



**Appeal No 189-11/19**

**Mukhtar Ahmed Ali** (Appellant)

Vs.

**Ministry of Law and Justice, Islamabad** (Respondent)

**Order**

Date: February 03, 2020

**Zahid Abdullah:** Information Commissioner

**A. The Appeal**

1. The Appellant filed an appeal, dated 27/11/10 to the Commission, stating that he submitted an information request to the Secretary, Ministry of Law and Justice, dated 01/11/19 under the Right of Access to Information Act 2017 requesting following information.  
“A) List of the members of the prosecution team and the relevant law firms that were engaged by the federal government for the trial of former President General Pervez Musharraf under Article 6 of the Constitution;  
b) Total fee paid to the members of the prosecution team and the relevant law firms (i.e until November 01, 2019) that were engaged for the trial of former President General Pervez Musharraf under Article 6 of the Constitution;  
c) Total out of pocket expenses (e.g. travel, lodging, meals etc. (reimbursed to the members of the prosecution team and relevant law firms (i.e. November 01, 2019) that were engaged for the trial of former President General Pervez Musharraf under Article 6 of the Constitution;  
d) how much fee has been paid to each member of the prosecution team and the relevant law firms (i.e. until November 01, 2019) that were engaged for the trial of former President General Pervez Musharraf under Article 6 of the Constitution?  
e) Certified copies of the contracts signed with the members of the said prosecution team or relevant law firms”.

2. The Appellant also shared along with the appeal response of the Ministry of Law and Justice, shared with him through letter dated 20/11/19 vide letter no 4(95)/2015-Sol.II which is as under:  
“I am directed to refer to your letter number nil dated 01.11.2019 on the subject noted above and to state that the Cabinet Division vide its U.O No.5/ 16/90-Security, dated 04.04.1993 has declared the Ministry of Law and Justice as classified, therefore, your request is hereby declined on this aspect. Through the above referred letter, the Law and Justice Ministry has denied me therequested information by stating that "the Cabinet Division vide its U.O No. 5/16/90-Security,dated 04.04.1993 has declared the Ministry of Law and Justice as classified, therefore, your request is hereby declined on this aspect”.
3. The Appellant also submitted his rejoinder to the response of the Ministry of Law and Justice which is as under:  
“...I, hereby, argue that the Ministry has declined the request without paying due consideration to the provisions of the Right of Access to Information Act 2013 and Article 19-A of the Constitution. My arguments are as below:
  - 2.1. The rejection of my application for access to information, vide the above-referred response of the Ministry, is not based on Article 19-A of the Constitution or any of the provisions of the Right of Access to Information Act 2017. This suggests that the Ministry has not even bothered to consider Article 19-A and the Act in the course of deciding my application.
  - 2.2. The Ministry's response is vague, as it refers to a Cabinet Division's notification issued on 04/04/1993 but does not explain what exactly the notification says, and how is that applicable in relation to an application filed under the Right of Access to Information Act 2017. Nor has the Ministry provided me a copy of the said notification.
  - 2.3. The Right of Access to Information Act 2017 has overriding effect vide its section 25 and, therefore, inconsistent provisions in other laws cannot be used to deny information requests under this Act. Yet, the Ministry has tried to hide behind a mere administrative notification, which has no legal effect in the presence of explicit provisions of the Right of Access to Information Act 2017.
  - 2.4. The requested information is about the use of tax-payers money in relation to a matter of public importance and, therefore, its disclosure is not likely to cause any harm to public interest. In fact, by disclosing the requested information, the Ministry of Law and Justice will contribute to building public trust in the government.
  - 2.5. The said Cabinet Division notification was issued a long before the insertion of Article 19-A in the Constitution in 2010. Whereby right to information was declared a fundamental right of every citizen. Therefore, reliance on that notification to deny access to information amounts to deliberate violation of citizens' fundamental rights. The said notification,

therefore, needs to be declared as contradictory to the Article 19-A of the Constitution and provisions of the Right of Access to Information Act 2017.

In view of the above, it is requested that the Ministry of Law and Justice may be directed to immediately implement sections 5 & 9 of the Act; and provide information that I requested vide my application dated November 01, 2019 without any further delay and excuses. Moreover, the Law and Justice Ministry may be directed to share a copy of the said Cabinet Division's notification and the Commission should determine whether it has any legal effect in the light of Article 19-A of the Constitution and the Right of Access to Information Act 2013”.

## **B. Proceedings**

4. The hearing date was fixed for 26/12/19 through the hearing notice sent on 03/12/19 and both parties were informed accordingly. The text of this hearing notice is as under:

“Take notice that the above cited appeal is fixed for regular hearing before the Pakistan Information Commission on December 26, 2019 at 11:30 AM at the above-mentioned address.

You are directed to appear before the commission or represent the public body through Public Information Officer as required to be designated and notified by each public body under Section 9 of The Right of Access to Information Act 2017.

Also find enclosed request for information filed by the Appellant, response of the Ministry of Law and Justice and rejoinder of the Appellant filed with the commission.

Note: The case record in the above cited appeal, if any, be produced before the Information Commission at the time of hearing”.

5. The Respondent did not appear before the commission at the time of hearing on 26/12/19.

## **C. Discussion**

6. The instant appeal has brought to the fore the interplay of Article 19, Article 8, Section 25 and Section 16 (1) (k) of the Right to Information Act 2017, hereafter referred to as Act.

