



Appeal No 049-06/19

Mukhtar Ahmed Ali (Appellant)
Vs.
Office of the President of Pakistan (Respondent)

Order

Date: March 11, 2020

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 06/05/2019 to the Commission, stating that he submitted an information request to the Principal Secretary, President of Pakistan Office, dated 10/04/2019 under the Right of Access to Information Act 2017 requesting following information:

“As you are aware that right to information is a fundamental right of every citizen under Article 19A of the Constitution, and the Right of Access to Information Act 2017 provides a mechanism for ensuring that citizens can easily access the required information from public bodies. Therefore, in exercise of citizens' rights under the Constitution and the Act, I shall appreciate if the following information may kindly be provided:

- a) *Total sanctioned strength of staff members of President Office (category-wise) against different positions/ pay-scales. from pay scale 1 to 22 (category-wise).*
- b) *Total vacancies in the President Office against different pay-scales/positions (category-wise); and dates since which these positions have been lying vacant,*

- c) *Number of staff members who are not regular but have been engaged on daily-wage basis or through short-term or long-term contracts against various positions/ pay-scales (category-wise).*
- d) *Number and types of positions created anew since January 1, 2017.*
- e) *Total number of female staff members (category-wise) against various positions/ pay-scales. The response may distinguish between the short-term/ temporary staff members and regular ones.*
- f) *Total number of persons with disabilities working with the President Office against various positions/ pay-scales (category-wise). The response may distinguish between the short-term/ temporary staff members and regular ones.*
- g) *Total number of transgender persons working with the President Office against various positions/ pay-scales (category-wise). The response may distinguish between the short-term/ temporary staff members and regular ones,*
- h) *A certified copy of the latest approved Service Rules of the President Office”*

B. Proceedings

3. Through a notice dated 18/06/2019, the Commission called upon the Respondent to submit reasons for not providing the requested information within 7 working days.
4. Another notice dated 26/07/2019 was sent to the Respondent to submit reasons within three working days as to why the requested information has not been provided to the appellant.
5. The respondent through its letter dated 07/08/2019 vide letter No. 13(261)/2010-Estt stated that *“the matter is under consideration with this Secretariat and the requisite reply shall be furnished in due course of time.”*
6. The commission again sent a notice dated 14/10/2019 to Muhammad Saleem, Director (Legal), President’s Secretariat (Public) in response to the earlier letter of the Respondent to submit the response.
7. The Respondent replied to the notice on 28/10/2019 vide No.13(261)/2010-Estt and stated:

*“The Right of Access to Information Act, 2017 applied to public bodies of the Federal Government as envisaged in section 1(2) of the Act whereas, the office of the President does not fall within the ambit of the said act.
Law and Justice Division has endorsed the views contained in para-2 above”.*
8. The response was shared with the Appellant on 11/11/2019.
9. The appellant submitted his response which is as under:

The response of the President's Secretariat suggests that it not a public body and, therefore, 'the office of the President does not fall within the ambit of the provisions of the said Act.' If this stance were to be accepted, the question would be: if it is not a public body, what it is? Is it a private body? The response, therefore, makes no logical sense, and has been furnished with least sensitivity for citizens' rights in a democratic country.

"The said response refers to section 1(2) of the Act and states that the Act 'applies to public bodies of the Federal Government...', and then concludes that the President's office is not covered by the Act. This is despite the fact that section 2(ix) (g) on definition of a 'public body' clearly and unambiguously includes "any other organization which undertakes public function, to the extent of that function...". Now it would be really interesting if the President's Secretariat thinks that it does not perform public functions and, in such a case, one would like to know what kinds of functions it performs, if not public functions. I would like to argue that the President's Secretariat performs public functions because:

- 2.1. It has been established by the people of Pakistan for performing certain functions in the interest of the people through a social contract in the form of the Constitution of the Islamic Republic of Pakistan. If people of Pakistan have established this office and then have indirectly elected the President, how come Hon'ble President and his Secretariat are not meant to perform for them and be accountable to them?*

1.2.2. The President's Secretariat meets all of its expenses including the salary of the Hon'ble President through taxpayers' money. An office that consumes taxpayers' money can't claim to be excluded from the definition of a 'public body', and is certainly a body that performs public function - or else, it should not get taxpayers' money.

