

Pakistan Information Commission



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In Pakistan Information Commission

Appeal No 279-02/20

Azaz Syed

(Appellant)

Vs.

National Database and Registration Authority

Through Faik Ali Chachar, Deputy Director (Media) / Public Information Officer

(Respondent)

Order

Date: August 25, 2020

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 03-02-2020, to the Commission, stating that he Submitted an information request to the Chairman, National Database and Registration Authority dated 03-07-2020 under the Right of Access to Information Act 2017.
2. The information sought by the Appellant is as follows:
 - *“Total number of Transgender holding the National Identity cards in the country. Please provide province wise list.”*

B. Proceedings

3. Through a notice dated 24-02-2020 sent to the Mr. Faik Ali Chachar, Deputy Director (Media) / Public Information Officer of NADRA, the Commission called upon the Respondent to submit reasons for not providing the requested information.
4. The Respondent through a hearing notice dated 24-07-2020 was directed that the above-mentioned appeal is pending decision before this Commission. The text of the notice is as under:

“In pursuance of the Standard Operating Procedures issued by the Government of Pakistan for the Covid-19 and to ensure public safety, the personal appearance before the Commission at the time of hearing, is condoned for the time being. Therefore, you are directed to submit your written reply and arguments to Pakistan Information Commission within fifteen days of the receipt of this notice.

Copies of the supporting documents may be annexed with the written arguments. If the written arguments are not submitted within 15 days, the appeal will be decided Ex Parte in the light of the record available on file and the Right of Access to Information Act 2017”

5. The Respondent did not respond to the notice of the commission.

C. Discussion and Commission’s View on Relevant Issues

6. The questions for the consideration of the commission are as under:
 - (a) Should a citizen have access to requested information in accordance with the provisions of the Right of Access to Information Act 2017, hereafter referred as Act?
 - (b) Did the Respondent follow procedure laid down in the Act in responding to the request of the citizen?
7. The requested information should not only be made available to the Appellant as a constitutional right of access to information in matters of public importance under Article 19-A of the Constitution of Islamic Republic of Pakistan but also as a statutory right under different provisions of the Right of Access to Information Act 2017. The Preamble of the Act states:

“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”. The requested information belongs to the category of information which public bodies are legally bound to proactively disclose, through their web sites, under Section 5 (1) (i) of the Act.
8. NADRA collects data about citizens, on the behalf of citizens and for the citizens. It is custodian of this data and not its owner.
9. This commission is of the view that Section 25 of the Act overrides all other laws including that of NADRA when it comes to matters of deciding which information should be made available and which should be exempted from disclosure. The Right of Access to Information Act 2017 contains adequate provisions to ensure that the sensitive data available with NADRA is exempted from disclosure. Furthermore, the Act also requires public bodies to record reasons in writing in case where harm from disclosure of information outweighs public interest. This commission is of the view that let alone causing any harm, the disclosure of requested information available with the NADRA about total number of transgender people in the country would enhance public interest.

10. Section 10 (1) of the Act fixes responsibility on the designated Public Information Officer, (PIO) to ensure that “requests are dealt with promoting full compliance by the public body of its obligation under this Act”.
11. In the instant appeal, the PIO failed to perform following obligations under the Act.
 - I. Failure to provide “written acknowledgement in response to” a request for information filed by citizen as required by Section 10 (1) of the Act.
 - II. Failure to follow procedure enunciated in the Act for acceptance and refusal of request for information laid down in Section 13 (2) of the Act which is as under:

“(2) 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
 - iv. 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”
 - v. Failure in following the timeline for responding to the information requests as required under Section 14 (1) and (2) of the Act as the PIO did not respond to the information request at all.
12. The PIO not only delayed and denied access to the requested information, the PIO also failed to comply with the duly sent notices of the commission.
13. Had the Respondent gone through the Act after receiving request for information of the citizen and notices of this commission, clearly referencing the Act, it would have saved time and resources of this Commission. It also demonstrates that the Respondent has not taken any steps for the implementation of the Act. It demonstrates that the powers vested in officers are not being 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.

14. The emerging trends suggests that NADRA is treating requested information like a jealously guarded secret which in fact should be on its web site in the best interest of the public. The Appellant has not sought information which may be deemed as private information about the transgender people. In other words, it is not information about identifiable individuals. This information is of generic nature.
15. This commission is of the view that the wellful 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.
16. Citizens of Pakistan through their elected representatives have included the provision 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.
17. If directions of the commission in this Order are not followed, it will be left with no option but to invoke Section 20 (f) of the Right of Access to Information Act 2017.

D. Order

18. The appeal is allowed. The designated PIO, NADRA is directed to provide the requested information to the Appellant, with intimation to this office, at the earliest, but in any case, not later than 10 working days of the receipt of this Order.

19. 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 28/09/2020.

20. Copies of this order be sent to Public Information Officer, NADRA and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on:

August 28, 2020

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