

## IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 281/02/2020

Azaz Syed

Vs

Federal Investigation Agency

**Fawad Malik: Information Commissioner**

Date: July 06, 2020

### **APPEAL:**

1. Azaz Syed (appellant) has filed the appeal before the Pakistan Information Commission alleging therein that his request under Art 19-A of the Constitution of Pakistan read with the Right of Access to Information Act, 2017 filed before the, Federal Investigation Agency, Anti Human Trafficking Department (respondent) has not been complied with, notwithstanding the specified period provided in the Act.

The information requested in his application dated 4.7.2019 is as under;

- 1) *Provide the year wise and gender wise total number of cyber claims registered since January 2008 to January 2019. Also provide a list of arrested and convicted persons against each case.*
- 2) *Please provide a list of total sanctioned posts in all departments of FIA and total number of vacant post in all departments of secretariat. Give a department wise list.*

### **PROCEEDINGS:**

2. The Commission vide notice dated February 12, 2020 directed the respondent to provide reasons in writing within seven days of the receipt of the notice as to why the requested information has not been provided to the applicant as each federal public body is bound to respond as soon as possible and in any case within ten working days of the receipt of the request.

3. The notice remained unheeded therefore the appeal was set down for hearing before the Commission on 11.3.2020 and both the appellant as well as the respondent were informed accordingly vide notices dated 27.2.2020.

4. At the time of hearing of appeal Mr. Mohammad Raza, deputy director along with Mr. Sadam Khan, assistant director appeared before the Commission to represent the

respondent public body, and assured the Commission the provision of the requested information till the next date of hearing hence the appeal was adjourned to 18.3.2020, but on the said date no one appeared to represent the public body nor the written reply was submitted.

### **COMMISSION'S VIEW:**

5. The first part of the requested information is concerning cyber-crime claims registered by the respondent public body. The Federal Investigation Authority (Inquiries and Investigation) Rules 2002, empowers the FIA authorities to inquire and investigate the complaint before the registration of the FIR. After the registration of the FIR it becomes a public document, open for disclosure under the Right of Access to Information Act, 2017 and 19.A of the Constitution of Pakistan.

6. In an identical matter titled *(Shumaila Hussain Shahani versus Federal Investigation Agency)* the Commission has earlier dealt with the issue. The relevant text of the order is reproduced as under;

*7. The First Information Report (FIR) is a Report registered at the Police Station on the complaint of the complainant on the basis of which the Police Machinery is activated and set in motion followed by the investigation. The FIR is a public document which cannot be denied from sharing under the Right of Access to Information Act. 2017.*

*According to Section 24.5 of the Police Rules 1934 Vol. III the First Information Report shall be registered at the Police Station. The original copy shall be preserved in the Police Station for a period of 60 years. The other three carbon copies shall be submitted as follows:-*

*(a) One to the Superintendent of Police or other gazetted officer nominated by him.*

*(b) One to the Magistrate empowered to take cognizance of the offence as required by Section 157 Criminal Procedure Code.*

*(c) One to the complainant unless written report in Form 24.2(1) has been received in which case the check receipt prescribed will be sent.*

8. Section 154 Cr.P.C 1898 as well as Section 24.5 of the Police Rules 1934 are very clear that the informant has the right to get a copy of the F.I.R free of cost but the issue arise whether any other person is having rights to get the copy or the number of the F.I.R.