7. The questions before this commission are as under:

(a) Is the reliance of the Respondent on the Cabinet Division’ notification issued on 04/04/1993 to deny the requested information, which it failed to produce before the commission, legally tenable in the presence of Article 19-A, Article 8<sup>1</sup> of the Constitution and Sections 25, 16 (1) (k) of the Right of Access to Information Act 2017?

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(b) What is the procedure for declaring records to be classified after the enactment of the Right of Access to Information Act 2017 and how should the records declared classified earlier be treated?

(c) Does attorney-client privileged communication protect legal fees paid to lawyers from public funds?

8. The commission is of the view that the reliance of the Respondent on Cabinet Division' notification issued on 04/04/1993 is in conflict with Article 19-A<sup>2</sup> of the Constitution of the Islamic Republic of Pakistan.

9. The commission holds that as right to information in matters of public importance is a fundamental constitutional right, Article 8<sup>3</sup> of the Constitution which aims at curbing practices which thwart efforts of the citizens in the exercise of their fundamental rights and freedoms renders Cabinet Division' notification issued on 04/04/1993 void ab initio. Furthermore, Section 25 of the Act also overrides the said notification.

10. The right of access to information in matters of public importance is not absolute right. However, the right of access to information in matters of public importance can only be restricted, as Article 19-A dictates, through "reasonable restrictions imposed by law". The elected representatives enacted the Act to operationalise Article 19-A of the Constitution but the Respondent did not refer to any of the provisions of the Act to deny the requested information.

11. The Respondent was directed to produce "The case record "through hearing notice in the instant appeal. However, the Respondent did not produce the said notification before the commission so that it could determine its validity, if any, to deny requested information. As such, the Respondent also challenged powers vested in the commission under Section 20 (1) (d) (i) (ii)<sup>4</sup> of the Right of Access to Information Act 2017.

12. This commission believes that classifying a record and exempting it from disclosure is too serious a business to be left alone to bureaucrats and politicians owing to possible conflict of interest in certain cases. That is why the elected representatives in their collective wisdom have forestalled such an eventuality by laying down procedure to be adopted for classifying records. Section 7 (f) allows a Minister-in-charge to classify a record which is as under:

a) "Records declared as classified by the Minister-in-charge of the Federal Government

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<sup>1</sup>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.

<sup>2</sup>8. Laws inconsistent within derogation of fundamental rights be void.-

(1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

<sup>3</sup>Summoning and enforcing the attendance of witness and compelling them to give oral or written evidence on oath; and

Requiring public bodies to produce records as defined in section 6 pertaining to the appeal;

Provided that the Minister-in-Charge of the Federal Government shall have to record reasons as to why the harm from disclosure of information outweighs public interest and further that information pertaining to allegation of corruption and violation of human rights shall not be excluded”.

The Respondent did not follow this procedure. Had the Respondent duly recorded reasons to classify the records and communicated the same to the commission to demonstrate that it acted in accordance with the provisions of the Act as required under Section 17 (4)<sup>5</sup>, the commission would have determined whether the harm from disclosure of information outweighs public interest.

13. The commission is of the view that the said notification cited to deny requested information was created more than 20 years ago and is itself a public record in the light of Section 16 (1) (k) of the Act which is as under:

“exemptions set out in section 16 shall cease to apply after every twenty years and that record of public bodies shall be made public”.

14. When a public body procures services of an individual or a firm/company, it enters into a contract for the delivery of services against a certain amount which is paid through public funds. This commission concurs with the point raised by the Appellant that “The requested information is about the use of tax-payers money in relation to a matter of public importance and, therefore, its disclosure is not likely to cause any harm to public interest. In fact, by disclosing the requested information, the Ministry of Law and Justice will contribute to building public trust in the government”. For example, the public will be able to know that the legal fee paid to each lawyer from their taxes was in accordance with their relevant experience in dealing with such a case. The people of Pakistan wanted to ensure that their taxes through contracts signed by public bodies were well spent and that is why contracts signed by a public body are declared public records under Section 6 (c) which is as under:

“Information regarding grant of licenses, allotments and other benefits, privileges, contracts and agreements made by a public body”.

15. Though the Respondent has not raised the point of attorney-client privileged communication to protect the requested information from disclosure, this commission believes that attorney-client privileged communication is restricted to the extent of advice given by an attorney to the client. The attorney - client privileged communication does not cover legal fees paid to the lawyers from public funds. In this connection, as Amicus Curiae of the commission, Ms. Reema Omer, Legal Advisor, South Asia, International Commission of Jurists shared with the commission the following:

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<sup>4</sup>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

“As the United States Court of Appeals for the Ninth Circuit held in *Clarke v. American Commerce National Bank*, “Not all communications between attorney and client are privileged. Our decisions have recognized that the identity of the client, the amount of the fee, the identification of payment by

(6)

case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege.”<sup>6</sup>

Similarly, striking the delicate balance between professional secrecy and public access to documents, the Quebec Court of Appeal in a recent judgment that the total amount of legal fees paid to a lawyer working on a mandate for public bodies – in that case municipalities or school commissions - are not automatically covered by solicitor-client privilege ([Kalogerakis c. Commission scolaire des Patriotes](#), 2017 QCCA 1253)”.

#### **D. Order**

16. 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 04/03/2020.
17. Copies of this order be sent to the Secretary, Ministry of Law and Justice, Public Information Officer Ministry of Law and Justice and the Appellant for information and necessary action.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner

Announced on:  
February 03, 2020

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<sup>5</sup>Clarke v. American Commerce National Bank, 974 F.2d 127 (9th Cir. 1992).

This order consists of 6 (six) pages; each page has been read and signed.