1.2.3. President's Secretariat and the Hon'ble President of Pakistan (infact all state officials and institutions) exercise authority that has been vested in them by the people of Pakistan through a delegatory process involving chosen representatives of the people of Pakistan i.e. through the Constitution and relevant laws, (Please refer to the wording of the Objective Resolution that is now an integral part of the Constitution). Therefore, the President's Secretariat that exercises public authority is very much a public body that discharges 'public functions'.

1.3. Lastly, it is argued that, under the Rules of Business, the President's Secretariat is a part of the Cabinet Division, which explicitly falls within the definition of a 'public body', as provided in section 2(ix)(a) encompassing 'any Ministry, Division, attached department...'. Therefore, even if the President's Secretariat and the Prime Minister Secretariat are not explicitly mentioned, they are still very much a part of section 2 (ix) (a), which covers all ministries, divisions and attached departments. It may be mentioned here that the Prime Minister Secretariat has already responded to a similar information request by providing the requested information. 2.

In view of the above, it is requested that the President's Secretariat may be directed to immediately implement sections 5 & 9 of the Act; and provide information that I requested vide my application dated April 10, 2019 without any further delay and excuses”.

10. The hearing of the case was fixed for 22/01/2020 through the hearing notice sent on 23/12/2019 and both parties were informed accordingly.”
11. Muhammad Saleem, Director (Legal), President’s Secretariat (Public) appeared in the hearing to represent the Respondent. He submitted that *the office of the President was not a public body under section 1(2) of the Right of Access to Information Act 2017 and that the Act was applicable only to the public bodies of the federal government whereas Office of the President was a constitutional body.*

C. Discussion

12. The question before this commission is as under:

Can citizens of Pakistan seek information from the Office of the President under the Right of Access to Information Act 2017, henceforth referred to as Act?

13. In his rejoinder to the stance taken by the Respondent that Office of the President is not a public body under Section 1 (2) of the Act, the Appellant has raised some pertinent points.
14. This commission concurs with the Appellant that the Office of the President is a public body under Section 2(ix) (g)¹ of the Act because it performs public functions. The Appellant also makes a valid point when he states that “under the Rules of Business, the President's Secretariat is a part of the Cabinet Division, which explicitly falls within the definition of a 'public body', as provided in section 2(ix)(a) encompassing 'any Ministry, Division, attached department...'. Therefore, even if the President's Secretariat and the Prime Minister Secretariat are not explicitly mentioned, they are still very much a part of section 2 (ix) (a), which covers all ministries, divisions and attached departments. It may be mentioned here that the Prime Minister Secretariat has already responded to a similar information request by providing the requested information”. In fact, not only Prime Minister Secretariat has been providing requested information to citizens, it has also designated Public Information Officer, (PIO) as required under Section 9² Of the Act who has been representing PM Secretariat before the commission in the hearings.

¹ Any other organization which undertakes a public function, to extent of that function

1. ² **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;

15. The Appellant has also raised a pertinent point when he states that “President's Secretariat and the Hon'ble President of Pakistan (in fact all state officials and institutions) exercise authority that has been vested in them by the people of Pakistan through a delegatory process involving chosen representatives of the people of Pakistan i.e. through the Constitution and relevant laws, (Please refer to the wording of the Objective Resolution that is now an integral part of the Constitution). Therefore, the President's Secretariat that exercises public authority is very much a public body that discharges 'public functions'”.
16. This commission believes that the principle behind the enactment of the Act is to ensure public accountability so that the precious resources of the citizens of Pakistan are put to use in a judicious manner. That is why even the Non-Governmental Organisations that receive or have received public funds have been brought within the purview of the Act under Section 2(ix) (h)³ of the Act. As such, Office of the President which is a public authority run on public funds falls within the ambit of the Act.
17. While a particular clause of an Act may serve a particular purpose, an Act needs to be understood in its entirety to understand its spirit and purposes. The Respondent has based its response entirely on one section of the Act overlooking other provisions of the Act.
18. The Preamble⁴ Of the Act states the rationale behind the enactment which can be described as: making government accountable and answerable to people, greater participation of citizens in the affairs of the government, reduction in inefficiency and corruption through transparency and openness, wellbeing of the citizens through economic growth, good governance and protecting and promoting human rights. This is to be achieved by providing citizens access to public records. This is the rationale behind the enactment of

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.

