



Appeal No 213-12/19

Anique Salman Malik

(Appellant)

Vs.

Capital Development Authority

(Respondent 1)

Metropolitan Corporation

(Respondent 2)

ORDER

Date: March 02, 2020

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal with the commission on 04/12/2019 in which he stated that he had requested information from the Metropolitan Corporation Islamabad under the Right of Access to Information Act, 2017.
2. The information sought by the Complainant, through application dated 29/10/2019, addressed to the Chief Officer, Metropolitan Corporation Islamabad and Chairman, Capital Development Authority pertained to the provision of following information:
 - i. *“Any agreement(s)/instrument(s) vesting the authority in FGEHF/FGEHA to discharge municipal services in Sector G-14/4 and Sector G-13;*
 - ii. *Any agreement(s)/instrument(s) divesting from MCI the obligation and responsibility to supply water in Sector G-14/4;*
 - iii. *Any agreement(s)/instrument(s) divesting from MCI the obligation and responsibility to supply water in Sector G-13;*
 - iv. *Information and statistical data relating to source(s) of water supply from which water is provided in Sectors G-14/4 and G-13;*
 - v. *Information relating to source(s) of water supply from which water is supplied to other developed Sectors in Zone-I Islamabad, including in particular Sectors F-6, G-6;*
 - vi. *The identity and number of developed Sectors in Zone-I, Islamabad where no direct (door to door) water pipe network has been laid;*

- vii. *Copies of any contract(s)/ agreement(s) for the provision of water supply in Sectors G-14/4 and G-13 including any instructions issued to such contractor(s) regarding rates at which water is to be supplied;*
- viii. *Statistical data regarding the amount of water supplied to Islamabad from dams from 2015 till date; and*
- ix. *Statistical data regarding the amount of water supplied to each developed Sector (including Sectors G-14/4 and G-13) in Islamabad annually.”*

B. Proceedings

3. Through a notice dated 17/01/2020, the Commission called upon the Respondent 1 and Respondent 2 to submit reasons for not providing the requested information within 7 working days.
4. No response was received from the respondent 1 and Respondent 2 within the 7 working days and the hearing date was fixed for 13/02/2020 through the hearing notice sent on 27/01/2020 and both parties were informed accordingly.
5. No one appeared on behalf of Respondent 1 and Respondent 2 on the date of hearing on 13/02/2020.

C. Discussion and Commission’s View on Relevant Issues

6. The questions for the consideration of the commission are as under:
 - (a) what steps have been taken by Respondents to ensure the implementation of the Right of Access to Information Act 2017, henceforth referred to as Act?
 - (b) Have Respondents designated Public Information Officers, and if not, who is responsible for responding to information requests?
 - (c) Did the Respondents follow procedure laid down in the Act in responding to the request of the citizen?
 - (d) Is requested information available with the Respondents? and
 - (e) Can requested information be provided to the Appellant under the Act?
7. The Respondent 1 and Respondent 2 have not designated Public Information Officer, (PIO) as required under Section 9¹ Of the Act.
8. Since the Respondent 1 and Respondent 2 have not designated PIO, Chairman, Capital Development Authority, (CDA) and Mayor, Metropolitan Corporation under provision²

1. ¹ **Designated Official**-- Each public body shall, within thirty days of the commencement of this Act, notify one or more designated officials, not below the rank of an officer in BPS -19 or equivalent; Provided that where no designated official has been notified or he is absent or not available, principal officer of the public body shall be the designated official: Provided further that in case of non- government organization, it may designate a senior officer as per its organizational structure.

² Provided that where no designated official has been notified or he is absent or not available, principal officer of the public body shall be the designated official

of Section 9 are deemed to be PIOs respectively and responsible to respond to information requests.

9. The commission notes with concern that both Respondent 1 and Respondent 2 violated Section 10 (1)³, Section 12⁴, Section 13 (1)⁵, Section 13 (2)⁶ and Section 14⁷ Of the Act.
10. The requested information pertains to the key functions performed by both the Respondents and is not covered under any of the exemption clauses of the Act. In fact, the requested information pertains to different categories of information under Section 5 of the Act and both the Respondents are legally bound to proactively

³ Function of Designated Official (1) Subject to the provisions of this act and the rules made there under, the designated official shall be responsible for ensuring that requests are dealt with promoting full compliance by the public body of its obligation under this Act

⁴ Where information requested for is not held--- Where a public body does not hold information or record, the applicant shall be informed accordingly within ten working days of the receipt of the request.

1. ⁵ **Procedure for acceptance and refusal of requests** -- (1) The designate official shall provide a written acknowledgement in response to a request.

