

Pakistan Information Commission



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In The Pakistan Information Commission, Islamabad

Appeal No 273-02/20

Moonus Kayinat Zahra

(Appellant)

Vs.

Ministry of Interior

Through Deputy Secretary (Admn) / Public Information Officer

(Respondent)

Order

Date: August 31, 2020

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 30-01-2020, to the Commission, stating that he Submitted an information request to the Secretary, Ministry of Interior dated 12-11-2019 under the Right of Access to Information Act 2017.
2. The information sought by the Appellant is as follows:
 - i. "Please provide a list of people who have been put on exit control list from 1st October 2018 to 1st October 2019. Also provide reason against each name.
 - ii. Please provide a list of people who have been removed from the exit control list from 1st October 2018 to 1st October 2019. Also provide reason of removing from ECL against each name.
 - iii. Please provide the particulars of any officer designated as Public Information Officer under Section () in the ministry of interior."

B. Proceedings

3. Through a notice dated 25-02-2020 sent to Maj. (Retd) Syed Muhammad Ali – Deputy Secretary (Admn) / Designated Public Information Officer, the Commission called upon the Respondent to submit reasons for not providing the requested information.
4. Through a letter vide No. 12/72/2020-ECL dated 23rd June 2020, the respondent stated that relevant/necessary information can be provided only to the persons whose name is place on the ECL.
5. The commission through a letter dated 21-07-2020 directed the Respondent to provide the information about the following:

A. What are Standard Operating Procedures, (SOPs) adopted by the ministry of Interior in putting are removing names of citizens on ECL?

B. Are these SOPs put on the web site of the Ministry of Interior?

C. Is there a Standard Operating Procedure through which a citizen can know whether his or her name has been removed from ECL and is this SOP available on the web site of the Ministry of Interior?

6. The Respondent did not submit its reply to this commission.

C. Discussion and Commission's View on Relevant Issues

7. The questions for the consideration of the commission are as under:

- I. 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?
- II. Did the Respondent follow procedure laid down in the Act for responding to the information request?

8. This commission sent following questions to the Respondent to enquire about the Standard Operating Procedures adopted by the Respondent about the issue at hand:

A. What are Standard Operating Procedures, (Sops) adopted by the ministry of Interior in putting and removing names of citizens on ECL?

B. Are these Sops put on the web site of the Ministry of Interior?

Is there a Standard Operating Procedure through which a citizen can know whether his or her name has been removed from ECL and is this Sop available on the web site of the Ministry of the Interior?"

9. As the Respondent has not answered to the queries, the commission is left with no option but to determine whether the requested information be made available to the citizen in light of the provisions of the Act. More importantly, the commission will determine the question as to whether the harm from disclosure outweighs public interest?

10. In the absence of the availability of such SOPs in the public domain, how can a person know how to get his or her name removed from ECL?

11. The relevant sections of THE EXIT FROM PAKISTAN (CONTROL) ORDINANCE, 1981(XLVI OF 1981) are as under:

“2. Power to prohibit exit from Pakistan. — (1) The Federal Government may, by order, prohibit any person or class of persons from proceeding from Pakistan to a destination outside Pakistan, notwithstanding the fact that such person is in possession of valid travel documents.

(2) Before making an order under sub-section (1), the Federal Government shall not be necessary to afford an opportunity of showing cause to the person against the order.

(3) If, while making an order under sub-section (1) it appear to the Federal Government that it will not be in the public interest to specify the ground on which the order is proposed to be made, it shall not be necessary for the Federal Government to specify such grounds.

3. Review.— (1) Any person aggrieved by an order of the Federal Government under subsection (1) of section 2 may, within fifteen days of the making of the order, make a

representation to the Federal Government for a review of the order, setting out in the representation the grounds on which he seeks the review.

(2) The Federal Government may, after giving the person making a representation an opportunity of being heard, make such order as it may deem fit.

(3) Subject to the order of the Federal Government in review, an order under subsection (1) of section 2 shall be final and shall not be called in question before any courts or other authority”.

Rule 3 of the Exit from Pakistan (Control) Rules, 2010 Is as under:

“ Service of order.—An order made under subsection (1) of section 2 of the said Ordinance shall be served on the person concerned either through the local authorities or the staff of the immigration check post or by registered post and a copy thereof shall be forwarded to the Provincial Government, the Federal Investigation Agency and the Directorate of Immigration and Passports for immediate compliance:

Provided that an omission, for any reason, to serve the order on any person in the matter aforesaid shall not be deemed to affect the powers of the authorities at an immigration check-post to prevent departure of the said person from Pakistan on the authority of the copy in their possession”

12. It is clear from the above-mentioned sections and the Rule that when the Respondent issues orders for placing a person on ECL, it is also required to afford the opportunity to the person of representation against the order.

13. 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”.

14. As stated in the Preamble, the Act has been enacted to inter alia promote ‘respect for human rights. The instant appeal has brought to the fore intersectionality of the constitutionally guaranteed right of access to information in matters of public importance with other constitutional rights such as right to fair trial under Article 10-A, inviolability of dignity of man under Article 14, freedom of movement under Article 15, freedom of assembly Article 16 and freedom of trade, business or profession, Article 18.

15. There have been reported incidents of people finding out at the air ports that their names have been placed on the Exit Control List. It would be stating the obvious that people go through the entire process of getting travel documents and booking tickets and hotels for a variety of reasons including, but not limited to: jobs, trade, professional pursuits, education, visiting friends, families and places. The constitutionally guaranteed fundamental human rights mentioned in the above para are adversely impacted and infringed if people find out their names

to be placed on ECL at air ports in the absence of robust mechanism informing them of the same.

16. This commission is of the view that the requested information should be made available to the Appellant under Section 6 (d) of the Act as well as the Respondent is legally bound to proactively share through its web site under Section 5 (1) (b) of the Act.

D. Order

17. The appeal is allowed. The Respondent is directed to provide certified copies of the final orders pertaining to the removal from, and, placing names of people on Exit Control List issued from 1st October 2018 to 1st October 2019. This information be provided to the Appellant, with intimation to this office within 10 working days of the receipt of this Order.

18. The Respondent is directed to put the contact details of the Public Information Officer on its web sites as required under Section 5 (1) (h) of the Act and submit compliance report to the commission within 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 03/10/2020.

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

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
August 31, 2020

This order consists of 4 (four) pages, each page has been read and signed