 the Commission asked PEMRA to “provide the reasons for claiming the exemptions provided under the Act, within ten working days after the receipt of this notice.” However, PEMRA did not submit any reply to this notice.

C. Discussion and Commission's View on Relevant Issues

5. The duly notified Public Information Officer, (PIO) by PEMRA did not follow proper procedure in denying access to the requested information. The PIO did not share with the Appellant written approval of the Principal Officer for denying the requested information as required under Section 13 (4) which is as under:

“Where the designated official refuses a request, he shall, before informing the applicant of such refusal, obtain written approval of the principal officer of the public body”.

6. The PIO rejected the requested information in its entirety by invoking Section 7 (g) (h) without providing any reasons. It should be noted that even when there are justifiable reasons for withholding the requested information, Public Information Officers are expected to fulfill their legal obligation to provide parts of records or information which are not excepted from disclosure as required under Section 16 (a) (i) which is as under:

“Provided that where only part of a record or the information falls within the scope of the exceptions provided for in this Act, that part shall be severed and the residual record or information shall be provided to the applicant”.

7. The exemption clauses of the Right of Access to Information Act 2017 are based on universally accepted principles to protect from disclosure information which is likely to harm certain legitimate interest. The PIO has merely referred to exemption clause of the Act, has not provided any arguments for withholding requested information from the citizen as required under Section 17 (4) of the Right of Access to Information Act 2017 which is as under:

The public body shall, in an appeal under sub-section (1), bear the burden of proof of showing that is acted in accordance with the provisions of this Act

8. This commission maintained in its Order in the case of Mukhtar Ahmed Ali VS Federal Board of Revenue, (FBR), which was challenged by the FBR but was upheld by the Honourable Islamabad High Court that “the requested information can only be withheld from a citizen by invoking an exemption clause on justifiable grounds. The commission is of the view that mere referral to an exemption clause does not mean that a public body has acted in accordance with the provisions of the Right of Access to Information Act 2017”.

9. The fact that PIO did not seek written approval of the Principle Officer of the public body shows that the powers vested in the Principal Officer have not been exercised “reasonably, fairly, justly and for the advancement of the purposes of the enactment” as required under **Section 24A (1) of the General Clauses Act 1897. Furthermore, the requirement** of Section 24A (2) “The authority, officer or person making any order or issuing any direction under the powers conferred by or under any enactment shall so far as necessary or appropriate, give reasons for making the order or as the case may be for issuing the direction and shall provide a copy of the order or, as the case may be, the direction to the person affected prejudicially has also been compromised.

9. Section 5 (e) of the Federal Right of Access to Information Act, 2017 requires every public body to proactively disclose “particulars about the recipients of any concession, permit, licence or authorization granted by a public body. Since PEMRA falls under the definition of the public body as given in

Section 2(ix) of the Federal Right of Access to Information Act, 2017, therefore, it is under statutory obligation not only to provide access to information on request but also proactively publish, on its website, all information relating to its licensees.

10. The question still before this commission is as to whether or not a broadcaster has any legitimate privacy interests that need to be protected. Amicus curie of the commission Mr. Muhammad Aftab Alam, Advocate High Court and leading media laws expert shared his input with the commission, which is as under:

1. Frequency is a key component for the operation of any broadcast media / radio station. It is an established principle that airwaves / frequencies are a public good and regulators have the duty to safeguard public interest while regulating this public good. Transparency and people's access to information about regulations / licensing of any public good is imperative to safeguard the public interest. Therefore, all information relating to licensing of a public good including details of applications submitted by licensees, their qualifications to secure licenses, licensees' legal status, their annual revenues report / audit reports and details of their contact persons are the public information.
2. The Pakistan Electronic Media Regulatory Authority (PEMRA), under Section 4 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002, is "responsible for regulating the establishment and operation of all broadcast media and distribution services in Pakistan ...". As per Section 19 of the Ordinance, the "[a]uthority shall have exclusive right to issue licenses for the establishment and operation of all broadcast media and distribution services, provided that this exclusive right shall be used by the Authority **in conformity with the principles of fairness and equity** applied to all potential applicants for licenses whose eligibility shall be based on prescribed criteria notified in advance and that this [licensing] shall be done through **an open, transparent** bidding process." Moreover, one of the objectives of the PEMRA, as enshrined in the preamble of the PEMRA Ordinance, 2002 is to "[e]nsure accountability, **transparency** and good governance by **optimizing the free flow of information**."

To ensure '**the principles of fairness and equity**' in licensing process, the spirit of the above provisions of the PEMRA Ordinance 2002 requires **transparency** and **free flow of information** about the applicants for a license. Any secrecy about one particular applicant can vitiate the very principles of fairness, openness and transparency as required in Section 19 of the Ordinance. As the process involves licensing of a public good, therefore, public has a right to access to all information, submitted by the applicants for the purpose of securing such license.

3. Article 19-A of the Constitution of Pakistan reiterates this principle by stating that:

*"Every citizen shall have the right to have access to **information in all matters of public importance** subject to regulation and reasonable restrictions imposed by law"*

Since licencing and regulation of a public good is a matter of direct public importance, therefore, every citizen has a constitutional right to access to information about those who are licensed to use the public good.

11. The constitutional right of access to information in matters of public importance encompasses information pertaining to those who are licensed to provide information to citizens about matters of public importance because each media organisation has a certain world view, an ideology which it ends up preaching to the citizens while providing information. No matter how hard a media organisation may try to be objective, the form and content of information provided by the media organisations is shaped by the world view and ideology of media organisation. Furthermore, it is a common knowledge that the media performs an extremely critical task of shaping opinions of the masses. Therefore, citizens have every right to know about the media organisations so that they could know what is the narrative of those who are trying to shape their narrative.

D. Order

14. The appeal is allowed. The Respondent is directed to provide the requested information 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 and submit the compliance report to the commission by 12/01/2020.

15. Copies of this order be sent to the Respondent, the Appellant and Chairman, Pakistan Electronic Media Regulatory Authority, (PEMRA) for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
December 09, 2019

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