9. Article 85 of the Qanoon-e-Shahadat order 1884 deals with public documents and reads as follows:-

*“85. Public documents. The following documents are public documents.*

*(1) documents forming the acts or records of the acts.*

*(i) of the sovereign authority.*

*(ii) of official bodies and tribunals, and*

*(i) of public officers, legislative, judicial and executive, of any part of Pakistan, or of a foreign country,*

*(2) Public records kept in Pakistan of Private documents.*

*(3) Documents forming part of the records of judicial proceedings.*

*(4) documents required to be maintained by a public servant under law, and*

*(5) registered documents the execution whereof is not disputed.*

*(6) Certificates deposited in a repository pursuance to the provisions of the Electronic Transactions Ordinance 2002”.*

10. The denial of information through the reply by the public body is evasive and unsatisfactory. The public body has failed to mention specifically the subsection of Section 16 which exempts the public body from disclosing the requested information. Furthermore mere reference of exemption clause or Section does not established the fact that the public body has acted in accordance with the provision of the act as provided under Section 17(4) of the Right of Access to Information Act 2017. The Respondent has not furnished any plausible or justifiable reasons for claiming the exemption clause provided in Section 16 of the Act.

*“17(4) the public body shall, in an appeal under subsection (1), bear the burden of proof of showing that it acted in accordance with the provisions of this Act”.*

11. According to Section 5(1) of Right of Access to Information Act, 2017 regarding publication and availability of record, the principal officer of each public body within 6 months of the commencements of the Act had to ensure the categories of information and record mentioned in Section 5 of the Act to be published and uploading over the internet. If the public body meet its obligations with responsibility and proactively published the record as required under the Act, surely the requested informations in the instant appeals would not have been filed, but the public body's failure make the citizen to invoke the jurisdiction of this commission.

12. Section 5(i) of the Right of Access to Information Act 2017 is reproduced as under:

*“5(i) Reports including performance report, audit reports, evaluation reports, enquiry or investigation report and other reports that have been finalized”.*

13. *The FIR is a public document which is available at the Police Station, SP office and in the Court of Magistrate. Once the document (FIR) is submitted before the SP office and Court of Law, it becomes a public document and any person can ask for a copy of the same. Ref PLD 2007 Kar.415, 2012 YLR 1386. Likewise the information pertaining to the total number of persons arrested in a particular crime is neither barred from disclosure under the Police Rules 1934 nor exempted under the Right of Access to Information Act 2017.*

14. *The requested information may reveal type, nature and frequency of Cyber Crimes committed in the country without compromising autonomy of F.I.A in its investigation of Cyber Crimes. The Commission maintains that public participation in the affairs of the Government is key to good governance and the citizen can have greater participation in the affair of the government through the exercise of their Right to Information. Instead of denying access to the requested information by broadly referring to Section pertaining to exemption and without providing sound arguments, F.I.A is legally obliged to proactively share this information through its Websites to ensure greater public participation in its functioning.*

15. *After going through the appeals, the reply submitted by the public body and the Act, the commission is of considered view that the disclosure of number of people arrested, number of cases registered and the number of FIRs in a particular crime as desired by the applicant in her applications are not exempted from disclosure rather the same should have been made public as required under Section 5 of Right of Access to Information Act 2017. Access to Information is statutory right under the Act, further endorsed by article 19-A of the constitution of Pakistan, therefore the citizen cannot be denied their fundamental and constitutional right.*

7. In the later part of the request the appellant has sought the detail of total sanctioned posts and the number of posts lying vacant in all departments of FIA. This category of record is listed in the Act that ought to have been disclosed proactively by each public body within a period of six months of the commencement of the Act including uploading over the internet.

8. Access to the information is a fundamental right under article 19.A of the Constitution of Pakistan, further fortified by the Right of Access to Information Act, 2017. It needs to be construed liberally to provide maximum right and benefit to the citizens to expand the orbit of right to information. Information held by the public body

cannot be withheld in arbitrary manner according to the whims of the government officials.

9. The public bodies must interpret the Act so as to advance its purposes as set out in the preamble of the Act to promote the right of access to information and facilitate prompt disclosure of information and record held by the public authorities and for improving the participation by the people in public affairs for promoting good governance and respect for human rights.

**ORDER:**

The appeal is allowed. The respondent is directed to provide the requested information to the appellant forthwith but not later than seven days of the receipt of this order.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner  
Announced on 1.7.2020

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