⁶ The designated official shall process the request and by notice in writing inform the applicant that---

- a) A request has been acknowledged and the applicant is entitled to receive the information or record, subject to the payment of the prescribed fee. On payment of the fee the designated official shall provide the requested record, or
- b) The request has been rejected-
 - i. On the basis that it does not comply with the provisions of this act and the rules made there under but only after requisite assistance has been offered to the applicant as mentioned in sub-section (2) of section 10;
 - ii. 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;
 - iii. On the basis that it is incorrect, because it relates to information which is substantially the same information that has already has been provided to the same applicant during last six months; or

In whole or in part, on the basis that the information is exempt subject to section 7 or section 16, in which the notice shall specify the exact exception, relied upon and specifying details regarding the right of the applicant to appeal against this decision.

⁷ **Time-limit of responding---** (1) Subject to the provisions of this Act, a public body shall be required to respond to a request as soon as possible and in any case within ten working days of receipt of the request

(2) The periods stipulated in sub-section (1) may be extended by maximum of further ten working days, where is necessary when the request requires a search through a large number of records or records located in different offices or consultation is required with third parties or other public bodies.

(3) Information needed to protect life and liberty of any individual shall be provided within three working days.

disclose such information and publish on its web site under Section 5⁸ and Section 8⁹ of the Act.

⁸ **Publication and availability of the record**—(1) The principal officer of each public body shall, within six months of the commencement of the this Act, ensure that the following categories of the information and record are duly published including uploading over the internet or in a manner which best ensures that these are accessible subject to reasonable restrictions based on limited resources;

- a) Description of the public body's organization and functions, duties, powers and any services it provides to the public, including a directory and any services it provides to the public, including a directory of its officers and employees, indicating their duties that these are accessible subject to reasonable restrictions based on limited resources;
- b) Statutes, statutory rules, regulations, bye-laws, orders and notifications, etc. applicable to the public body disclosing the date of their respective commencement or effect
- c) Substantive or procedural rules of the general application evolved or adopted by the public body, including any manual or policies by its employees
- d) Relevant facts and background information relating to important policies and decisions which have been adopted, along with a statement of policies adopted by the public body and the criteria, standards or guidelines upon which discretionary powers are exercised by it;
- e) The condition upon which members of the public body can acquire any license, permit, consent, approval, grant, allotment or other benefits of whatsoever nature from any public body or upon which transactions, agreements and contracts, including, contracts of employment which can be entered into with the public body, along with particulars about the recipients of any concession, permit, license or authorization granted by the public body
- f) A description of its decision-making processes as defined in the Federal government's secretariat instructions, 2004 and any instructions for the time being in force for the public to provide any input into or be consulted about decisions;
- g) Detailed budget of the public body; including proposed and actual expenditures, original or revised revenue targets, actual revenue, receipts, revision in the approved budget and the supplementary budget;
- h) The methods whereby information in the possession or control of the public body may be obtained and the prescribed fee required along with the name, title and contact details of the designated officials;
- i) Reports including performance reports, audit reports, evaluation reports, inquiry or investigative reports and other reports that have been finalized
- j) Such other matters which the principal officer of the public body deems fit to be published in the public interest
- k) Such other information as may be prescribed; and
- l) Camera footages at public places, wherever available, which have a bearing a crime:

Provided that it the information or record pertains to a period earlier than the year 2008. The same shall be published within reasonable time.

⁹ **Computerization and Voluntary Disclosure of record**--- Each public body shall Endeavour to ensure within the time prescribes in section 5 and that all record accessible under this Act is computerized and is available online so that authorized access to such public records is facilitated.

11. This commission is of the view that the wilful delay or denial of the requested information causes undue cost to citizens and the commission. Citizens have to approach this commission for the exercise of their fundamental constitutional right of access to information which involves cost both in terms of money and time.
12. Citizens of Pakistan through their elected representatives have included the provision¹⁰ of imposing fine on public official who wilfully delay or deny access to the requested information so that they do not have to pay the undue cost in terms of time and money in exercising their right of access to information because of the dereliction of the duty of a public official.
13. If the Respondents continue to violate provisions of the Act, the commission will have no option but to fulfil its legal obligation and offset this trend of raising cost in terms of time and money for citizens, the commission and the superior judiciary.

Order

14. The appeal is allowed. The Respondent 1 and Respondent 2 are 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.
15. Furthermore, the Respondent 1 and Respondent 2 are directed to implement Section 5 and Section 8 of the Right of Access to Information Act 2017 and submit the compliance report to the commission by 15/04/2020.
16. Copies of this order be sent to Chairman, Capital Development Authority, Mayor, Metropolitan Corporation, Islamabad and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:

March 03, 2020

This order consists of 5 (five) pages, each page has been read and signed.

¹⁰ Section 20 (f)

Impose on the official a fine equivalent to his salary for one day, for a maximum of a hundred days, who has acted willfully to obstruct any activity which is required to be undertaken by this act; including preventing or delaying the disclosure of information to an applicant