³A non- government organization which directly or indirectly receives or has received public funds, subsidy tax exemptions, piece of land or any other benefit involving public funds and any other non- governmental organization or body registered under any law for the time being in force

⁴*An act to provide for the rights of access to information in transparent and effective manner, subject only to reasonable restrictions imposed by law*

Whereas Government believes in transparency and the right to have access to information to ensure that the people of Islamic Republic of Pakistan have improved access to records held by public authorities and promote the purpose of making the government more accountable to its people, of improving participation by the people in public affairs, of reducing corruption and inefficiency in Government, of promoting sound economic growth, of promoting good governance and respect for human rights.

AND whereas it is expedient to provide for a law which gives effect to the fundamental right of access to information, as guaranteed under Article 19A of the Constitution of Islamic Republic of Pakistan and international law, whereby everyone shall have the right to have access to all information held by public bodies subject only to reasonable restrictions imposed by the law and for matters connected therewith or incidental thereto:

law. If this be the rationale and the purpose of the Act, how can any public entity or any institution claim absolute exemption?

19. Does the law provide for absolute exemption to any public entity or any institution? A close scrutiny of the Act shows that the Act itself does not provide absolute exemption to any public entity or any public institution. In fact, even defence forces have not been given absolute exemption as an entity. Only certain records pertaining to defence forces have been given exemption under Section 7 (e)⁵ of the Act and all records pertaining to commercial and welfare activities have not been exempted.
20. The Appellant has exercised his constitutional right of access to information in a matter of public importance as evident from the requested information. Apart from the information about the staff employed at the Office of the President of Pakistan, he has also requested certified copy of the latest approved Service Rules of the President Office. In constitutional petition 39 of 2019, Juris Foundation through Chairman VS Federal Government through Secretary, Ministry of Defence, the Hon'ble Supreme Court said: "Acts of the Parliament or subordinate legislation are public documents and must be readily available to the citizen of the country subject to the exceptions provided under the Right of Access to Information Act, 2017. Those exceptions extend only to record relating to defense forces, defense installations or connected therewith and ancillary to defense and national security,⁶ and not to the Army Laws".
21. The Appellant has the statutory right to have access to the requested information under the Act. Furthermore, the Constitution of the Islamic Republic of Pakistan is the supreme law of the land. Therefore, constitutionality⁷ of the right of access to information in matters of public importance dictates that no real or perceived flaw in the statute can trump the fundamental constitutional right in the presence of Article 8⁸ of the Constitution.
22. While the constitutionality of the right of access to information in matters of public importance has accorded it the status of fundamental right, it is not absolute right and is

⁵Records relating to defence forces, defence installations or connected therewith and ancillary to defence an national security excluding all commercials and welfare activities

⁶ The Right of Access to Information Act, 2017, Section 7(e)

⁷Article 19-A

"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"

⁸"8. Laws inconsistent within derogation of fundamental rights be void.-

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

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."

“subject to regulation and reasonable restrictions imposed by law”. The Act operationalises Article 19-A of the Constitution as mentioned in the Preamble and includes restrictions to be imposed on right of access to information as required by Article 19-A of the constitution under Section 7 and Section 16 of the Act. Therefore, citizens’ right of access to information in matters of public importance can only be restricted under the restrictions mentioned in the Act.

23. The question before the commission is as to whether the requested information can be denied to the citizen under the restrictions mentioned in Section 7 and Section 16 of the Act. This commission believes that the requested information does not fall within any provision of the exempted information mentioned in Section 7 and Section 16 of the Act.
24. This commission believes that not only the requested information does not fall within the provisions of the exempted information under the Act, the public entities are bound to proactively share the requested information through web sites under Section 5 (1) (a) and (b) and Section 8 of the Act.
25. It should be noted that information of similar nature was requested by this appellant from the Federal Board of Revenue. This Commission held its order in the case of Mukhtar Ahmed Ali VS Federal Board of Revenue Appeal, No. 052-06/19, which was challenged by FBR but upheld by the Honourable Islamabad High Court, that the requested information pertained to proactive disclosure of Information under section 5 of the Right of Access to Information Act 2017. In the Constitutional Petition W.P. No. 3080/2019 Federal Board of Revenue through its Member FATE versus Chief information Commissioner the Honourable IHC stated that “.... The Information sought by the private respondent definitely falls within the ambit of clause (a) of sub section (1) of section 5 of the Act 201.”
26. As Amicus Curiae of the commission, Mr. Asad Jamal, Advocate High Court submitted the following:

“The right to information is a constitutionally guaranteed right. Article 19A of the Constitution of Pakistan, introduced in 2010, reads as follows

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.

A bare reading of article 19A informs us that the right to have access to information relating to “all matters of public importance” subject to “reasonable restrictions” expressly provided in a law passed by the legislature. The Right of Access to Information Act, 2017 is the law passed by parliament. It provides “reasonable restrictions” referred to in article 19A of the constitution.

The first and the foremost point which must be taken into account is that it is not the Right of Access to Information Act, 2017 which gives the citizens of Pakistan the right to information in all matters of public importance. The right to information flows from the

constitution which is the supreme law of the land. The Act can only regulate the right by subjecting it to reasonable restrictions. It would be relevant to state here that unlike article 19, no specific criteria are provided in article 19A of constitution which could be taken into consideration while imposing reasonable restrictions. This is a clear departure from the wording of article 19 which guarantees freedom of speech. The Act of 2017 provides a framework for disclosure of information in the custody of the institutions, departments and organisations operated either under the direct executive authority of the federal government or are financed by the federal government.

*It may be argued that since the right to information relating to all matters of public importance is a constitutional right, the definitions, and exclusions or exemptions contained in the Act have to be strictly construed to convincingly justify the denial of access to information held by a public office. This argument is strengthened by what has been held in **Waheed Shehzad Butt vs. Federation of Pakistan PLD 2016 Lah 87**. A similar question relating to the application of the Freedom of Information Ordinance 2002 ("FOI Ordinance"), repealed by the Right of Access to Information Act, 2017, had arisen in 2015. The FOI Ordinance like the Act of 2017 contained exclusions and exemptions for information held by the federal government. The Hon'ble Lahore High Court held as follows*

In addition to the FOI Ordinance, the citizens now have the constitutional guarantee of freedom of access to information. After the introduction of Article 19-A of the Constitution, the exclusions contained in section 8 of the FOI Ordinance shall have to be strictly construed justifying the denial of access of public record to the citizens.

The stance adopted by the office of the President of Pakistan is that it doesn't fall within the definition of "public body" as defined in the Act of 2017. This is a narrow view of the Act of 2017 and article 19A of the Constitution.

Even if it is conceded, that the office of the President of Pakistan does not fall within the scope of the definition of "public body" as provided in the Act of 2017, it cannot be denied that the office of the President of Pakistan performs important public function and it is a "public office" in the legal sense of the word. The Black's Law Dictionary (9th Edn.) defines "public office" as "A position whose occupant has legal authority to exercise a government's sovereign powers for a fixed period".

The president is the head of the state. The office of the President is created by the constitution, has definite tenure, and is entrusted with powers to carry out some governmental functions. It is also fully funded by the federal government. Reference may be made to articles 41-49 (Chapter 1 Part-III) Constitution of Pakistan 1973.

Dealing with “matters of public importance”, a full bench of the Hon’ble Lahore High in judgment reported as Province of Punjab vs. Qaisar Iqbal etc. (PLD 2018 Lahore 198) “Under clause 19-A of the Constitution, every citizen shall have the right to have access to information in matter of “public importance”. The word “public importance” used in Article 19-A of the Constitution is not a defined term. However, term public importance according to dictionary meaning could be defined that “question which affects and has its repercussions on the public at large and it also includes the purpose and aim in which the general interest of the community particularly interest of individual is directly or widely concerned”. The same interpretation was expressed by august Supreme Court in Ch. Muhammad Akram vs. Registrar, Islamabad High Court and others (PLD 2016 Supreme Court 961) and in State of J. & K. and others vs. Bakshi Gulam Muhammad and others (AIR 1967 SC 122).”

The President of Pakistan deals with matters which affect and have repercussions on the public at large and the purposes for which the office of the president is established are such that in which the people of Pakistan have a general interest. Reference may be made to article 41-49 of the Constitution.

In light of the foregoing, it can be argued that the office of the President of Pakistan is a public office which deals with “matters of public importance”, and holds information in which the citizens have a legitimate interest. There can be no convincing argument why would the legislative intent in enacting the Act of 2017 be to provide a blanket cover to the President of Pakistan from the scope of the right to information.

The intent of the legislature in enacting the Act of 2017 is that only specific kind of information may be excluded or exempted from the scope of the constitutionally guaranteed right to information. Such exclusions and exemptions are provided in the Act, which must be interpreted and construed narrowly to promote to advance the purposes set out in the preamble of the Act. Reference in this regard may be made to section 3(2) of the Act of 2017.

Unless the Office of the President can show that the information sought by a citizen of Pakistan falls within the scope of the exclusion and exemptions under sections 7 and 16 of the Act of 2017 as interpreted in accordance with the international best practices, the request for information cannot be denied.

None of the provisions of the Act of 2017 excludes, implicitly or expressly, the office of the President of Pakistan from the scope of the Act. A blanket exclusion, as claimed in the reply submitted by the office of the president, from the scope of the constitutional guarantee would be ultra vires of the constitution. Only specific information can be excluded from the constitutional right to information and such denial too has to be rigorously argued and

justified especially because the relevant constitutional provision doesn't even remotely provide any criteria of what may be excluded from the scope of the constitutional guarantee.

For such a justification one would have to consult and rely on international standard practices. In this regard, reference may be made to "The Public's Right to Know: Principles on Freedom of Information", a document prepared by Article 19, an international rights based organisation working to promote the right to information and free speech (available at <https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>)

These principles have been developed while relying on international best practices and have been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression, in its report to the 2000 session of the United Nations Commission on Human Rights, and referred to by the Commission in its 2000 resolution on freedom of expression. They were also endorsed by the Organization of American States (OAS) Special Rapporteur on Freedom of Expression in its 1999 Report, Volume III of the Report of the Inter-American Commission on Human Rights to the OAS.

Principle 3 enumerates the standards which must be followed for the promotion of open government in a democracy. Principle 4 enumerates the standards which must be followed to interpret and apply exceptions and exemptions provided in the law such as the Act of 2017. It prescribes that the exceptions and exemptions should be clearly and narrowly drawn. Based on the standards provided in the Principles, it may be stated that a refusal to provide information must be based on three part test.

- i) The information sought by the citizen doesn't relate to legitimate aim of the law i.e. article 19A of the Constitution of Pakistan, first and foremost; and the Act of 2017 ("the legitimate aim test")*
- ii) The disclosure of information must threaten to cause substantial harm to "the legitimate aim" ("the substantial harm test")*
- iii) The harm to the aim must be greater than the public interest in having the information ("the public interest test").*

The information sought by the concerned citizen relates to the number of staff members falling in different categories. Both in terms of the Act of 2017 as well as the international best practices and principles as enumerated above, there can be no justification to seek exemption and exclusion from the application of article 19A of the Constitution of Pakistan. The information sought in the instant case must be provided".

D. Order

27. 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.
28. The Respondent is directed to designate Public Information Officer and submit notification to this effect to this commission within 10 working days of the receipt of this Order.
29. 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 20/04/2020.
30. Copies of this order be sent to the Principal Secretary, Office of the President and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:

March 11, 2020

This order consists of 11 (eleven) pages; each page has been read and signed.